

1

Wednesday, 4th November 2009

2 (Afternoon session)

3 (1.52 pm)

4

**ALEXANDER CHARLES MCGINNIES**

5

**Examined by MISS CARMICHAEL (continued)**

6

MISS CARMICHAEL: Mr McGinnies, I have now a couple more

7

questions for you really about the Mayfield report, one

8

particular and one more general.

9

Coming to the particular one, if you look first at

10

paragraph 128 of your statement, which is at page 32 of

11

FI0193, I think you have been asked about your thoughts

12

on blind testing in the sense of putting in something

13

that is meant to be testing material by way of perhaps

14

something that, if not treated properly, might produce a

15

mis-identification into ordinary workload undisclosed so

16

that people wouldn't know that they were dealing with

17

anything out of the ordinary run of their work. Your

18

response had been that you questioned whether that would

19

bring many additional benefits, given competency

20

testing, dip sampling and you mentioned technical and

21

procedural problems?

22

A. Would this be a test whereby you create the sample?

23

Q. The intention of question to you, I think, was in

24

relation to material that was deliberately generated to

25

be fed into the system.

1 A. The problem we have with was we would need -- and it  
2 is procedural and technical problems -- if it was a mark  
3 that was being submitted it would need a crime reference  
4 number, it would need to be put through our office  
5 management system. If it was fingerprints that were  
6 submitted they would need to be checked through the  
7 Ident1 system. It's a live system. There's no training  
8 facility on it we have access to. That would generate a  
9 national search. The individual would need to be  
10 checked out on the criminal history system. The people  
11 who are carrying out the process and procedures from  
12 that criminal history system, realising that it wasn't  
13 on the system, on either Ident1 or in the  
14 criminal history system, would need to create a record  
15 for it and that would generate a unique reference  
16 number. To that stage we've created a lot of official  
17 documentation for something that isn't going to have --  
18 you would need then to apply to the Criminal Record  
19 Office to kill off the criminal record. Ident1, we're  
20 not supposed to -- we don't use any -- the live system  
21 for any training database or any checking of that. So  
22 it is not the fact that blind checking wouldn't be of  
23 benefit, it's a fact that there would be technical and  
24 procedural problems. If there was a way round that and  
25 there was a demonstration that blind checking would

1 be of assistance to further checking from manual  
2 competency testing, the verification process and  
3 procedures, dip sampling and our career procedures  
4 through ISO, then that could be looked at.

5 Q. Is the difficulty that you are indicating one that it  
6 would be difficult to generate something for the first  
7 person looking at a mark because it wouldn't look like a  
8 proper crime record?

9 A. No, you could feed a blind test into the system but the  
10 way that the system and the procedure is run it would  
11 generate lots of official paperwork that wouldn't  
12 necessarily be right to create in a test system because  
13 it would create things that would then need to be erased  
14 and taken off. For instance, on the Criminal History  
15 System the unique reference number that's allocated to  
16 each individual the first time that a record's created,  
17 that record would need to be killed off because it was  
18 be a sample. It would also be searched on the Ident 1.  
19 So that wouldn't be an ideal scenario because you were  
20 creating records that aren't going to exist.

21 Q. I am not quite following why there would have to be a  
22 search on Ident1.

23 A. When you submit a form, either by LiveScan or by ten  
24 prints, the procedure that it need to go through so that  
25 when that first checker got it looked like a proper case

1 was it would need to be searched on Ident1 to make sure  
2 that the fingerprints -- to find out whether they were  
3 on record or not on record. If they weren't on record,  
4 as they wouldn't be, then a record would need to be  
5 created for them and that would on a live system which  
6 we wouldn't be allowed to do.

7 Q. Subject to perhaps looking to overcome some way around  
8 the technical difficulties of creating effectively a  
9 dummy record and a dummy file, there's no objection in  
10 principle to doing this?

11 A. No.

12 Q. The reason I am asking you about it is because  
13 recommendation 13 of the OIG in Mayfield was that blind  
14 or undisclosed testing fed into the verification process  
15 might be a useful way of making sure that verifiers  
16 weren't just rubber stamping things from the first  
17 examiner or indeed from another verifier. I would like  
18 to have you comment on that as a matter of principle.

19 A. Yes. As an additional check to the ones that are in  
20 place, if there was a way of creating that process that  
21 could be implemented, yes, I can't see why that would be  
22 a problem.

23 Q. My other question about the OIG Mayfield report was  
24 rather a more general one and it may be for another  
25 witness -- and if so please tell me -- but do you

1            yourself know whether your organisation or its  
2            predecessor took into account the Mayfield  
3            recommendations at the time that the non-numeric  
4            standard was being considered for introduction in  
5            Scotland?

6        A.    I would need to -- I wouldn't know the answer to that.  
7            I think it may be something that would be looked at  
8            nationally by NPIA in the national training for anything  
9            regarding those specific recommendations prior to us  
10          going non-numeric I wouldn't know the answer.

11       Q.    Moving on to a rather different theme, as regards the  
12          marks that the Chairman is considering mainly in this  
13          Inquiry, Y7 and we've been looking at QI2 (Marion Ross)  
14          as well, what is the position of SPSA as an organisation  
15          as to whether there might be useful lessons to be  
16          learned from the training point of view arising from  
17          either of those marks?

18       A.    Currently we don't use either marks in a training  
19          environment. The only way I've referred to either mark  
20          in a training environment is that when talking to  
21          trainees I'll say that the differences between Y7 being  
22          an identification or not an identification can't be  
23          explained by opinion. It was put forward at one point,  
24          probably in the SFS past, that it was just a difference  
25          in opinion. I was only reiterating to the trainees that

1 that couldn't be the case, that if A says that Y7 is an  
2 identification and B says that Y7 is not an  
3 identification, then the very fundamentals of the way we  
4 carry out fingerprint examinations means someone is  
5 wrong. I would never go on to draw any conclusions from  
6 that. We don't have any learning outcomes from the  
7 position of Y7. We're still ongoing with the Inquiry at  
8 the moment. So we have nothing that we take from that  
9 at the present, no.

10 Q. Do we take it from that that, effectively, your  
11 organisation is waiting to learn what the Chairman has  
12 to say at the end of the day about either or both of  
13 these marks?

14 A. Yes, wholly so, yes.

15 Q. And will decide what, if anything, turns out to be  
16 appropriate in the light of that?

17 A. Yes.

18 Q. There has been some suggestion in evidence,  
19 Mr McGinnies, that people within SPSA, employees, may  
20 either have been actively discouraged by management from  
21 coming to these hearings or certainly not actively  
22 encouraged to come to them.

23 Do you have any knowledge of anything of that sort?

24 A. Certainly not actively discouraged. I think anyone  
25 within the working environment who had applied to their

1 line manager, I would certainly, from a training point  
2 of view, see it as CPD, continuous professional  
3 development, if someone had an interest to come along  
4 and see how an inquiry runs, the set up, et cetera, the  
5 questions that are being asked -- I know people follow  
6 it certainly on line, if you like, but certainly anyone  
7 who went to their line manager with a request to attend  
8 with the reasons for attending would be facilitated. I  
9 know that SPSA had bought -- at one point was the  
10 Inquiry going to be televised? I think at one point --

11 Q. I don't think anybody ever positively proposed that but  
12 I think there were queries at the outset as to whether  
13 it might be --

14 A. I know there were a number of televisions purchased for  
15 such an event so ...

16 THE CHAIRMAN: I am sure people wouldn't have been rushing  
17 home to hear the next edition of it.

18 A. But not actively discouraged in any way, no.

19 MISS CARMICHAEL: I take it from what you say your  
20 understanding had been that if there had, in fact, been  
21 live streaming you would have been keen to have it?

22 A. Oh, yes.

23 Q. Finally, Mr McGinnies, I would like you to look at a  
24 document that you may not have looked at before. It is  
25 CO0034. As I say, this may not be a document that you

1 are familiar with but to give you some idea of the  
2 context, it is a minute of a meeting that took place  
3 after **Her Majesty's Advocate v Shirley McKie**  
4 involving Crown Office representatives and Fingerprint  
5 Examiners and management from SCRO. I think you will  
6 probably see that from the list. The names you might  
7 not be familiar with are Mr Sean Murphy who was the  
8 Advocate Depute in the case, Mr Frank Crowe who was the  
9 Deputy Crown Agent. I do not need to trouble you with  
10 the detail of all of this but there were some learning  
11 points from this, what was effectively a debrief, at the  
12 end of the document. I wonder if we could go to page 6,  
13 please.

14 What we see as main learning points there were that  
15 in the first place -- and I will go through these one by  
16 one with you for your own comment on them -- is that  
17 visits to SCRO by advocates, and I think we heard what  
18 was actually meant there was Advocate Deputes, High  
19 Court prosecutors, would be of value.

20 I wonder if I could have your comment on that?

21 A. Certainly, as you know, we have -- more recently we've  
22 had a better educational and communication approach with  
23 the Crown Office. Certainly at the seminar earlier that  
24 I spoke about, I mentioned to them at the end of it if  
25 anyone wanted to come along and get a look round at any

1 of the bureaux to let me know. I would apply to the  
2 unit manager and see if they could be given a tour, if  
3 they liked, and certainly I and others have been out  
4 giving more presentations. Yesterday there was a  
5 presentation to the Solemn Legal Managers at Ballater  
6 Street by a member of SPSA staff from Dundee.

7 Q. Ballater Street, for those who maybe don't understand,  
8 is the Procurator Fiscals' office in Glasgow and I think  
9 there is also a training facility there.

10 A. Yes. So whether it came -- I wouldn't say it came  
11 directly from that but it is something we are working  
12 on.

13 Q. It is not something that is yet routine that Advocate  
14 Deputes come along to the office?

15 A. No.

16 Q. The second learning point, if I can go to that, is:  
17 "Presentation of evidence needs to be considered  
18 with a view to giving clearer cut explanations to the  
19 jury, especially in relation to areas of distortion,  
20 et cetera."

21 A. Certainly the clearer cut explanations to the jury. I  
22 think that now we would be expected more and certainly  
23 the run up in training before going non-numeric was to  
24 explain the whole process to be better prepared in court  
25 to explain the formation and structure of skin, talk

1 about our methodology and talk about how we came to our  
2 conclusions. Unfortunately, as we can see from, and we  
3 spoke about earlier, in relation to talking areas of  
4 distortion with nothing to actually demonstrate areas of  
5 distortion physically present, then that would be quite  
6 difficult to do.

7 Q. The third one is that generic material would be examined  
8 to allow for a more professional presentation in high  
9 profile cases. I think we touched on that briefly  
10 earlier?

11 A. Again, our direction, to my understanding, when we  
12 stopped doing generic enlargements was that in place of  
13 it they weren't looking to have any generic -- sorry,  
14 when we stopped doing case-specific enlargements they  
15 weren't looking to have any generic enlargement  
16 introduced to assist the expert. However, as I stated,  
17 in recent cases, one case in particular in Dundee, a  
18 high profile case, they were asked to prepare generic  
19 presentation on how they carry out their examination.

20 Q. But, again, we have something that currently is not, at  
21 least not yet, routine?

22 A. No.

23 Q. If we could move on to the fourth learning point:

24 "Guidance would be given to fingerprint experts on  
25 how to respond to this case [that was the McKie case] at

1 future trials and to ask for time to examined fresh  
2 material."

3 I will take that apart at a time. Is there  
4 currently any guidance as to what examiners' response  
5 might be if they were asked about the identifications in  
6 the Asbury and the McKie cases?

7 A. Currently at this time I would be inclined to think that  
8 because we're in the middle of this process that they  
9 would just refer to the fact that we're in the middle of  
10 an Inquiry regarding both cases and it may be a case of  
11 waiting for the recommendations and outcomes of the  
12 Inquiry before they made any comment.

13 Q. Do you know, as a matter of fact, whether there is any  
14 guidance of that sort?

15 A. No, not currently.

16 Q. The second part of that learning point arose -- I think  
17 I'm representing it fairly -- because defence  
18 productions had come in quite close to the date of the  
19 start of trial and what was being said here was that  
20 fingerprint experts might had given guidance indicating  
21 that they should ask for time, perhaps for extra time,  
22 to look at fresh material that had come in.

23 Do you know whether there is any guidance or  
24 instruction of that sort?

25 A. I don't know. I would expect that that would be the

1 case, that the Crown would contact us to let us know  
2 there was fresh material to be examined but I couldn't  
3 be certain in which format that would take.

4 Q. Insofar as there's any guidance within SPSA or training  
5 for examiners within SPSA, is it something that they are  
6 trained or guided about, how to deal with a situation  
7 where there's perhaps a late defence production and they  
8 are concerned about having enough time to consider it  
9 before the trial?

10 A. Currently, no, not to my knowledge. I may stand to be  
11 corrected on that by someone but not that I'm aware of  
12 at current, no.

13 Q. The next two learning points are perhaps ones that are  
14 more for the Crown than for you so I will not ask you  
15 further about these.

16 There is one further matter that I would like to ask  
17 you about but I am going to have to obtain a document  
18 reference so I am sorry to break for a moment but if you  
19 can bear with my just a moment I will try and do that.

20 **(Pause)**

21 If we could have CO4109, and if we can scroll  
22 through that to page 4, you were asked I think by the  
23 Chairman earlier in your evidence about the sort of  
24 reports you do for court and I think I am right in  
25 saying here that what we have is a style joint report?

1 A. Yes, that's correct.

2 Q. I think I would be right in saying that this is a style  
3 that is agreed for all cases in Scotland?

4 A. That's correct, yes.

5 Q. What we see is a narration of the names of the officers  
6 involved and that they are authorised by the relevant  
7 statutory provision.

8 A. Yes.

9 Q. We see in I think perhaps fairly formal terms that they  
10 received certain items on certain dates and those would  
11 be detailed in the report after that?

12 A. Yes.

13 Q. Can we have the next page up beside it, please.

14 So you would have a narration of the lifts and  
15 photographs and a narration of the particular finger or  
16 palm-print forms that you were using and then really a  
17 very brief certification that you had carried out  
18 analysis, comparison and evaluation and that there had  
19 been a verification process?

20 A. Yes.

21 Q. There would then be the signatures.

22 Can we move on to the next page, please.

23 Here we have another form to be filled in. Can you  
24 tell us what that is for?

25 A. Is this page 6 of the ...?

1 Q. Yes. That, as I understand it, forms part of your joint  
2 report as well?

3 A. That will list, in the boxes there, the production  
4 numbers which are left blank and will be allocated  
5 later. It will detail in there the results of the -- it  
6 says, "lift photograph details", so you will put in  
7 there whatever the lift photograph details were and then  
8 you put in the results of the identification and say  
9 identified as shown on the finger and palm-print form  
10 the name and that would then be signed.

11 Q. So in the results box you would see the name of the  
12 person who had been identified as the donor of the mark?

13 A. Yes.

14 Q. Again, we have space for signature and there is some  
15 further detail that there were further items received in  
16 relation to the case.

17 A. Yes.

18 Q. And letting people know that there were such items and  
19 that the results of examinations are elsewhere?

20 A. That's correct.

21 Q. Can I take it then that that would be the extent and the  
22 form of your report?

23 A. That's a standard joint report, yes.

24 Q. In any case, whether summary or solemn --

25 A. Yes.

1 Q. -- that you were involved in in Scotland?

2 A. In Scotland.

3 MISS CARMICHAEL: Thank you very much, Mr McGinnies.

4 THE CHAIRMAN: Shall we begin again with you, Mr Smith?

5 MR SMITH: It seems I am usually the first. I am happy to  
6 go again, sir. There are a number of areas I would like  
7 to ask this witness about. They relate to some further  
8 questions relating to the training within SCRO and the  
9 subsequent bodies, effectively SCRO from the past; the  
10 system of note-taking that may or may not exist;  
11 competency testing; some further issues about  
12 disclosure; some further questions about giving evidence  
13 in court; and some questions about the status of Y7 and  
14 Q12, the official status of these.

15 Again, I am happy to say I will do my level best to  
16 avoid duplicating --

17 THE CHAIRMAN: Yes, as long as you do not cover ground we  
18 have been over.

19 **Cross-examined by MR SMITH**

20 Q. Before I turn to the particular issues, Mr McGinnies, I  
21 would like to ask you a few questions about your own  
22 background.

23 I think we can see from your statement to the  
24 Inquiry that you explain in numbered paragraph 2 -- I  
25 don't think we need to bring it up but just to read it

1 out -- you worked with the Strathclyde Police,  
2 effectively, as a police officer, I suppose, is that --

3 A. No, actually, sir, I was a divisional  
4 assistant/turn-key. They'd civilianised certain posts.  
5 When I came out the army I went into one of those  
6 posts and it was a station assistant/turn-key at Stewart  
7 Street --

8 THE CHAIRMAN: It is very natural to turn to the person who  
9 is speaking to you but if you wouldn't mind keeping this  
10 way, then I can hear and the stenographer can also  
11 follow.

12 MR SMITH: I think, although the stenographer is extremely  
13 quick I think you also speak very quickly and I wonder  
14 if you can slow down a little bit.

15 I was mistaken, I understood it was as a police  
16 officer but you were a civilian employee by Strathclyde  
17 Police?

18 A. That's correct.

19 Q. Then in March 2001 you joined SCRO as a Trainee  
20 Fingerprint Officer at that time?

21 A. That's correct.

22 Q. I notice you say you completed your training in  
23 October 2004, so we are looking at about three and a  
24 half years training at that stage?

25 A. That would be correct.

1 Q. You say you qualified as a Fingerprint Officer at that  
2 time.

3 Did that require any examinations being carried out  
4 before you actually achieved your qualification?

5 A. Yes, sir. When I first started with SCRO, I was on the  
6 five year qualification plan. In the middle, after  
7 about a year and a half of that, we changed, the NPIA  
8 changed the criteria to a modular route, whereby I  
9 undertook modules. Scotland came into line at the same  
10 time with the rest of the UK in making it three years,  
11 if you like, competency based before you could be put  
12 forward for your advanced course. So I had sat the  
13 Durham foundation, the Durham intermediate and modular  
14 route and the Durham NPIA or as it was Centrex and NPIA  
15 advanced course and qualified in October of that year  
16 which would make three and a half years.

17 Q. You have actually answered my next question whether it  
18 was outside training and, effectively, certification.  
19 The answer is yes it was, it was --

20 A. Yes, sir, it was Centrex and NPIA from beginning to end,  
21 yes.

22 Q. You qualified in October 2004 but I am just wondering if  
23 the date is actually right. November 2004, so the very  
24 next month, your statement says you became a temporary  
25 training officer for the Glasgow Bureau.

1                   Was it as quick as that, you qualified one month and  
2                   the next month you were temporary training officer?

3       A.    That would be correct, yes.

4       Q.    Forgive me, I don't wish this to sound critical but you  
5            will appreciate that you have three and a half years  
6            where you are effectively being trained yourself until  
7            you qualify and as soon as you qualify you then become a  
8            temporary training officer.

9            Is that something that was unusual, for someone to  
10           move so swiftly from being qualified to actually then  
11           training people?

12    A.    I think it may be termed as unusual but what there was  
13           there was a vacancy had arisen. I was qualified to  
14           apply for the vacancy. I applied for the vacancy and  
15           was the successful candidate.

16    Q.    In 2005 you explain the post became permanent, that you  
17           moved from a temporary training officer into a training  
18           officer permanent, as it were?

19    A.    Again, sir, that was -- I had to effectively apply again  
20           for my own job. That was again an open ...

21    THE CHAIRMAN:   Competition?

22    A.    Competition, yes, and again I was the successful  
23           candidate.

24    MR SMITH:   Mr McGinnies, I am not suggesting you --

25    A.    I am not getting defensive, no. I am trying to explain

1 the process.

2 Q. I am simply expressing a little bit of surprise that so  
3 swiftly you moved from having been trained to training  
4 people and you have explained it was a competition and  
5 you made the application and got the job.

6 A. I think that I possibly had -- one of the things that  
7 possibly in my favour was I had gone through most  
8 recently this modular route and process so I was  
9 probably the most up-to-date candidate, among other  
10 things, for that learning programme.

11 Q. Sure. Can I also ask you this: have you ever given  
12 evidence in court about fingerprints?

13 A. I've given evidence as a turn-key on the taking of  
14 fingerprints. As regards to making identification  
15 evidence, no, I have not.

16 Q. I think just for the notes you said evidence as a  
17 turn-key --

18 A. Yes.

19 Q. -- did you say that, taking fingerprints, so it would be  
20 part of your job, in your previous work with the  
21 Strathclyde Police, to take inked prints and then have  
22 to give evidence that you took inked prints from  
23 someone?

24 A. Inked and LiveScan, that's correct.

25 Q. At that stage, of course, you weren't a Fingerprint

1 Examiner?

2 A. No.

3 Q. But I take it from that then you haven't actually had to  
4 or haven't in fact given evidence in court, as it were,  
5 defending an opinion?

6 A. No, I have not.

7 Q. Have you ever seen fingerprint experts doing so in  
8 court?

9 A. Yes, I do that on a regular basis. One part of the  
10 training programme is to take trainee fingerprint  
11 experts to court and let them observe experts giving  
12 evidence and then they would, part of one of the modules  
13 on preparing and presenting evidence, they would have to  
14 compile a report on their observations.

15 Q. Is that seeing experts in fingerprints giving evidence  
16 in a live case, as it were, not a mock up, a live case?

17 A. No, in live cases. For instance, the Tobin trial in  
18 Dundee and various other cases, yes.

19 Q. Although it would depend in a case whether there was an  
20 actual challenge being presented. I think I am right in  
21 saying the Tobin trial, although some questions were  
22 asked, there was no actual dispute about the  
23 identification of the fingerprints, was there?

24 A. Not regarding the identification, just the -- I believe  
25 it was the placement of the prints.

1 Q. It is obviously not a very common thing for fingerprints  
2 to be challenged, the identification of them to be  
3 challenged in the courts in Scotland, is it?

4 A. No.

5 Q. In fact, certainly, as far as I understand it, in the  
6 context of a live criminal trial the McKie case really  
7 was, as far as I'm aware, the only one in the trial  
8 where there has been a challenge placed with  
9 fingerprints.

10 Is that your understanding to?

11 A. I think it would possibly be, yes.

12 THE CHAIRMAN: Have there been any since then in which it  
13 has been challenged, in your experience?

14 A. Not to my knowledge, no.

15 MR SMITH: So it was a pretty unusual case by any stretch of  
16 the imagination, the McKie case; we would agree about  
17 that?

18 A. Yes.

19 Q. Of course one of the other interesting features about it  
20 is that relating to the McKie case is not just one but  
21 two fingerprints, QI2 and Y7, both of which appear to be  
22 hotly disputed in the fingerprint community. You are  
23 obviously aware of that, I take it?

24 A. Oh, yes, sir.

25 Q. Against that background, can I ask you this: have you

1            yourself looked at Y7 and the inked mark of Shirley

2            McKie? Have you ever seen it?

3        A.    I've seen them. I have not compared them.

4        Q.    In what context did you see them?

5        A.    I was given them -- I think, it was at a training forum.

6            In fact, it was a National Fingerprint Bureau meeting by

7            a colleague.

8        Q.    In your statement you mention the Brandon Mayfield case

9            for obvious reasons and it is an important case and I am

10          sure you have read the report in the Brandon Mayfield

11          case and understand its context?

12        A.    Yes.

13        Q.    But against that background you have a much more

14          interesting case, in many ways, nearer to home and, in

15          fact, not just right on your doorstep but right in your

16          organisation that undoubtedly is causing some concern,

17          very, very public discussion about the case.

18                Can I ask why it is then that you yourself have not

19          actually looked at it and said, "Well, I'm going to have

20          to look at this to know what my opinion is about Y7

21          compared with the inked mark of Shirley McKie"? Why

22          haven't you done that?

23        A.    My main reason for not comparing the mark is the

24          material that I received wasn't the original material.

25          I was told this when I received the material.

1                    My main reason for not comparing the mark is that at  
2                    the time I received the mark and still currently and in  
3                    the future I'm looking to have a non-biased way of  
4                    taking fingerprints forward in Scotland, in a way that  
5                    no matter who I converse with in the rest of the  
6                    fingerprint community I am not -- I wouldn't like to say  
7                    pigeon-holed but I am not immediately taken to task or  
8                    held an opinion about on myself because of my opinions  
9                    on the McKie mark.

10                    The other reason I would have is the fact it is an  
11                    ongoing mark and I still work within that organisation  
12                    currently.

13        Q.        The thing is though, Mr McGinnies, within the SPSA there  
14                    are a number of different units including, for example,  
15                    what was formerly the Aberdeen Bureau; is that right?

16        A.        Yes.

17        Q.        Obviously, there is the Glasgow branch of the SPSA as  
18                    well.

19                    Would you agree with me that the views, the very  
20                    clearly expressed views of a number of individuals  
21                    within the SPSA, is that Y7 was wrongly identified by  
22                    SCRO.

23                    You're aware of that, aren't you?

24        A.        Yes.

25        Q.        So what we've got is a situation where you are in charge

1 of training in an organisation where you have different  
2 groups within that organisation who are diametrically  
3 opposed to one another.

4 Do you follow?

5 A. Yes.

6 Q. I am wondering from almost a management point of view,  
7 that the SPSA has to have a position on Y7. It must.  
8 It cannot go through life just pretending it didn't  
9 happen.

10 Are we agreed about that much?

11 A. Yes.

12 Q. Would you agree with me that the way they dealt with it  
13 in the Brandon Mayfield case was a very, very swift  
14 acceptance that there had been a mistake, questions then  
15 asked as to how it happened, systems brought in to  
16 ensure it couldn't happen again, but there was a  
17 starting point of a very clear and unequivocal  
18 acceptance of an error had been made.

19 You agree with that as a broad outline of the  
20 Brandon Mayfield case?

21 A. Of the Brandon Mayfield case, yes, I do.

22 Q. Do you not see that that approach is a very powerful  
23 one? It has a starting point because of course if the  
24 SPSA's position is that Y7 was correctly identified,  
25 then there would be an argument that, well, we don't

1 actually need to change very much because it was right  
2 and there's nothing to say it was a systems failure  
3 because it was right. But when you have a situation  
4 where no position is being taken, it is very hard for  
5 anyone to understand what the SPSA is actually waiting  
6 for.

7 Do you understand the point I am trying to make,  
8 that it is better if it is wrong face up to it, if it is  
9 right then herald it as being correct?

10 A. Yes, I do and I believe that that's why there is an  
11 Inquiry. I believe that's one of the outcomes that I  
12 would think the SPSA may be looking to see. As I say,  
13 this is something you may have to ask of the forensic  
14 director of SPSA's position on the mark.

15 Q. I understand that you yourself don't necessarily speak  
16 for the whole organisation. I fully understand that but  
17 can I ask you this: let us suppose you go back to your  
18 office today and you get a phone call saying one of our  
19 guys in a High Court trial at Dundee was presenting  
20 evidence, a defence expert came in challenging it and  
21 the jury acquitted the individual. Someone in a  
22 position that you are in, what would your response to  
23 that be? What would you do?

24 A. I would -- I would get this call from the line manager  
25 or the head of that unit, I would think.

1 Q. Let's assume it comes to your attention that there was,  
2 in effect, a successful challenge to one of your people,  
3 someone maybe you had trained, whose evidence, let's say  
4 it's a fair assumption, was not accepted by a court,  
5 whether it's a judge and jury or whether it is a Sheriff  
6 alone sitting saying, "I'm not accepting this evidence".  
7 What would your response be to it? How would you handle  
8 it?

9 A. My response would be to speak to the person's line  
10 manager and ask them if there has to be training  
11 involvement, if the line manager is requesting that  
12 training be involved, whether it be court training or  
13 whether it be any other kind of training, where an  
14 action plan needs to be put in place for that  
15 individual.

16 Q. Would the first question not be, well, was the SPSA  
17 employee right or were they wrong? Is that not the  
18 starting point? You look at the work, you say, "No,  
19 sorry, whether the judge didn't accept it or the jury  
20 didn't accept it, this man was right in his opinion and  
21 we will stand by that and if we need to get an  
22 independent report we will do it". You see the strength  
23 of that? Equally, if they got it wrong then you have  
24 got a training issue. Do you understand the --

25 A. Sorry, I had just taken it -- I thought you said that

1           they had got it wrong. It was agreed that they had --

2       Q.    No, I'm not asking you to assume that. Just you are  
3           told that they were successfully challenged, apparently.  
4           They were challenged successfully.

5           Do you agree with me that the logical response is to  
6           find out what the correct analysis was? That is the  
7           first starting point, isn't it?

8       A.    Yes.

9       Q.    As I understand it, Mr Mulhern, some time in the past,  
10          acknowledged that Y7 was mistaken in some way. You are  
11          aware of that, are you not?

12      A.    That's correct, yes.

13      Q.    At some stage, as I understand it, the official status  
14          of Y7 within the SPSA is it is an unsafe identification,  
15          I think is the way it has been put.

16          Is that the official position of it?

17      A.    At that time I think I believe I was at the Bureau when  
18          Mr Mulhern said that if asked in -- sorry, that the  
19          position of SPSA at that time was that Y7 was an unsafe  
20          identification. That was Mr Mulhern's statement at that  
21          time, I believe.

22      Q.    I stand to be corrected if I get this wrong but, as I  
23          understand it, Mr Mulhern acknowledged that the  
24          fingerprint Y7 was mistaken in the identification. Have  
25          I got that wrong?

1 A. I would need to be -- I'm not quite sure on that. I'm  
2 not sure whether he said it was a mis-identification or  
3 whether he said it was an unsafe identification.

4 Q. The position now about Y7 is that it is unsafe. You are  
5 aware of that, at least?

6 A. Yes.

7 Q. What does it mean? What actually are we to understand  
8 by unsafe? Does it mean it was correctly identified but  
9 it's not really one that we can comfortably rely on? Or  
10 does it mean it's wrong? It seems to have this somewhat  
11 fuzzy description to it. Can you tell me what you  
12 understand by unsafe?

13 A. What my opinion on what unsafe, if someone said  
14 something was unsafe means or are you talking about what  
15 Mr Mulhern said it was unsafe?

16 Q. Let's leave aside Mr Mulhern. It has been confirmed to  
17 me that his position was it was a mistake and I am  
18 assuming there's some difference between a mistake and  
19 unsafe otherwise they wouldn't need to change the  
20 terminology.

21 What I am trying to understand is what the status is  
22 officially of Y7. Perhaps I will tell you what I am  
23 imagining. I am imagining a criminal trial taking place  
24 and one of the people in court is asked by defence  
25 counsel, "You work for SPSA", answer, "Yes".

1 "What is SPSA's official position regarding the mark  
2 Y7 in the Shirley McKie case?"

3 Now, it would be a question, certainly from my  
4 perspective, I would be interested if I was defence  
5 counsel in the answer to, because it may give an  
6 impression to the jury of some doubt or some dogmatic  
7 attitude by SPSA.

8 What is it that you would expect, if asked that  
9 question, one of your trainees would say?

10 A. I would say that it is, currently -- that the mark in  
11 the cases is currently subject to a public inquiry.

12 Q. My next question would be before the public inquiry was  
13 announced what was the SPSA's position on Y7?

14 A. I believe, and I stand to be corrected, that it was --  
15 that the SPSA line was that it was a mis-identification.  
16 That it was not an identification. By the same token,  
17 when Mr Mulhern announced that, it was asked if anyone  
18 had an opinion of their own on that and they were under  
19 oath they had to obviously state their own opinion.

20 Q. Of course. But the answer to the question is there is a  
21 public inquiry ongoing. We are going to wait to see  
22 what that says. But there is an official position, as  
23 you have explained, which is unsafe, it uses the word  
24 "unsafe". What I am struggling to understand is what is  
25 meant by unsafe when used by the SPSA as a description.

1 A. My understanding would be that it would be under -- this  
2 is my understanding, it would be that it is an  
3 impression or it is an identification that under current  
4 circumstances we wouldn't take to court. As I say, I  
5 stand to be corrected on that but that would be my  
6 understanding of an unsafe identification.

7 Q. I wonder if we could have a document up, please, just on  
8 this question of unsafe. Could we have document SG07865  
9 up, please?

10 This is the action plan for excellence. Is that a  
11 document that you are familiar with, the action plan for  
12 excellence?

13 A. Yes.

14 Q. I am interested in the introduction. I will just read  
15 out what is on the screen there in paragraph 1.1. It  
16 says in this document:

17 "Mis-identification of a fingerprint, as Shirley  
18 McKie's 1997, has understandably caused considerable  
19 public concern ever since about the quality of the work  
20 done by fingerprint experts in Scotland -- an issue  
21 which is central to maintaining public confidence in the  
22 Scottish criminal justice system."

23 If we can flick through to paragraph 5.13, please,  
24 it says:

25 "It has however been almost nine years since the

1 mis-identification occurred, seven years since Shirley  
2 McKie's acquittal and almost six years since this issue  
3 was addressed by HMCI."

4 I take it that you would agree that what we have is  
5 a very clear indication there that there was a  
6 mis-identification in the action plan for excellence.

7 You agree with that --

8 A. Yes.

9 Q. -- that is the way it has been presented.

10 Can we also have up document now, a different  
11 document, DB0650. This is, I understand it, we have a  
12 document dated September 2006 by Roger Shearn, a  
13 forensic consultant. Can we have paragraph 4.3, please.  
14 What is said in 4.3 is this:

15 "My answer to this, based on 40 years' of  
16 identification practice, is that a disputed  
17 identification cannot remain as such. Identification of  
18 a crime scene mark against the fingerprints of a  
19 nominated person can ONLY have three outcomes.

20 "[The first is] there are insufficient minutiae for  
21 a useful comparison to be completed.

22 "[Second] it is identical.

23 "[Third] it is not identical. What cannot happen is  
24 a comparison remaining 'disputed'."

25 Perhaps we can compare that with something in a

1 statement, Mr Tom Nelson's statement. Can we have  
2 FI01353, please. I am just trying to track down the  
3 paragraph in which he notes that both Y7 and Q12 are,  
4 the description is, unsafe identification?

5 MISS CARMICHAEL: I think it may be 93 or 97.

6 MR SMITH: Yes 97, please. Paragraph 97. I will just read  
7 it out:

8 "Although I am not a fingerprint expert, I am aware  
9 that there are a number of interpretations of Y7 and  
10 Q12. In these circumstances, based on my scientific  
11 background and given that the benefit of the doubt  
12 should always be given to the accused, it is SPSA's view  
13 that these are both unsafe identifications."

14 Perhaps, just for completeness, paragraph 104. What  
15 is said is under section A -- if you can just take in  
16 the A, thank you:

17 "In relation to the identification of Y7 and Q12, I  
18 can confirm that SPSA's position is that there are so  
19 many varied views on these issues that it is our view  
20 that these are unsafe identifications and SPSA will  
21 accept the findings of this Inquiry in this regard."

22 I would like to ask you just really to compare the  
23 two things, what is said by Mr Shearn to begin with  
24 where he comments that there are really only three  
25 possibilities: identical, not identical, insufficient

1 minutiae to come to a conclusion.

2 Would you agree with me that the idea of unsafe  
3 identification is not within these three possibilities;  
4 it can't be squashed into one of these three categories,  
5 is it?

6 A. No, it's not and actually that same three scenarios  
7 appear on one of the slides that I use regularly in  
8 training. Disputed or unsafe identifications do not  
9 come under those categories, no.

10 Q. You understand why it is important that we don't create  
11 additional categories there because it causes a lack of  
12 public confidence in the result?

13 A. Yes.

14 Q. Would you not agree with the suggestion that to the  
15 extent that the SPSA is presenting it as being an unsafe  
16 identification, then that is bound to damage public  
17 confidence in the position of the SPSA? Would you not  
18 agree with that?

19 A. I would think that the SPSA will accept the finding of  
20 this Inquiry in this regard. I wouldn't want to  
21 second-guess the Inquiry, what it's going to decide, but  
22 I think taking direction on how we should deal with that  
23 may be left for the Inquiry.

24 Q. The thing is that there are two points to be made about  
25 that for your comment. The first is what will the SPSA

1           have done, do you think, or what would you have  
2           suggested they do if the public inquiry was not going to  
3           take place? Just do nothing? Just leave it as an  
4           unsafe identification?

5       A.    I think that that would obviously be a question possibly  
6           for Mr Nelson as to what was -- I don't know whether he  
7           had a position on this before the Inquiry was coming or  
8           whether that's because of the Inquiry.

9       Q.    The other point that I wish to make is that it has been  
10          ten years since Shirley McKie's trial, over ten years  
11          since the trial. Ten years is an awfully long time for  
12          doubt to be floating about in the public about issues of  
13          confidence over an organisation that is given an  
14          extremely responsible job. I am just wondering why it  
15          is that the SPSA -- can you think of any reason why they  
16          couldn't adopt a strong and clear position, whether it  
17          was the SCRO are right or whether it is they were wrong,  
18          in order that the public can then consider it and say,  
19          "Well, we know where we stand on that" rather than what  
20          might be seen to be sitting on the fence?

21                 Can you see that there would be merit by actually  
22          taking a positive position as opposed to, "Just let's  
23          wait and see what the Inquiry says"?

24       A.    It's my opinion that whatever the Inquiry decides now  
25          should be our -- should be SPSA's line under it, if you

1           like, and we should definitely move on from there.

2       Q.    Of course. I think it would be a surprising position if  
3           SPSA said they were not going to accept the views of the  
4           Chairman in this matter.

5           I am more interested in whether you see frankly that  
6           in the past ten years there has been a huge loss of  
7           confidence by the public in SCRO, then becoming SFS,  
8           then becoming SPSA. You realise that there is a huge  
9           lack of public confidence in that service, don't you?

10     A.    Yes, I would agree with the fact that it cannot remain a  
11           disputed ident. That cannot be -- in my opinion, I  
12           would feel that SPSA has to move on from it being a  
13           disputed ident, yes.

14     THE CHAIRMAN: I think you yourself earlier this afternoon  
15           said you regarded it as a mis-identification if I  
16           understood your evidence properly. I think you said  
17           that -- I was just looking at the passage. Maybe I have  
18           misinterpreted what you said.

19     A.    Possibly, sir, because I haven't compared the mark to a  
20           conclusion so I don't think -- unless I was taking the  
21           standpoint that SFS --

22     THE CHAIRMAN: Maybe you were speaking of an example that  
23           was being given to you of a case in Dundee or somebody  
24           coming back. I will just look for the passage.

25           I thought I had marked it but obviously I haven't.

1 I will just look again.

2 "My understanding would be that it would be that it  
3 is an impression that is an identification that under  
4 current circumstances we wouldn't take to court. As I  
5 say, I stand to be corrected on that but that would be  
6 my understanding of an unsafe identification."

7 A. Yes, sir, correct.

8 THE CHAIRMAN: That is what I understood you to say.

9 A. Yes. If we were talking about unsafe identification --  
10 if we have identified, not identified, unable to say  
11 then "unsafe" would fall into either "not identified" or  
12 "unable to say" due to insufficient features in sequence  
13 and agreement to individualise it.

14 MR SMITH: I would like, if I can, really to pick up on that  
15 and come back to this question of you say that you have  
16 been passed copies of Y7 and the inked mark of Shirley  
17 McKie. I think you explained that it was given to you.  
18 Was there some sort of training environment?

19 A. We were -- I'm trying to recall exactly when it was. It  
20 was either at a conference or coming back from a  
21 conference that a colleague had passed me it.

22 Q. For what purpose?

23 A. I don't know whether he'd -- you'd need to ask him  
24 whether he came across it in his drawer or whether he  
25 thought it was something that I would want to see,

1           whether he thought it was something I hadn't had a look  
2           at.

3       Q.    Did you know what it was as soon as you opened it?

4       A.    Yes, he told me what it was and I've actually since --  
5           it was a long time ago. But since then I've had a  
6           conversation with the individual and he knows that I  
7           didn't compare it. I think I've discussed it with him  
8           more recently than when I first got it.

9       Q.    What I am struggling with a little bit here,  
10       Mr McGinnies, is this: you're handed an envelope, the  
11       single-most, arguably, interesting piece of forensic  
12       evidence in a fingerprint case in the history of  
13       fingerprinting upon which no-one is suggesting that this  
14       fingerprint is, as I understand it on two camps, that  
15       you cannot examine it and come up with an opinion. Both  
16       sides are saying either you can and it is hers or you  
17       can and it's not hers.

18      A.    I believe there are other people saying that you can  
19           look at it and say that there would be insufficient to  
20           individualise, but it's the same thing. It's not --

21      Q.    These people have told you that, that they've --

22      A.    No, I believe that there are -- I could be wrong. I  
23           thought there were people who had looked at the  
24           impression and thought it was an insufficient mark; in  
25           other words, they wouldn't compare it.

1 Q. Your position is that -- well, perhaps if I can put it  
2 this way: did you take a positive decision that you  
3 didn't want to look at it?

4 A. Yes.

5 Q. Why are you scared of looking at it? Why are you scared  
6 of coming to your own professional opinion as a trainer?

7 A. I'm not in any way scared to come to my own professional  
8 opinion as a trainer. I am a professional. I took the  
9 professional decision in the organisation that I worked  
10 in that it was an ongoing process, that I wasn't  
11 prepared to look at it at that time.

12 THE CHAIRMAN: I have understood you when you last were  
13 asked this question that you said you gave me the  
14 impression that what you wanted was not to be seen to be  
15 in either camp because you were running the office or  
16 doing the work that you were doing at present.

17 A. That's correct, sir, and not only in a Scottish context  
18 but integrating even more fully the Scottish SPSA (or as  
19 it was known then the Scottish Fingerprint Service)  
20 international training model, having ourselves fully  
21 integrated with that, having open doors.

22 Unfortunately, some people who have an opinion one  
23 way or the other can't be professional about this and  
24 would hold it against you if you had an opinion one way  
25 or the other. That would close the doors to what I see

1 as the more important point of taking the Scottish  
2 training forward.

3 MR SMITH: Can I ask you, moving on from that, just on the  
4 management position where you have people with different  
5 organisations within the same organisation with  
6 diametrically opposed views. It must be quite a  
7 difficult thing actually to manage. You're having a  
8 meeting and you've got the Aberdeen people there who are  
9 saying the former SCRO people are wrong and you've got  
10 someone then saying they were right. That must be quite  
11 a difficult thing to manage, is it not?

12 A. Believe it or not, it's not something that comes up at  
13 meetings. It's not something that's the be all and end  
14 all. People are professional enough to put their  
15 position on that to one side and still deal with each  
16 other on a professional basis daily.

17 Q. Just one more question. I see the time. We usually  
18 stop at ten to. The other thing I wanted to ask is  
19 would it not be a very useful training model not just Y7  
20 and the inked print to look at it and then try and work  
21 out what happened, but also the methods of presentation,  
22 the difference between how the Americans presented the  
23 evidence, is it not something that is a very useful  
24 database for training purposes for, frankly, interest's  
25 sake within the SPSA? Would you agree with that

1 comment?

2 A. I certainly would and we do use the Mayfield case. The  
3 Brandon Mayfield case has, if you like, a beginning a  
4 middle and an end. It has, as you say, a very quick  
5 turnaround on the report, the international experts and  
6 the recommendations. We use that to look back and look  
7 at the procedural breakdowns. I'm hoping that when the  
8 case is resolved that I will be able to use that as a  
9 training aid, yes.

10 Q. So hopefully once this Inquiry is completed you might  
11 actually use the McKie case as a training model?

12 A. Certainly, as you say, the models and standards of  
13 presentation that I've observed both in the case and  
14 here, yes.

15 MR SMITH: Thank you, sir. I am going to move on to  
16 something else.

17 THE CHAIRMAN: We will just rise now but, before we do, of  
18 course the advantage of the Mayfield case, as I keep  
19 reminding myself, is that there there was someone who  
20 was the suspected owner of the mark.

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

22 THE CHAIRMAN: Not just the person that the FBI suspected  
23 but that the person that the Spanish police suspected so  
24 you could compare both to see where the difference lay.

25 A. Exactly, yes.

1 THE CHAIRMAN: Very good. We will sit again at 2 minutes  
2 past 3.

3 **(2.52 pm)**

4 **(A short break)**

5 **(3.03 pm)**

6 MR SMITH: Mr McGinnies, dealing now if I can with the  
7 question of differences of view amongst employees with  
8 the SPSA, let us suppose we have fingerprint expert A  
9 and fingerprint expert B, each of whom disagree. Let us  
10 say they disagree with the analysis of Y7. They can't  
11 both be right about that. Assuming one says Y7 is  
12 correctly identified and the other one says it was  
13 incorrect, they cannot both be right.

14 How is it in a training situation you would manage  
15 that if these individuals are both going to be going to  
16 give evidence? There must be a training issue for one  
17 of them. He needs to have his training revised, doesn't  
18 he?

19 A. Certainly that's one training with a learning outcome  
20 that we can have from this case so far is that if expert  
21 A says that it's an identification and expert B says  
22 it's not an identification, then they can't both be  
23 right. In cases where that happened, we would always  
24 err on the side of the accused. We wouldn't be going to  
25 court with it.

1 Q. I understand but I'm actually thinking let's say they  
2 both agree in a case they are going to court over but,  
3 apart from that, one of them says Y7 is right and one  
4 says Y7 is wrong. Do you follow? So they actually have  
5 a view expressed, maybe very clearly and publicly, about  
6 the analysis of Y7.

7 As a training manager, you would no doubt be  
8 concerned as to why it is they had diametrically opposed  
9 views, which may raise questions over frankly their  
10 competence, wouldn't it?

11 A. Yes.

12 Q. How do you handle that knowing there are some people  
13 within SPSA who say Y7 is right and some who say it's  
14 wrong? How can you handle that because someone  
15 obviously requires some degree of retraining or  
16 education about the position? What do you do about it?

17 A. Regarding talking to an individual who has stated  
18 that -- these individuals, what would happen ... I'm  
19 quite lost, sorry. I'm not quite understanding.

20 Q. Let us suppose you are conducting a training course and  
21 there are two fingerprint people there and they are  
22 talking about Y7 and one says, "I think SCRO were right"  
23 and the other says, "I think they were wrong" and they  
24 both say, "We've looked at it, we've analysed it and we  
25 differ about that".

1                   It must immediately cross your mind that it is  
2                   likely that one of them hasn't done the work properly.  
3                   It follows, doesn't it?

4     A.    Yes.

5     Q.    How would you respond to that if you know that there are  
6           two people in the same room who disagree? A training  
7           issue is raised but how do you deal with it as an SPSA  
8           training officer?

9     A.    I can't think of an occurrence of that happening. If it  
10          is someone that is already within the organisation, then  
11          I would say that their work was being verified daily,  
12          they're being competency tested, they're being dip  
13          sampled, they're on the national register and I think  
14          that their work is undergoing daily ongoing assessment.

15    Q.    I would like to ask you a very particular question.  
16          First of all, in case I forget about it, have you seen  
17          images of Q12?

18    A.    Yes.

19    Q.    What is your position about that? Have you analysed  
20          that or have you the same position as Y7?

21    A.    No, the first time I'd seen Q12 is when I was sitting  
22          over there when I came in look at the Inquiry a few days  
23          ago.

24    Q.    So you have never been passed copies even by the same  
25          individual who gave you Y7?

1 A. Not to my knowledge, no.

2 Q. Let us move on to the question of training in a  
3 particular matter, training about slippage, distortion,  
4 movement, et cetera, et cetera.

5 Are you saying to the Inquiry that whenever you  
6 provide training to trainees you specifically train them  
7 on the question of identification of distortion,  
8 movement, et cetera? They are told what to look for,  
9 are they?

10 A. They are shown various examples that -- sorry, they are  
11 shown various examples that contain these different  
12 aspects and it's highlighted to them what they would  
13 look like. For instance, a blood mark, what a blood  
14 mark would look like as compared to sweat on glass that  
15 had been developed with powder so that they know what  
16 these look like to build up their knowledge database of  
17 the things that can happen in chance impressions.

18 Q. Yes, but I am asking you something very particular. I  
19 am not asking what a blood mark looks like or what a  
20 print on glass looks like, I'm asking about whether they  
21 get direct training that there's a very, very concerning  
22 part of your work that may crop up, and probably will  
23 crop up, which is there may be distortion or movement,  
24 smudging, pressure, et cetera, et cetera, and you have  
25 to know how to identify when that has happened because

1           it will throw you off the trail of making an analysis.

2                    Are they taught the importance of how to recognise

3 features of that kind of distortion? Specifically, are

4 they taught about it?

5    A.   Yes. In an ACE-V presentation that I do, there are

6 various examples of marks that have these distortions or

7 these characteristics during when they've been deposited

8 and the presentation let's them see. For instance, one

9 is an elliptical whorl which has been on a plastic bag

10 and it's folded and it makes it look like a normal

11 whorl. That's then explained to them and shown to them

12 the impact that fold in the plastic bag has caused on

13 that fingerprint.

14    Q.   I understand that. Let us take one step back because it

15 is important that we all understand the if I call it the

16 one discrepancy role. I know you answered some

17 questions about this but I just want to be crystal clear

18 about it.

19            Let us suppose that you look at a mark and you're

20 carrying out a comparison and you will just have a

21 single very clear difference between the two. What do

22 you do about that difference when you spot it? Let us

23 say it is the first thing you see, a bifurcation say or

24 a ridge count is out. What do you do then? Do you

25 carry on or do you say, "Nope, it's not a match. I'm

1 not going further"?

2 A. You would have to look at the print in a whole and see  
3 what other weight you put under that evidence. You have  
4 to see if there was sufficient quantity and quality of  
5 other features in sequence and agreement to allow you to  
6 effect an identification.

7 Q. Let us suppose you get 20 points in similarity but you  
8 have got one that is different, a very clear one that is  
9 different. Are you saying that that could still be a  
10 valid analysis even if you don't know the reason for the  
11 difference?

12 A. And you can't explain if there's -- it's a nice clear  
13 mark you can't explain?

14 Q. Correct.

15 A. I don't think you would be able to take that forward as  
16 an individual identification then because you have no  
17 reason whatsoever of why that's there.

18 Q. That is part of the training, is it? That is what  
19 people are trained to do?

20 A. I believe so, yes.

21 Q. Is there a bit of a danger here, though -- I know you  
22 have not heard all of the evidence -- but is there not a  
23 danger where a difference is spotted, the danger is that  
24 the Fingerprint Examiner, if they are satisfied of their  
25 other points of the similarity just say, "Well, there

1 must be some kind of distortion or twisting or something  
2 going on here. I can't see it specifically but I can  
3 only explain this difference because there must have  
4 been". You see, it's round the wrong way, isn't it?

5 A. Yes. Trainees will never be advised to explain things  
6 away by it must be a movement or there are three ridges  
7 going in and there's a dark area where they can't make  
8 out what happens and there's only two ridges coming up  
9 or one ridge coming up; so, therefore, there must be  
10 something happening in it. There needs to be clear  
11 features that are in sequence and agreement for them to  
12 be able to -- they can't explain things away if that's  
13 what you're saying.

14 Q. That is really what I am saying because it would be  
15 (inaudible due to coughing) if the individual examiner  
16 was able to say, "I think there is distortion by  
17 twisting and I can show you why there is twisting here.  
18 You can actually see a dragging of ridges" or something  
19 and that can account for the ridge count. That is one  
20 scenario, isn't it?

21 A. Yes.

22 Q. Which would be perfectly legitimate if it was explicable  
23 if you could justify it?

24 A. Yes.

25 Q. But I take it you would be critical of someone who said,

1 "I can't actually see it here but the differences must  
2 be accountable by some kind of pressure, distortion,  
3 movement, et cetera". That would not be a comfortable  
4 position to be in, would it?

5 A. No, certainly it's not the way that people would  
6 training to explain things away because they must be --  
7 in other words, if you are working, the danger there  
8 would be reverse reasoning. If you're going from left  
9 to right and then you can see it clearly on the  
10 right-hand print but you transfer that back over to  
11 well, that must be what's happening there.

12 Q. I am glad you raised this point. It is something I  
13 wanted to ask you about -- I do not need to go to it --  
14 but the demonstration carried out with the dots on in  
15 green and red that you explained you were going to have  
16 to change.

17 A. Yes.

18 Q. As I understood what you were saying is you look for a  
19 point on the latent and then you would go to the inked  
20 and see if you plot it. I think your PowerPoint  
21 actually showed that taking place?

22 A. Yes, that's correct.

23 Q. We have heard some evidence in this Inquiry that the  
24 appropriate way of dealing with it is to look at the  
25 latent and not plot one and then find it, but to

1            actually look for a cluster of them in the latent and  
2            plot them and then you go to the inked and see if you  
3            can find them.

4        A.    That's correct. That's a very basic level demonstration  
5            for them. Actually, when I was presenting that, I would  
6            talk about looking for a cluster of characteristics and  
7            then pick a strong characteristic or two or three, a  
8            bifurcation next to a lake or a ridge ending, and  
9            transferring that over. That PowerPoint can probably  
10          deal with that actually.

11        Q.    I am interested not so much in what the PowerPoint  
12            shows, I am interested in what people are trained to do.  
13            Do you follow?

14                    We have two scenarios. One is you pick a point,  
15            find the other, pick another point and find the other  
16            and working backwards and forwards like a game of  
17            tennis. What I am interested in, though, is whether  
18            that is what's done as opposed to looking at the latent,  
19            concentrating, squeezing very last drop out of what you  
20            can find, and then and only then you go to the end. Two  
21            different scenarios?

22        A.    Yes, it's two different scenarios and, on reflection,  
23            that PowerPoint doing -- maybe it's a bit simplistic to  
24            explain it. It's broken down for not laymen but broken  
25            down to show the working from left to right. More

1 accurate would be the ACE-V report with the target areas  
2 drawn on the back and the whole report on the ACE side  
3 of the unknown mark and then transferring that over to  
4 do your comparison.

5 Q. I follow.

6 Obviously the danger is that you are doing it like a  
7 game of tennis as I've described.

8 A. You start transferring in circular reasoning, yes.

9 Q. Exactly. You are looking for things in the other one,  
10 maybe accidentally, but you are looking for them?

11 A. Yes.

12 Q. As far as this Inquiry is concerned, how closely have  
13 you been following the evidence?

14 A. As closely as my work and social life has allowed me.

15 Q. Of course. Again, I am not being critical --

16 A. No, no but obviously I have more time --

17 Q. It is consuming a lot of my social time as well, I have  
18 to say. But I am not criticising.

19 What I am interested in is this: I am sure you know  
20 or may even have seen, for example, the presentation by  
21 Mr Zeelenberg. Have you seen that presentation?

22 A. I wasn't present and seeing the whole thing. I followed  
23 the transcript but not the whole presentation, no.

24 Q. I think in fact the actual PowerPoint is available  
25 online.

1 A. It's on there.

2 Q. What I am interested in, though, is whether you would  
3 see on a presentational basis, even for a training  
4 basis, that using PowerPoint to show how points could be  
5 placed or differences could be placed, would you see  
6 that as a useful training tool?

7 A. Certainly, yes. On reflection and with time to digest  
8 the stuff that comes out from the Inquiry, I would look  
9 to optimise and use some of these things possibly for  
10 training aids.

11 Q. Equally, coming almost full circle back to the question  
12 of presentation to the jury, I think it was raised by  
13 the Chairman as to the only thing that really is placed  
14 in front of the jury is a typewritten report, in fairly  
15 short measure actually, just saying, "We've looked at it  
16 and we're satisfied that these two match".

17 Again, I take it you would agree with me if I  
18 suggest that the purpose of the expert is not just to  
19 stand there and say, "I'm an expert, I know what I'm  
20 talking about"?

21 A. Absolutely.

22 Q. And if either the defence or the judge or indeed, I  
23 suppose, theoretically the jury would say, "Sorry, I  
24 don't follow this", it would be incumbent upon the  
25 expert to actually be able to demonstrate why the expert

1 held that opinion. Do you agree with that --

2 A. I do, yes.

3 Q. Against that background, are you comfortable with -- I

4 know it's the Crown who are principally leading it, but

5 are you comfortable with just a written report being

6 made available to the court?

7 A. No, and I think I actually touched on earlier that there

8 are moves being made in that area of looking at whether

9 its a generic PowerPoint or a generic way of describing

10 how we make our identifications and use it or whether we

11 actually can get to some stage for case-specific. These

12 are ongoing talks and I would certainly advocate that

13 that's where we should be going.

14 Q. I would like to ask you a few questions if I can about

15 the question of disclosure. You were asked some

16 questions about that earlier. Part of the training

17 programme that is provided, as I follow it, is a

18 discussion about the criminal justice system. I think

19 it is in your statement to the Inquiry explaining that

20 it is part of the training for the fingerprint experts,

21 for obvious reasons.

22 A. That's correct.

23 Q. Can I ask you if you yourself have ever received

24 training particularly on the question of what disclosure

25 is and what is required? Do you understand what is

1 required in law?

2 A. Yes. I have recently been on a one-week course at  
3 Tulliallan run by Superintendent George Basley(?) who is  
4 leading on disclosure stuff for the Police. I am  
5 currently working with SPSA in putting together -- in  
6 fact, they have already put together an open distance  
7 learning package that basically outlines what disclosure  
8 is. I think that's going to be put on the SPSA website  
9 as well.

10 Our next move from that is to actually look at each  
11 business area and for them to draw up plans for what  
12 they need to do to conform to full disclosure.

13 Q. I understand there are various systems to implement  
14 disclosure but what I am interested in is if you  
15 understand, as it were, what the law requires is  
16 disclosed. Obviously, it is the Crown who carries the  
17 can but the can has to have something in it. They have  
18 to have information available to them from various  
19 organisations (whether it is the police, whether it's a  
20 pathologist, whether it's a fingerprint expert) in order  
21 that they are educated as to what they have and they  
22 know what has to be disclosed.

23 A. Yes, talking about any material that may undermine the  
24 prosecution or assist the defence case.

25 Q. Yes. I think you said that quite quickly for the

1 stenographer. Can you just repeat that.

2 A. It would be any information that's held that may  
3 undermine the prosecution case or assist the defence  
4 case, any exculpatory or inculpatory evidence.

5 Q. I think that is a pretty accurate summary of what has to  
6 be handed over.

7 I take it you are aware that in fact the disclosure  
8 policy of the Crown is available on their website. It  
9 is readily available. Did you know that?

10 A. That's possibly one of the things that come out of the  
11 training.

12 Q. Against that background, obviously it is important that  
13 when analysis has been carried out within an office,  
14 then there is a very clear audit of who looks at the  
15 document, when, what their conclusion is. In light of  
16 that, first of all, if there is a problem from the  
17 prosecution side that it can be communicated, traced  
18 back and verified or managed or something of the kind.  
19 You would agree that that is necessary?

20 A. Yes.

21 Q. I am interested in something you said earlier. I think  
22 when Miss Carmichael was asking you questions you said  
23 if there was a problem like that, it probably would be  
24 put in the diary. It probably would end up there.

25 Do you remember giving evidence to that effect?

1 A. I think so. I think we were talking about facilitated  
2 discussions. I think anything of that nature would be  
3 recorded on a diary page, which is like a chart of what  
4 happens with the case as it goes through.

5 Q. By "facilitated discussion", do you mean when a  
6 disagreement arises there's actually almost like a mini  
7 committee meeting to discuss it? Is that what you mean?

8 A. It would go to the quality assurance. I think earlier I  
9 said the verification unit. I think it goes to the  
10 Quality Assurance Unit, who would deal with the  
11 discussion, yes.

12 Q. It is just the use of the word "probably" be put in the  
13 diary. Are you saying it definitely --

14 A. It would be. Sorry, that's where it would be recorded.  
15 It would be recorded in the diary page for the case.

16 Q. The diary page in those circumstances would always be  
17 communicated to the Crown, would it?

18 A. I would have to say that I'm not sure about that. I  
19 would need to take advice on that. I'm not sure whether  
20 it is always or whether that is -- I don't think it is  
21 as a matter of course given to the Crown.

22 Q. Why wouldn't it be because how could the Crown be able  
23 to disclose to the defence that there had been some  
24 debate about the mark unless the Crown was told?

25 A. As I say, I would have to just say that at this point

1 I'm unsure whether we are now putting it to the Crown or  
2 whether we have always put it to the Crown. I'm  
3 sorry, I (inaudible) --

4 Q. You understand the importance of it, though, I take it?

5 A. Certainly, yes.

6 Q. Are there no standard operating procedures or there's no  
7 rule book about this? The simple rule where there's a  
8 dispute about it, then SPSA, it must be reported to the  
9 Crown. It is an easy rule to devise and an easy rule to  
10 follow; do you accept that?

11 A. Yes, I do. I would just need to apologise and say that  
12 at this time I'm unsure whether that is happening.

13 THE CHAIRMAN: But if you cannot answer the question, so be  
14 it.

15 MR SMITH: I fully understand.

16 I would like to ask you, if I can, about the  
17 question of the work of Professor Dror. Are you aware  
18 of Dror's work?

19 A. Dr Itiel Dror, yes.

20 Q. I think broadly speaking -- I don't want to try and  
21 summarise him in a sentence or two -- but I think his  
22 position is that the culture, psychology and emotional  
23 context of the way people work can sometimes influence  
24 decisions. There can be cross-contamination, there can  
25 be observer bias, there can be confirmation bias --

1           these kinds of things?

2       A.    Yes.

3       Q.    As far as that is concerned, is that something that you  
4           are aware of being taken into account, for example, in  
5           your training courses when you train people?

6       A.    We currently send -- people who are members of the  
7           Fingerprint Society have attended lectures at various  
8           times by David Charlton and Dr Dror. We currently have  
9           one expert who is doing some research for her Masters  
10          degree which encompasses contextual bias and reverse  
11          reasoning, et cetera, in her studies. So that obviously  
12          as well will be shared with the wider community when she  
13          has finished her report.

14      Q.    So it is being taken into account. There is obviously a  
15          recognition within SPSA that that kind of approach is  
16          important?

17      A.    Oh yes.

18      Q.    I see.

19                 This is one small point of detail, the question of  
20           testing and verification. I think you indicated that  
21           effectively there's an outside agency which occasionally  
22           verifies the testing process?

23      A.    The collaborative Testing Systems which all the experts  
24          sit annually. So yes.

25      Q.    Can you help me with this. I have tried to find out

1 without success, but Collaborative Testing Systems, what  
2 is that organisation? Is it a private commercial  
3 organisation?

4 A. To my understanding, it's a private commercial  
5 organisation from America that provides this test. I  
6 think they sit two tests a year and all our experts sit  
7 on one test roundabout this time of year, November.

8 Q. But as far as they are concerned, they are not  
9 particularly fingerprint experts, are they?

10 A. I don't know their background. I think we've always  
11 used CTS and we still use CTS. We had looked at using  
12 other collaborative testing systems and did a pilot with  
13 one under SFS and we decided not to use and they've  
14 stuck with CTS.

15 Q. What do they actually check?

16 A. To my understanding, they put out a set of control  
17 prints, Scenes of Crime marks and check prints and they  
18 know the results of these because they are donor prints  
19 and they've set those up, if you like. We would then  
20 issue the experts with these tests. They would fill  
21 them in independently and send them back through our QA  
22 process to Collaborative Testing Services in America and  
23 they would publish results. So they're testing people's  
24 identification skills, if you like.

25 Q. The actual fingerprints that they are providing for the

1 test, are they provided by the SPSA or do they obtain  
2 them from another source?

3 A. They don't obtain them from SPSA so it must be from  
4 their own source.

5 Q. Can you help me with this: what is dip testing? It is  
6 referred to in your statement.

7 A. Dip testing. I possibly meant dip sampling.

8 Q. I am sorry, dip sampling. What is that?

9 A. Dip sampling is where you would randomly take cases  
10 throughout -- if we were talking about dip sampling for  
11 a person, it would be a dip sample one in ten of their  
12 cases for the last six months. We're talking about for  
13 a bureau we may take it from across the bureaux, dip  
14 sampling of cases which would then receive a sort of  
15 full verification and QA check to make sure that  
16 everything that was -- it's almost like blind testing  
17 afterwards. So you go through the whole process and  
18 make sure that everything was done correctly.

19 THE CHAIRMAN: By whom?

20 A. By our Quality Assurance Team within the units.

21 MR SMITH: That would be across the whole of the SPSA. So  
22 you might have someone in Glasgow quality assurance  
23 testing someone from the Aberdeen, would it?

24 A. I'm not sure that they cross-test. I may be wrong on  
25 that but certainly there's QA dip sampling across the

1 service, yes.

2 Q. I just want to understand though. The SPSA is a single  
3 unit, isn't it, but with smaller or separate departments  
4 within it or are they just geographically in different  
5 places --

6 A. I think the SPSA -- SPSA Forensic Services Fingerprints  
7 located at four different locations throughout Scotland.

8 Q. As far as these dip testing dip analysis procedures are  
9 concerned, are the results of these held for posterity?

10 A. Sir, you would need to speak to someone possibly in the  
11 QA or the dip sampling. It's not my area of expertise  
12 and I'm not really sure --

13 Q. I understand you can't answer the question now. So be  
14 it.

15 The last thing I wanted to ask you might have  
16 thought a strange question but the SPSA is obviously  
17 your immediate employer but who, as it were, operates  
18 the SPSA? Is it police-funded, is it Strathclyde  
19 Region-funded --

20 A. It's a public service body that would answerable to the  
21 Scottish Parliament, I believe.

22 Q. The reason I ask is -- and you may or may not be aware  
23 of it -- at the outset of the litigation at the instance  
24 of Shirley McKie there seemed to be considerable doubt  
25 amongst the Scottish Executive, the Strathclyde Police,

1 the Glasgow City Council, as to who actually had  
2 vicarious responsibility for the Fingerprint Officers in  
3 question.

4 Are you able to help us whether you are  
5 ultimately -- it may be you cannot answer this -- but  
6 the SPSA is ultimately effectively owned by or  
7 immediately owned by the Scottish Executive?

8 A. I would think it would be the Scottish Executive.

9 That's who I would expect us to answer to. Certainly  
10 when there's reports within that I'm sure that's where  
11 they would be directed, yes.

12 Q. Give me one moment, please.

13 A. Certainly.

14 Q. I have been reminded there is one question I wanted to  
15 ask you and it is this. We can actually see in the  
16 draft of the report that is prepared, the template for  
17 the expert report, a reference to the role of  
18 legislation, the Criminal Procedure (Scotland) Act 1995.  
19 There appears to be certification by the appropriate  
20 Minister of an expert.

21 Can you help me with this? You have obviously been  
22 approved. What is the mechanism by which you get that  
23 approval? Do you just apply and it is rubber-stamped  
24 or --

25 A. What would happen would -- you are talking about the

1 application to the Scottish Executive to have us  
2 considered under section 2(8) to prepare a joint report?

3 Q. Yes.

4 A. What would happen in that was we're back to our national  
5 training programme. The national training programme and  
6 the SPSA's fingerprint training policy sit within each  
7 other; so the training follows that national programme  
8 through to completion and the advanced course.

9 They would then have -- that would then enable them  
10 to be put on a National Register of Fingerprint Experts  
11 held at NPIA. What would happen then is a full report  
12 would go from that trainee's line manager, the coach or  
13 mentor, their supervisor, all their completed training  
14 would then go to the unit manager and it would be the  
15 unit manager that would submit that in writing to the  
16 Scottish Executive basically saying that they are now a  
17 fingerprint expert that can be considered for giving  
18 expert evidence on fingerprints in court.

19 Q. Is there some kind of list or register of them?

20 A. I believe there is a register that sits with Executive  
21 that has a list of expert witnesses, if you like, yes.

22 Q. What about within SPSA? Is there a book that says who  
23 is qualified --

24 A. Yes. That would match and mirror the one that we have  
25 sitting with the National Police Improvement Agency.

1           It's up to SPSA to manage that list for the NPIA; in  
2           other words, if someone was to leave the organisation,  
3           we would have to have inform the NPIA and the Scottish  
4           Executive of their status.

5       Q.    Are individuals who have been trained under your  
6           guidance encouraged to, for example, do additional  
7           training courses with the Met, even going abroad to  
8           attend training courses and join organisations such as  
9           the IAI and so on and so forth? Is there encouragement  
10          to go and see the world?

11     A.    Certainly there's encouragement and support and through  
12          our PDR process, anyone who has written aims and  
13          objectives and gave an agreement with their line manager  
14          through the chain would be supported in these  
15          endeavours.

16     MR SMITH:   Thank you very much.

17     THE CHAIRMAN:   Mr Holmes?

18     MR HOLMES:   Thank you, sir. There are three topics I would  
19          like to cover with this witness, all of them relatively  
20          brief.

21                 The first is the question of demonstration of  
22          individual characteristics to a jury.

23     THE CHAIRMAN:   Yes.

24     MR HOLMES:   The second is his evidence regarding the SPSA  
25          position on Y7 and there is a statement that I am able

1 to put to him. The third is his own position on the  
2 value of examining Y7 and Q12.

3 THE CHAIRMAN: You may ask those.

4 **Cross-examined by MR HOLMES**

5 Q. Mr McGinnies, if I can ask you first about this question  
6 of demonstrating characteristics to a jury. I know it  
7 is something that others have asked you about already,  
8 but am I correct in saying that you gave evidence  
9 earlier that, in your experience, charted enlargements  
10 since the advent of the non-numeric system have simply  
11 not been produced?

12 A. Whether they were standard before for every case, no,  
13 they're not any more, no.

14 Q. Do you ever recall charted enlargements being produced  
15 for a specific case since non-numeric came in?

16 A. Not to my knowledge, no.

17 Q. So there is no longer any attempt to get the jurors to  
18 actually see what the fingerprint expert is seeing when  
19 they are carrying out their comparison?

20 A. No.

21 Q. You do, however, describe when you give the evidence  
22 what you have seen; is that correct?

23 A. If asked to do so, yes -- anything that you think would  
24 help the court to come to a conclusion, yes.

25 Q. When it is being suggested to you that you are asking

1 the jury to make some kind of leap of faith, is it not  
2 the case that what in fact is happening is that either  
3 the Advocate Depute or the Procurator Fiscal -- because  
4 you are not asking the jury to accept anything, it would  
5 be the Depute or the Fiscal asking the jury to accept  
6 the evidence of any of their witnesses -- is what is  
7 happening that the Depute or the Fiscal is asking the  
8 jury to accept the evidence of a witness who is on oath  
9 as to something they have seen?

10 A. Yes, that would be the case, yes.

11 Q. Which is exactly what happens with every witness as to  
12 everything in every case?

13 A. Yes, that would be correct.

14 Q. The second thing I would like to ask you about is the  
15 SPSA position now. You say that the characterisation of  
16 the identification of Y7 as unsafe indicates to you that  
17 it is something that the organisation wouldn't take to  
18 court now?

19 A. Yes, I believe that was my evidence, yes.

20 Q. If you have four officers all of whom are competency  
21 tested, all whom have their work verified on a daily  
22 basis, who are prepared to sign a joint report, why  
23 wouldn't you take it to court?

24 A. Sorry, if they've all signed it saying that it's an  
25 identification?

1 Q. There are four officers or there were four officers in  
2 this case who signed the joint report, all of whom are  
3 competency tested, all of whom had their work verified  
4 on a regular basis. If there were four officers willing  
5 to sign a joint report in relation to Y7 right now, why  
6 would you not take it to court?

7 A. If today, if four officers signed a case where they were  
8 sure of the thing why would you not take to court?

9 Q. Yes.

10 A. You would take to court, if the four officers -- if  
11 today in the Dundee Bureau four officers examined a mark  
12 and took it to court then they would -- sorry, put it  
13 forward for taking to court, then it would go to court.  
14 Are you talking about Y7 as opposed to it being  
15 insufficient?

16 Q. I am asking about Y7. You indicated earlier on that the  
17 characterisation of Y7 as unsafe --

18 A. I believe that's the SPSA's position on Y7.

19 Q. Yes. You indicated that what that said to you is that  
20 it was something that wouldn't be taken to court. What  
21 I am asking is when you have got an identification  
22 where officers are ready to sign the joint report, why  
23 not take it to court?

24 A. I think -- I'm not sure I'm qualified to answer that.  
25 If SPSA have said they wouldn't take -- was it an

1 insufficient or ... an unsafe identification to court

2 then that's the SPSA's position.

3 Q. You indicated earlier on that what you took from the

4 SPSA's position previously was down to a statement made

5 by Mr Mulhern; is that correct?

6 A. At one point Mr Mulhern had made a statement of the

7 position on Y7 for SPSA, yes.

8 Q. Your understanding from that statement that he had made

9 was that the organisation's view, if I can put it like

10 that, the institutional view was that Y7 was a

11 mis-identification?

12 A. That's correct.

13 Q. Can I put this statement to you from Mr Mulhern. This

14 is him giving evidence at Justice 1, where Mr Mulhern

15 says:

16 "In recent weeks an inference made from my comments

17 on this matter has been reported in the press.

18 Obviously, we will fully support the Scottish Government

19 in every way we can with regard to an Inquiry. However,

20 I hope that such an Inquiry will not try to reopen the

21 question whether the McKie print was a

22 mis-identification. I do not think that we will ever

23 resolve that matter."

24 Does that indicate to you that Mr Mulhern's view was

25 that there was no way of telling whether this was a

1 mis-identification or not and that the question would  
2 never be resolved?

3 A. Reading that statement, whether that's a personal  
4 statement on what he is saying or whether he's talking  
5 about SPSA as an organisation but at one point he  
6 definitely said that the SPSA position was that Y7 was a  
7 mis-identification.

8 Q. You yourself have never looked at Y7?

9 A. I never compared Y7, no.

10 Q. Nor have you looked at Q12?

11 A. I've seen them but I've never --

12 Q. You've never carried out a comparison?

13 A. -- carried a full comparison of them both, no.

14 Q. Is the reason for your not carrying out a comparison of  
15 Q12 the same as the reason that you have given for not  
16 carrying out a comparison of Y7?

17 A. I would say so, yes.

18 Q. Is there any degree of fear there, that if you were to  
19 look at Y7 or Q12 and you were to agree with those who  
20 identified those marks that you would be affected in the  
21 same way that they had been?

22 A. Excuse me, sir. Anyone who knows me knows that I don't  
23 do fear. That would not affect my decisions in any way,  
24 no.

25 Q. I appreciate that but is there a risk then, perhaps,

1 that you would be treated in the same way as the  
2 individuals who have identified Y7 and who have  
3 identified Q12 as belonging to Shirley McKie and Marion  
4 Ross respectively, that you would be treated in the same  
5 way were you to agree with their opinion?

6 A. No, if I was going to make a professional decision on  
7 any impression in any case then I would stand by that  
8 decision. There would be no peer pressure. I wouldn't  
9 be swayed by anything that I perceived outside that  
10 professional opinion, no.

11 Q. Those who have identified Y7 as belonging to Shirley  
12 McKie and those who have identified Q12 as belonging to  
13 Marion Ross have been accused not of making a mistake  
14 but something far less pleasant than that. They have  
15 been accused variously of criminality, malpractice, bad  
16 practice and the position of those who still work at the  
17 SPSA has been questioned if they agree with those  
18 identifications.

19 Is there not some concern on your part that were you  
20 to agree with their opinion you would be treated the  
21 same way and has that not contributed to your failure to  
22 look at the marks?

23 A. No. I can see where someone who doesn't know me  
24 personally may have -- may be putting someone else's  
25 stereotyping onto why someone may feel that. That



1 Q. Then in addition there is a written statement prepared  
2 by each of the Fingerprint Officers detailing their  
3 involvement?

4 A. That's correct. Those didn't come up and I should  
5 possibly have asked for those to come up to clarify the  
6 position at the time, yes.

7 Q. You clearly understand and can repeat the definition of  
8 disclosure and what is required on the part of the  
9 Crown.

10 Do you appreciate, Mr McGinnies, that the Crown  
11 expect that all relevant or material information should  
12 be included in either the joint report or the witness  
13 statement?

14 A. That's correct, yes. I would agree that would be the  
15 case, yes.

16 Q. You have acknowledged in evidence and you have used the  
17 words "full disclosure" at certain times throughout  
18 today and you have acknowledged that the Crown should be  
19 told about situations arising where there's maybe  
20 disagreements or there's different views held with  
21 Fingerprint Officers, mistakes made or there's been a  
22 facilitated discussion.

23 Do you appreciate that there's a benefit to Crown  
24 Office, the COPFS, the Crown Fiscal Service, that if a  
25 matter is raised in the joint report or the statement

1 that this can alert the precognoscer to any issue and  
2 that can then be explored further at precognition?

3 A. Yes. This was one of the conversations that I had with  
4 the Advocate Depute on the day we were doing my  
5 presentation, was the fact that unless they know there  
6 is something to speak about in precognition then they  
7 need to be able to bring that out and certainly that new  
8 draft -- I don't know if you've seen the new draft  
9 statement regarding precognitions but it certainly goes  
10 a long way to making sure that the questions that are  
11 being asked cover all the topics that will be involved  
12 in the case.

13 Q. This was something the Advocate Deputes alerted you to?

14 A. Yes, it was.

15 Q. Do you also appreciate that if that information is  
16 provided in the joint report or the statement then the  
17 Crown can take that information into consideration when  
18 they're looking at the entire case?

19 A. Certainly and, again, that would be something that they  
20 would be able to raise at the precognition.

21 Q. You will also appreciate, Mr McGinnies, that if it is  
22 not in the joint report or the statement then it is  
23 going to be difficult for the Crown to be aware of that.  
24 Can I ask you this: do you tell trainees that they have  
25 a duty to raise this in their statements or the joint

1 report or perhaps at precognition?

2 A. Currently, we -- trainees will do, as part of one of  
3 their portfolios they would do, their attachment with  
4 their team and of the elements would be the writing out  
5 of the local work instructions -- sorry, not the writing  
6 out but the understanding of the local work  
7 instructions. They would take two example cases and go  
8 through them and one of the points that is highlighted  
9 in that instruction and one of the elements they need to  
10 cover when they are doing that for their modules is  
11 disclosure to the Crown.

12 Q. So that is covered in the training that's given?

13 A. Yes.

14 Q. Just finally on this question of disclosure, you talked  
15 about training you have had recently from Strathclyde  
16 Police at Tulliallan.

17 Did that cover the ACPOS guidance manual which  
18 covers the issue of disclosure and which has recently  
19 been published?

20 A. Yes, it did.

21 Q. We may hear evidence about that from a later witness.

22 Moving on to the question of precognition, you have  
23 had sight already of a Crown Office circular. I wonder  
24 if we could have that on the screen again, please.

25 That's CO4109, and it is pdf page 3 that I would like to

1 look at. Would you highlight paragraph 12, please.

2 This is the Crown Office guidance that was issued in  
3 March of this year, Mr McGinnies.

4 A. All right.

5 Q. Would you just take a moment to read that paragraph to  
6 yourself, particularly the last three lines. **(Pause)**

7 A. Yes, thank you.

8 Q. So do you see that -- and again we may hear further  
9 evidence about this at a later stage in the Inquiry --  
10 that:

11 "There is now an instruction to fiscals and  
12 precognoscers that all fingerprint experts in High Court  
13 cases should be precognosced and there is a presumption  
14 that the same applies to Sheriff and jury cases (unless  
15 it is clear at the time of precognition that the  
16 fingerprint evidence in the case is agreed)."

17 A. Yes, and this is happening.

18 Q. You mentioned in evidence earlier today that you had  
19 noticed a marked increase in the precognition of  
20 fingerprint experts and you said it was some time prior  
21 to your presentation to the ADs in June. I wondered if  
22 it could have been since March, since the issuing of  
23 this guidance?

24 A. Yes, that would certainly tie in with the timeline, yes.

25 Q. You also said that you had received an instruction to

1 precognosce all High Court cases and for the avoidance  
2 of any confusion at all, can you just clarify: SPSA  
3 don't do their own precognitions of experts?

4 A. No, they do not.

5 Q. That is something for a Fiscal or precognoscer in COPFS?

6 A. Yes, that's correct.

7 Q. In relation to this circular, you may not be aware of  
8 this, Mr McGinnies -- and if not, please, feel free to  
9 say so -- that in fact SPSA were asked to comment on the  
10 circular before it was issued and brought into force in  
11 Crown Office. Are you aware of that?

12 A. No, I'm not, no.

13 Q. In addition to this circular -- that can come of the  
14 screen, thank you -- are you aware that, in fact, there  
15 has been a review of expert evidence within Crown Office  
16 and they are developing what is being described as an  
17 aide-memoire in relation to taking precognitions of  
18 expert witnesses?

19 A. Yes, I think I referred to the document earlier that is  
20 sitting just now with our unit managers to go over it.  
21 Mr Patterson, Scott Patterson, had something for me for  
22 distribution to the unit managers for comment and that  
23 will then be returned to the Crown with our sort of  
24 comments on it, but I think it was a six-page document  
25 which was very detailed on what precognition process to

1 go through with a Fingerprint Examiner.

2 Q. Perhaps that is something that Scott Patterson will be  
3 better placed to give evidence on?

4 A. Yes, sir.

5 MISS GRAHAME: Thank you very much. I have no further  
6 questions.

7 THE CHAIRMAN: Ms Jones?

8 MS JONES: There are three matters. Two arise from matters  
9 asked by my learned friends today and one is on resource  
10 implications and some suggestions from the OIG report.

11 THE CHAIRMAN: Yes, very good.

12 **Cross-examined by MS JONES**

13 Q. Sorry, there's one other -- well, if I start perhaps  
14 with this matter: I think you were asked some questions  
15 about how experts would deal with being asked questions  
16 about Y7 in court.

17 To your knowledge have any experts been asked about  
18 Y7 in court?

19 A. I would need to look back at the summaries of questions  
20 that people have been asked. So I'm sorry, I couldn't  
21 recall. I would need to look back to see if anyone had  
22 been asked recently.

23 Q. So it's not something you can comment on?

24 A. No, sorry.

25 Q. You were also asked about whether there were

1 difficulties managing individuals in SPSA who still  
2 maintain the identification of Y7 as Ms McKie.

3 Is that something you are aware of there being any  
4 difficulties in?

5 A. No, certainly through line management, if there was  
6 anything raised from a training perspective they would  
7 bring that to me to request a training intervention  
8 after they had obviously discussed it with the unit  
9 manager. But, no, I haven't had any such requests, no.

10 Q. I think it has also been suggested at another time  
11 during the Inquiry that the circumstances surrounding Y7  
12 continue in the present day to have a significant impact  
13 on morale within the Fingerprint Service within SPSA.

14 Is that something you can comment on?

15 A. I would say morale is very good. I would say that  
16 people have worked through some difficult times, people  
17 have worked through some HMIC reports, inquiries, in the  
18 press and various other media outlets and Internet  
19 things and come into work every day and continue in a  
20 professional and constructive manner. So I would say  
21 that, across the service, everyone has done a  
22 professional job.

23 Q. Following on from that, it's been suggested that, in  
24 fact, the circumstances surrounding Y7 and these  
25 perceived difficulties have had an impact on the actual

1 efficiency of work within the Fingerprint Service within  
2 SPSA.

3 Is that something you can comment on?

4 A. I would say again from a training perspective, we are  
5 part of a national training programme. We've follow a  
6 national training programme closely and we integrate  
7 with other bureaux, both in England, Wales and Northern  
8 Ireland. I don't think that there has been any question  
9 called into the professionalism or the way the Scottish  
10 Police Services Authority, Forensic Service,  
11 Fingerprints is running or efficiency, no.

12 Q. Moving on then to the report into the Mayfield case and  
13 some other suggestions that have been discussed in the  
14 context of the Inquiry, particularly about note-taking.

15 Are you able to say at what stages and in what  
16 circumstances more detailed notes could be taken in an  
17 identification process which wouldn't have too dramatic  
18 resource implications for the organisation?

19 A. The diary page is there for anyone to record anything  
20 that they find. It may be the case that they, for  
21 instance, look at an impression or a sequence of marks  
22 and say that they can see the 2 or 3 and identify them  
23 however there is insufficient features in sequence and  
24 agreement in number 4 to individualise. They may record  
25 that on the diary page.

1                   For the purpose of note-taking on a daily basis to  
2                   the extent of an ACE-V report would be very time  
3                   consuming and I think it would just grind things to -- I  
4                   don't think it's practicable. Possibly for preparing  
5                   something for court, especially under full disclosure,  
6                   it may be something that could be looked at to provide  
7                   more robust reporting, especially where we have a lack  
8                   of using either generic or case-specific enlargements.

9       Q.   Are you able to say then if such a requirement were made  
10           of experts during that process what practical  
11           implication that would have within the resources that  
12           are currently available to SPSA?

13    A.   They would need to -- as I say, it would be time  
14           consuming and it would possibly slow down turnaround  
15           times on cases, it may mean that cases would certainly  
16           take longer to prepare and to get through a case, if  
17           you -- to whatever level of note-taking was having to  
18           take place.

19    Q.   Finally, you also gave some evidence in relation to your  
20           trainee notes that we had on the screen. I don't think  
21           we need to have them up but the question of,  
22           effectively, what was being put forward by the trainee  
23           who was talking about not being persuaded by the  
24           opinions of others. She seemed to be suggesting almost  
25           a process of blind verification.

1                   Is that something you could comment on in terms of  
2                   resource implications and whether it would be  
3                   practicable?

4       A.    Again, it would slow down case times if -- the person  
5           involved, actually, in her summary and her coming round  
6           thinking actually highlighted that, that she realised  
7           this would be the implication, that looking at each mark  
8           individually from the start would have on the length of  
9           the case, that it would basically be a resource  
10          implication of needing more people to maintain the same  
11          service level agreement or it would slow down the times  
12          taken to look at cases.

13    Q.    It may be you are not able to answer this but I think  
14          what the Inquiry may be interested in is what you mean  
15          by slow down.

16                Do you simply mean that a backlog may increase very  
17                slightly or do you mean that there may be a dramatic  
18                increase in a backlog or do you mean there would be a  
19                significant number of additional staff required? If you  
20                could perhaps give us a bit of a better idea about what  
21                you mean really by slowing down?

22    A.    I think that, depending on the level of note-taking or  
23           revisiting of each mark by each individual examiner from  
24           afresh, if you like, would dramatically lengthen the  
25           amount of time it would take to progress a case. That,

1 obviously, would possibly need to be looked at as a  
2 weigh-off against how cases could be progressed or  
3 further resourcing.

4 MS JONES: Thank you.

5 MISS CARMICHAEL: Sir, there are two points I would like to  
6 clarify, firstly, one from the questions from  
7 Miss Grahame and one from the questions from Mr Smith.

8 THE CHAIRMAN: Yes.

9 **Re-examined by MISS CARMICHAEL**

10 Q. I wonder if you would look again for me at CO4109 and  
11 perhaps we if start with page 7 because Miss Graham very  
12 correctly pointed out that wasn't a page you had been  
13 directed to earlier, which was the appendix to the  
14 report. This was, for completeness, results on other  
15 items.

16 A. Right, yes.

17 Q. I wonder if we could scroll through back to I think it  
18 is page 4.

19 I am sure it is a form you are very familiar with so  
20 you maybe don't need to look at it for long. If we look  
21 at page 1 of the report, then we look at the next page,  
22 if we look at the next page, and we look at what I think  
23 I am now right in saying is the final page.

24 First of all, am I right in thinking that this is an  
25 agreed form of report that everybody uses throughout

1 Scotland?

2 A. Yes.

3 Q. There was, I think we may hear, some consultation with  
4 the Crown about the form of that report?

5 A. There was, yes.

6 Q. Whereabouts in the report would you make disclosure of  
7 matters other than those that are obviously formally  
8 covered in the standard **pro forma** that we see here?

9 Because it seemed to be being suggested to you that you  
10 might make disclosure of other matters, the sorts of  
11 matters that were discovered in evidence this afternoon,  
12 using this joint report and I would like you comment on  
13 how that might be done?

14 A. There would also possibly be a statement that would go  
15 in, along with the report and then that statement you  
16 could put anything else that you thought may  
17 highlight -- that statement would then possibly lead the  
18 precognition.

19 Q. So would we be better perhaps looking at the statement  
20 rather than at the joint report for the possibility of  
21 disclosure?

22 A. Yes, everything else that's in the case would be on the  
23 appendix but anything else that were be disclosed would  
24 fall into the statement I believe.

25 Q. I wonder if we can look at MM0034. This is where the

1 technology is going to fail me at 4.02. The computer is  
2 obviously tired.

3 It is my fault because I am asking it to find  
4 something that is not there. It may be that I can  
5 perhaps ask another witness about this rather than  
6 detain you. There will be other SPSA witnesses and it  
7 may be that I can cover this otherwise.

8 The other point I wanted to clarify arising out of  
9 Miss Grahame's questions -- and it may be my fault and I  
10 have been back to the transcript which has not been  
11 corrected so I am not perhaps 100 per cent confident  
12 myself, if I can use that language, that I am putting  
13 this to you correctly but my recollection of your  
14 evidence earlier today, which is only partially assisted  
15 by the transcript, is that you said it wasn't long after  
16 your presentation to the Deputes that the marked  
17 increase in request for precognition came in. I just  
18 wanted to be quite clear about what your evidence on  
19 that was.

20 I think Miss Grahame put it to you that she had  
21 heard you had said it was before that and I am not  
22 immediately gaining assistance from the transcript on  
23 that.

24 A. I believe that from March on there was an increase in  
25 the precognitions. But I certainly -- it would be my

1 evidence, I believe, that since June lines of  
2 communication, I think, were even better, if you like  
3 even more strengthened, and it's certainly since then I  
4 have had comment to make that precognitions are  
5 happening on a very regular basis, for every case, and  
6 precognitions were being very thorough and more  
7 in-depth. It's possibly two dates then, there's  
8 probably they have been happening since March and after  
9 my input to the Advocates Depute in June that it's  
10 increased further.

11 Q. Am I detecting there -- please tell me if I am wrong --  
12 that you are saying there's some causal relationship  
13 between your presentation and the increased lines of  
14 communication and increased precognitions?

15 A. I would think so. I stand to be corrected but, no, I  
16 would think that, yes, it's something that possibly --  
17 standing in front of the advocates and speaking to --  
18 and Mr Patterson -- that that maybe highlighted the fact  
19 that it was to be increased or that caused it to be  
20 increased.

21 Q. There is one question I wanted to ask you arising from  
22 what you said in answer to Mr Smith's questions. You  
23 said there was an aspect on which you would want  
24 to amend slightly the presentation you have given to the  
25 Advocate Deputes.

1 A. Yes.

2 Q. Again, I do not want to keep you too long. You have had  
3 a very long day, Mr McGinnies, but would I be right in  
4 understanding the way you would probably want to amend  
5 it is by starting it with a cluster?

6 A. Is by starting with a target group. I talk about a  
7 target group and then I talk about going from left to  
8 right. The illustration and the dots appearing is to do  
9 the left to right. I would now amend it, I think,  
10 especially seeing some of the presentations over the  
11 last two or three days, to have a target group, possibly  
12 look at colouring in ridge edges and things and moving  
13 that over, something like Steve Meager from the FBI did  
14 on his presentation or Mr Langenburg.

15 Q. It would perhaps have an amended version with your  
16 target group and then the demonstration of how you move  
17 on to other points from the immediate target group?

18 A. Yes and I certainly am, as I say, interested in finding  
19 out the technology that you have in place here because I  
20 think that's something that we would certainly looking  
21 at employing.

22 MISS CARMICHAEL: Thank you very much.

23 THE CHAIRMAN: Just to finish, there are two things I wanted  
24 to ask you.

25 First about note-taking: I can well understand that

1 if you made notes in every case it would be very time  
2 consuming but where you have a complicated mark, would  
3 there not be some advantage in the examiner making some  
4 notes?

5 A. In my opinion, yes, sir.

6 THE CHAIRMAN: That would not reflect on everything. If you  
7 are not doing it in every case, the number of  
8 complicated marks, I don't know how many you would have  
9 but --

10 A. It would be on the rare occasion when you have  
11 complicated marks, I would say, I would advocate it  
12 would be good practice to make annotations on what you  
13 are actually looking at, yes.

14 THE CHAIRMAN: I think there was only one other thing that I  
15 wanted to touch on and that is how much information do  
16 you anticipate would be given in the precognition? The  
17 reason I am asking you this is that, for example, in Y7  
18 the first defence expert saw the charting and was able  
19 to form an opinion and, as it happened, he agreed with  
20 the SCRO officers. Nowadays you wouldn't get anything  
21 like that.

22 A. No. To take to court or to present in court, no.

23 THE CHAIRMAN: I can see one disadvantage and that is --  
24 well, two. The first is if you wanted to challenge it  
25 all you have got is somebody saying, "I have examined

1           this and I am confident", or whatever the words are,  
2           "that this print belongs to whoever" but it means, first  
3           of all, if you want to challenge it you can't see what  
4           the points were that they were relying on and, on the  
5           other hand, if you saw them you might agree with them  
6           and the whole question of a contest might disappear or  
7           the need for a contest.

8        A.    Sir, I still believe the mechanism is in process -- in  
9           place, sorry, that if a defence agent wants to look at  
10          the material they will be afforded access to the  
11          material in the case.

12       THE CHAIRMAN:   That is what I was going to ask you because  
13          my own experience is that, in other fields of forensic  
14          science people are given access to see whatever the item  
15          is.

16       A.    Yes, that's still the case in fingerprints.

17       THE CHAIRMAN:   That is the way it would happen with you, if  
18          somebody wanted to come to your laboratory to see the  
19          workings -- if that is the way to put it --

20       A.    Yes, they would be given access to the materials, yes,  
21          sir.

22       THE CHAIRMAN:   -- that would be made available to them.

23          That clears that up. Thank you very much.

24                You have given up a lot of time and I gather you had  
25          a very difficult journey here yesterday. I am sorry

1           about that. That really concludes, well and truly,  
2           today's proceedings and we will resume then with  
3           Mr Stewart tomorrow at 10.00.

4    **(4.10 pm)**

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

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25