

1

Thursday, 5th November 2009

2 (Afternoon session)

3 (1.50 pm)

4

**CHARLES DOUGLAS STEWART**

5

**Examined by MISS CARMICHAEL (continued)**

6

MISS CARMICHAEL: Good afternoon, Mr Stewart.

7

A. Good afternoon.

8

Q. I think just before lunch I had been asking if you could

9

help us with a couple of mysteries, one of which was

10

about a report that we were not quite sure how it had

11

come into being in that form.

12

I would like to ask you about another one of the

13

productions that we are not quite perhaps sure what the

14

origin of it was. I wonder if we could put up, please,

15

DB0011. If we scroll through to the next page and

16

following page, we will see that is listed as production

17

number 180 from the case against Ms McKie. If we scroll

18

further forward, we can see this is an SCRO photograph

19

book but unusually for the productions that we've got in

20

this case it's signed only by yourself and

21

Mr MacPherson, rather than by others of your colleagues

22

as well.

23

If we can scroll on further just to show you again

24

what it is, here we've got two photographic images of Y7

25

and then when we turn to the next page, page 6, we see

1 on the right part of Ms McKie's left thumbprint and on  
2 the left part of Y7 and the two of them charted to show  
3 the items in sequence and agreement that had been  
4 identified by yourself and your colleague.

5 Would that be correct?

6 A. That's correct.

7 Q. We have had, I think, three possible explanations for  
8 where this might have come from. The first we heard was  
9 that it was possible that it might have gone with the  
10 unused report that we have just looked at, the  
11 27th March one, and I think that was at one stage  
12 Mr MacPherson's suggestion.

13 The second suggestion -- and I will give you all  
14 three at the outset, Mr Stewart, was one that you made  
15 in the course of the trial and I can bring the  
16 appropriate page up for you. It is SG0526 at page 40.  
17 If we look at line 9 we see that the Advocate Depute is  
18 referring to 180 which I hope you will take from me is  
19 the production 180 that we have just been looking at.

20 As we go through, we see that the Advocate Depute  
21 asks you if we see a similar comparison exercise in the  
22 same way we have already seen and I hope you will take  
23 it from me he previously referred you to a similar book.  
24 He asks you:

25 "In taking part in the second examination as you

1           have described, what was your conclusion."

2           You say:

3           "The conclusion was the same as the first time  
4           round, that the fingerprint was made by the left  
5           thumbprint of Shirley McKie or Cardwell."

6           Then there is a little bit of confusion between the  
7           two of you, I think, as to what image you are talking  
8           about, the thumbprint or the comparison print.

9           Line 3 of page 41 and that is:

10          "I am sorry [this is a question] what I mean is the  
11          comparison print from the form, was that taken from the  
12          form which is now in front of you?"

13          Again I hope to save time you will perhaps take it  
14          from me that that was a reference to the second  
15          elimination form, the one of 18th February 1997.

16          What you explained to the Advocate Depute about  
17          production 180 is that you made the comparison from the  
18          form that you were being shown there, which was the  
19          18th February one, but you say:

20          "For the illustration purposes we used the previous  
21          form."

22          The Advocate Depute then says:

23          "Oh I see. So the illustration relates to the one  
24          we have already seen."

25          You explain that the left thumb in the impression

1 was very badly taken at the top of the form and that it  
2 was over-inked and distorted. Then the Advocate Depute  
3 clarifies with you that, for illustration purposes, you  
4 were actually looking at the same item as you had  
5 before. So it had come to be for some reason, and the  
6 reason that you are suggesting there was that albeit  
7 that you might have had available to you a further  
8 elimination form, a further illustration had been  
9 produced similar to an earlier one because the later  
10 impression had been badly taken. So that was the second  
11 explanation that we had for the existence of this book  
12 signed by the two of you only.

13 We have come up with a possible third one, and I am  
14 sorry that this comes via a long question with a number  
15 of different things for you to hear all at once,  
16 Mr Stewart, but the third possibility was that it may  
17 have been prepared by you and your colleague,  
18 Mr MacPherson, for the purposes of a Mr Wilson who was  
19 carrying out a disciplinary investigation against  
20 Ms McKie within the Police Service.

21 Perhaps it might assist you to see CO0345.13. If we  
22 look to the top of the page there, the first three  
23 paragraphs, those relate to yourself and to  
24 Mr MacPherson. It indicates there that, in the first  
25 place, that Mr MacPherson had provided a book containing

1 the fingerprint for comparison and also that you had  
2 signed the book prepared by Mr MacPherson and that  
3 certainly seemed to raise at least the possibility that  
4 the book signed by the two of you, rather than the four  
5 as seemed to be more usual in the case, may have been  
6 for the police for their investigation rather than, in  
7 the ordinary way, for the Crown for a prosecution.

8 With each of these possibilities in front of you --  
9 and I do apologise for the length of question, if you  
10 can remember what they all are -- do you have any  
11 comment as to which might be the correct one, if any?

12 A. First of all, can I ask you to go back to the  
13 production, please, to show the photographs of Y7?

14 Q. Yes of course, if we go back to DB0011 and if we run  
15 back to the previous page, page 5 and if we take away  
16 the image on the right-hand side and enlarge that.

17 A. What I see there is an original version of Y7 and a  
18 version that would appear to have been taken when  
19 Ms McKie was taken back to the **locus** because I think she  
20 signed the production label.

21 Q. I think you are absolutely correct about that.

22 A. From that point of view, that narrows down the  
23 possibilities. I don't think it would be a production  
24 we prepared for the normal court purposes because it  
25 would have been signed by all four of us in the usual

1 way, therefore I think it more than likely falls into  
2 the scenario it was prepared for a discipline purpose  
3 and only two of us, maybe, would be requested to give  
4 evidence or give a statement and prepare productions so  
5 I think that the third option is probably the more  
6 likely one.

7 Q. Thank you for your assistance on that, Mr Stewart.

8 If we can take that down for the moment, please, and  
9 perhaps continue on the theme of enlarged images, having  
10 touched on that production. I would like to go, please,  
11 to pages 24 and 25 of your statement, if we could have  
12 them both up here.

13 You are being asked about enlargements and the use  
14 of a charting PC machine in this part of your statement.  
15 If we look first at paragraph 105, you say:

16 "The charting PC was a dreadful machine. It was  
17 almost impossible to work with. It had limited  
18 contrast. The charting PC produced poor quality images.  
19 It could only enlarge to certain sizes, which meant that  
20 the image of the mark had to be cropped. It was  
21 preferable to show the full mark."

22 When you say the charting PC produced poor quality  
23 images, can you explain to the Chairman what you mean by  
24 that?

25 A. I think, basically, the imaging process within the

1 machine did not give as sharp an image as you would get  
2 by photographic enlargements. When you scanned in your  
3 photograph of the scene of crime mark and the  
4 fingerprint form I don't think the material that scanned  
5 it, the lenses or whatever, were anything like the same  
6 quality you could get when you were using a photographic  
7 enlargement.

8 Q. What was the consequence of that?

9 A. Usually the marks, if you had a good quality mark that  
10 had good contrast, it was fine. If you had a mark that  
11 was disappearing into the background, say a black mark  
12 against a grey-ish background you didn't get a lot of  
13 contrast on it so it made it very hard to see and work  
14 with. I always found the images were never as sharp.  
15 There was always a slight fuzziness on them. I just  
16 didn't think it was a very professional machine.

17 Q. If I understand correctly, you would use the computer  
18 not just to produce the images of the mark and the print  
19 but also to plot characteristics on it?

20 A. That's correct.

21 Q. Were you happy with the way the machine worked in terms  
22 of letting you plot the characteristics?

23 A. I always found it very difficult because you lined the  
24 mouse up to put the dot over your characteristic and  
25 just in the brief second you press the mouse button to

1 confirm that's where you wanted it, the mouse usually  
2 moved fractionally so it was very hard to line up your  
3 dot, certainly I always found, precisely where you  
4 wanted it.

5 Q. Did that raise any concerns for you about the accuracy  
6 of the charting that you were able to produce of the  
7 characteristics that you had seen in a case?

8 A. Well, realistically the charting was always just an  
9 illustration. The evidence was what the expert was  
10 giving but the charting was just an illustration of how  
11 we went about it. So, while it wasn't as accurate as a  
12 photographic enlargement would be, I didn't really have  
13 a problem with it from that point of view.

14 Q. I would like to ask you just a little bit more about  
15 that because I think you touch on that, if we take down  
16 105, at paragraphs 109 and 110 of your statement and if  
17 we could have the two of those up on the screen.

18 You say the enlargements were prepared for  
19 illustrative purposes to show how a fingerprint expert  
20 went about his job but you also say at paragraph 110  
21 that the enlargement was illustrative to the specific  
22 case, in that each enlargement showed a specific  
23 identification with 16 points in sequence and agreement.

24 What do you mean by that?

25 A. I think I'm maybe slightly contradicting myself between

1 the two. You produced an illustration for each case you  
2 sent to court so it would be case specific, which is  
3 probably what I'm trying to say in paragraph 110, and  
4 you marked up 16 points just to show how you went about  
5 what you did but we always referred to them as  
6 illustrations because the understanding was if a defence  
7 expert was looking at it his first port of call would be  
8 to look at the actual size mark and the fingerprint form  
9 and carry out the comparison, not to look at your  
10 illustration.

11 Q. If I can perhaps explore it this way, Mr Stewart, if one  
12 was simply interested in how a Fingerprint Examiner went  
13 about his or her job, I suppose one could do that with a  
14 generic illustration of a fingerprint that was quite  
15 unrelated to the case.

16 Would that be fair?

17 A. That would be fair, yes.

18 Q. Would it not then be reasonable to think that if you  
19 have gone to the trouble of preparing an enlargement  
20 that shows the points or at least certain of the points  
21 that you and your colleagues have identified in a given  
22 case that that was actually meant to show anyone who was  
23 interested just what points you had relied on in  
24 reaching your identification?

25 A. Well, it was always referred to as an illustration. It

1           was a guide to how you went about what you did. That's  
2           the way I was always taught about it and that's the way  
3           I always looked at it.

4    Q.    In this particular case, thinking of the McKie case  
5           rather than the Asbury one, when you came to be going to  
6           give evidence in court about Y7 did the accuracy that  
7           the machine had allowed you to produce on the charting  
8           cause you any concern?

9    A.    I've always had concerns with the charting PC because  
10           the accuracy of it was not as good as you could obtain  
11           doing it manually with photographic enlargements.

12   Q.    Again, if I can perhaps explore that a little further,  
13           why would the accuracy matter at all if it wasn't a  
14           matter of trying to demonstrate properly which points  
15           you'd identified on the mark.

16   A.    We were always trying to be as professional as possible  
17           in producing the best possible illustration we could.  
18           Therefore, being as accurate as possible was something  
19           we saw as being beneficial.

20   Q.    I think we touched on this earlier, that there was a  
21           point, certainly by the time of your meeting with  
22           Mr Murphy, when you became aware that there was going to  
23           be a challenge to the fingerprint identification in this  
24           case, yes?

25   A.    Yes, uh-huh.

1 Q. At that stage presumably you became aware that it is  
2 going to be necessary to show the court, to show the  
3 jury, just what points you had relied on in making your  
4 identification?

5 A. I assume so, yes.

6 Q. At that point, were you happy that the images that your  
7 colleague had marked up and that you had signed up to  
8 represented your position accurately?

9 A. Well, it was as accurately as you could with that  
10 machine. We didn't have an option to do anything else  
11 because we were told not to use photographic  
12 enlargements. We were expected to use the machine to  
13 produce the illustration.

14 Q. Please understand I am not criticising you for using the  
15 machine. I think we can all quite understand that you  
16 use the equipment that you are given at a particular  
17 time.

18 What I am trying to get at is whether, at the point  
19 when you knew there was going to be a challenge, the  
20 fact that the machine did not perhaps allow you to do  
21 the job that you might have wished to do had you had  
22 other sources available to you, if that was something  
23 that gave you any concern?

24 A. Certainly, it's easy to look back in hindsight and say  
25 we might have been better asking for an adjournment or a

1 period of time to allow us to do further enlargements  
2 photographically, but that's easy looking back.

3 Q. Again, please be clear, I am not seeking to criticise  
4 you for not taking that course, Mr Stewart. I am simply  
5 trying to find out whether at the time that was a matter  
6 that caused you any concern?

7 A. I really can't remember if it did, other than the fact I  
8 wasn't happy with the charting PC anyway.

9 Q. Was there any point during the trial that the quality of  
10 the enlargement and the charting became an issue?

11 A. I really can't remember.

12 Q. There are some points in the transcript that I would  
13 like to ask you about. It may be that you don't  
14 remember and that you may not be able to remember  
15 whether it had anything to do with the enlargement or  
16 not, but if I could take you, please, to SG0526 at  
17 page 139. I think perhaps in fairness I should have the  
18 previous page up for you also.

19 Where it says at the top of page 186, "By the  
20 Court", that I think you can take it from me is an  
21 indication that you are being asked a question by the  
22 judge rather than by any of the other lawyers in the  
23 court. That passage continues to line 5 on our  
24 page 139. The judge says:

25 "My concern at the moment is the quality of the

1 print in 152, [that was production 152] the real print,  
2 if I may call it that, but that is another question and  
3 that's a matter for the ladies and gentlemen."

4 At that point were you perhaps concerned about the  
5 quality of reproduction that was available for the  
6 Court?

7 A. From that I don't know whether he's expressing concern  
8 over the actual mark, life size mark, or one of the  
9 illustrations thereof. That doesn't make it clear.

10 Q. That is perhaps my fault. We will take that one down if  
11 it is not of assistance to you.

12 Do you recall being examined by Mr Findlay about  
13 things that appeared as blobs?

14 A. Certainly, I remember being examined by Mr Findlay. I  
15 don't remember -- I think he used the term "blobs" but I  
16 really don't remember.

17 Q. If we go to page 152 of this same document we may find  
18 one of the references. If we have the left page as  
19 well. Sorry, this is another example and, again, I must  
20 apologise, this is not Mr Findlay, this is the judge  
21 again.

22 This is an instance where you are clearly discussing  
23 the charted enlargement with the red lines and the  
24 numbers because we can see from the left-hand page that  
25 we're talking about a point number 7 and when we get to

1 our page 152 "By the Court" we see a reference that:

2 "The top of the red line is partly through a blank  
3 space, is it not? The top of the red line is going into  
4 the white bit between the ridge splitting."

5 So I think here we can quite firmly put this in a  
6 discussion of the charted production. Now, where it is  
7 being put to you by the Court that apparently the red  
8 line is going into a white area, should we take it that  
9 this might be an area where the charting was not good in  
10 some way or that it was that you had, in fact, intended  
11 the red line to go into a white area?

12 A. Well, I would think it very unlikely the red line would  
13 be marked into a white area, therefore I assume that  
14 when it's been charted the end of the red line has moved  
15 a fraction and therefore appears off the ridge.

16 Q. So that would be an instance where, as it were, the  
17 charting had let you down?

18 A. That is correct.

19 Q. Perhaps because of the difficulties with the mouse that  
20 you had indicated earlier?

21 A. That is more than likely so.

22 Q. That difficulty with the charting -- and again I am sure  
23 I will be corrected if I am wrong -- is not something  
24 you refer to at any point in your evidence in the trial  
25 of Ms McKie?

1 A. I think the policy was it was a machine brought into the  
2 department. It wasn't there to be criticised in any  
3 way. We were told just to use it and get on with it.

4 Q. Again, I am not suggesting that you should have done  
5 anything other than use the machine that you were given,  
6 Mr Stewart, but what I am suggesting is that if there  
7 was a difficulty of this sort caused by the machine that  
8 seemed to be causing the trial judge some difficulty, it  
9 would have been perfectly open to you to say, "Well, I'm  
10 sorry, my Lord, that's just because I can't put the mark  
11 where I need to. The machine's not really very good",  
12 or something along those lines?

13 A. Well, perhaps I just lacked the presence of mind to say  
14 so.

15 Q. Very well, I think we can take that down. If you bear  
16 with me a moment, something else is being suggested to  
17 me, Mr Stewart. **(Pause)**

18 I may come back to this but I think I will ask a  
19 different question just at this point. Thinking on the  
20 theme of the enlargements and the use of them with a  
21 jury, should a juror be able to see a feature on a mark  
22 that you say is there?

23 A. It's very hard to say. You can't make a juror an  
24 instant expert. You can't make them see what's there if  
25 they can't see it. It depends on the clarity of the

1 mark. If you have two very good quality marks it's  
2 quite potentially likely the juror could follow what you  
3 are doing and see the ridge ending in one and the ridge  
4 ending in another. The second you start working with  
5 more complex marks I consider it very unlikely the jury  
6 would be able to follow you clearly.

7 Q. It might be, for example, I suppose that an examiner  
8 comes along to court and says, "Well, I see a continuous  
9 ridge here", and the juror looks at it and to the lay  
10 eye it doesn't look to be continuous, it may appear to  
11 have gaps in it or something of that sort. It certainly  
12 doesn't appear there as a solid or anything like a solid  
13 line.

14 Why should the juror not accept simply the evidence  
15 of his or her own eyes?

16 A. Well, at the end of the day, it's opinion evidence. We  
17 give evidence on the basis it's up to the decision maker  
18 or the jury to weigh up the evidence and make a decision  
19 thereon, whether they accept it or not.

20 Q. We have heard also that there may be instances where  
21 there is some interpretation by the Fingerprint Examiner  
22 in the sense of there being, for example, a feature on a  
23 mark which may be a ridge ending or it may be that for  
24 some reason it should be properly construed as a  
25 bifurcation in one direction or another.

1                    Again, if the juror cannot see a connection between  
2                    one ridge and another, why should he accept from the  
3                    examiner that there are not simply two separate ridges,  
4                    if the examiner contends that the ridges are joined in  
5                    the form of a bifurcation?

6        A.    Again, the examiner is there to offer his or her  
7                    experience of comparisons to the jury to explain how  
8                    they go about it. You can't make the members of the  
9                    jury an expert. They will see what they see.

10      Q.    We have heard some witnesses say that they, as experts,  
11                    should always be able to demonstrate to another person  
12                    even a person unqualified in fingerprint examination, a  
13                    feature that they say is present on a mark.

14                    Do you have any comment on that?

15      A.    From my experience, as I said earlier, all marks vary.  
16                    The quality of the marks vary. As I said, if you have a  
17                    reasonable quality mark it is very likely you could go  
18                    round it and explain to the jury exactly what is there  
19                    and they would see it but once you start going into a  
20                    poorer quality mark I think it becomes harder for the  
21                    lay person to follow.

22      Q.    Might it be then that there are occasions when a juror  
23                    simply might not be able to see what you are telling  
24                    them is there?

25      A.    I suspect so because it can take an expert many years of

1 training to be able to look at a mark and interpret  
2 what's there and see what's there. So to expect a  
3 person off the street sitting in a jury for 10, 15  
4 minutes, half-an-hour to be able to do that, I would  
5 have thought is unlikely.

6 Q. If I can take you to another part of the transcript,  
7 page 157 of SG0526 and again if we look to where the  
8 judge is asking you questions, Lord Johnson asked you:

9 "Just before you leave 152 to put it very crudely,  
10 Mr Stewart, would you accept or not that to the  
11 untrained eye, such as mine, 15 and 16 on the latent  
12 print give the impression of a blob?"

13 I think this is part of your answer, sorry:

14 "It is a good term that Mr Findlay used earlier.  
15 Yes, sir, I would say to someone who has no training and  
16 no experience of fingerprints probably a whole lot of  
17 that just looks like a black mess you would think, my  
18 Lord."

19 Should we take this as an example of the sort of  
20 thing that you have just been describing?

21 A. I mean, I can go back to my early days when I was  
22 training and the first marks I looked at were just  
23 blobs, they meant nothing to me and I was amazed that  
24 people could look at them and see things in them and  
25 interpret them. So, from that point of view, it is very

1           hard to expect the jury to always see what you can see.

2       Q.    Would I understand rightly that it is through perhaps  
3           other examiners explaining their view to you of what  
4           might have seemed to you initially blobs that you gained  
5           your own means of comprehending these sorts of  
6           features on marks?

7       A.    The essence of learning is talking to other more  
8           experienced examiners, having them disseminate their  
9           experience to you. You learn from what they tell you,  
10          you learn from their experience. Hopefully, you  
11          appreciate it, you take it on board and you will  
12          continue to learn as you go forward in your career.

13   MISS CARMICHAEL:   If I might have a moment, please?

14   THE CHAIRMAN:   Yes. **(Pause)**

15   MISS CARMICHAEL:   I wonder if you would look for me, please,  
16          still on this theme, at ST0006. I think we have an H  
17          reference for that as well. I think we can give you an  
18          original document here to have in your hand, Mr Stewart,  
19          rather than asking you to strain at the screen.

20          **(Handed)**

21                Perhaps if we could run to the final page of that.  
22                I think the term "blob" in Ms McKie's trial perhaps was  
23                first mentioned by Mr Findlay in relation to the area  
24                that has the marker of 1 on it in the left-hand image  
25                here, the image of Y7. I won't go back to the

1 transcript for that at the moment but if you just  
2 perhaps take that from me at the moment.

3 Is area 1 one of these black messes that you refer  
4 to in your answer to Lord Johnson in the passage that  
5 we've just been looking at?

6 A. Certainly I would say for the lay person looking at that  
7 it is not obviously clear but, then again, that's why  
8 we've always argued we should use generics and not of  
9 case-specific enlargements because it avoids problems  
10 like this.

11 Q. I suppose that answer that you have just given to the  
12 Inquiry here, that I suppose is not the answer that you  
13 gave at the trial in relation to these matters. If I  
14 understand your position, your position was rather more  
15 that you can see the matter, not that one should not  
16 bother with enlargements of this sort at all?

17 A. As I said earlier, it is quite open for the expert with  
18 experience to be able to look at the mark and interpret  
19 what they see. What I see, what another examiner sees,  
20 could be two different things. Another examiner could  
21 see more or less in the mark and there's absolutely no  
22 guarantee the ladies and gentlemen of the jury will see  
23 what you see.

24 Q. I wonder if we could have page 147 of pdf 0526. I think  
25 we've got 157 there. We need 147.

1                    This is where you are being cross-examined by  
2                    Mr Findlay about point number 1, the point that I just  
3                    asked you about. If we go to line 15, Mr Findlay asks  
4                    you:

5                    "Now look at the latent. What is that blob meant to  
6                    tell us? Point to where number 1 is, please? What is  
7                    that blob meant to tell us?"

8                    Your answer is:

9                    "That ridge comes down here and splits here and goes  
10                   down [...] there."

11                   You are then asked:

12                   "So what is the blob?"

13                   You say:

14                   "The blob is the point of bifurcation."

15                   You are then asked:

16                   "No, the blob is a blob. How do you convert the  
17                   bifurcation into a blob?"

18                   You say:

19                   "That is just using your terminology. That point  
20                   there is where the ridge is bifurcating."

21                   If we can go on to the next page, please, you are  
22                   then asked:

23                   "So, you say, but you would agree what that looks  
24                   like, even with a magnifying glass all right to you  
25                   trained eye but to the untrained eye is an area of

1 darkness?"

2 You say:

3 "You say see it as that, sir, but I see it as a  
4 characteristic."

5 Then the trial judge asks you:

6 "I have got to be honest, Mr Stewart, because even  
7 with my magnifying class the word 'blob' is appropriate.  
8 Can you just with the pointer demonstrate where the  
9 bifurcation is actually taking place?"

10 You say:

11 "The ridge comes down here, my Lord, to this point  
12 here and one side of the ridge continues on that side  
13 and the other continues here."

14 ... which is perhaps something that doesn't  
15 enlighten us terribly in the detail just reading the  
16 transcript.

17 When we are talking about that area of darkness, if  
18 I can be quite clear, is that something that you say was  
19 a difficulty that was caused in terms of the quality of  
20 the image you were able to produce for the Court?

21 A. You mean using the charting PC?

22 Q. Yes.

23 A. I can't honestly remember from photographic enlargements  
24 whether we had the same problems with clarity or not. I  
25 would need to look at a photographic enlargement and see

1           whether there is the same blob appearing.

2       Q.    It may be that we can look to that without troubling you  
3           any further, Mr Stewart.

4           I shall leave that for the moment but I do have some  
5           more questions about enlargements. If we go this time  
6           to pages 25 and 26 of your statement. If we start at  
7           paragraph 113 at the foot of page 25 we see you are  
8           telling us that you -- and I assume you mean the SCRO --  
9           at that stage had been trying to persuade the Crown to  
10          drop the requirement for case-specific enlargements for  
11          many years.

12          Should we take it on the basis of what you have just  
13          told us that that was because you felt there was a  
14          difficulty with demonstrating what you saw and your own  
15          interpretations of marks to juries in individual cases?

16       A.   Two reasons for that: one, as a bureau we were virtually  
17          out of line with the rest of the United Kingdom, no  
18          other bureau produced case specific enlargements; two,  
19          from what I had seen over the years of giving evidence  
20          members of the jury certainly had problems following you  
21          when you were looking at the case-specific illustrations  
22          so from both points of view I'd always felt there was a  
23          benefit in not having it.

24       Q.    Just to clarify your understanding about the practice of  
25          other bureaux, was it your understanding that they did

1 not produce case-specific enlargements at all or was it  
2 rather than they perhaps produced them only when  
3 specifically asked to do so in individual cases?

4 A. I think on the whole the majority of them didn't  
5 produce. One or two did produce on very rare occasions  
6 when it was case-specific but it wasn't done as a norm  
7 from what I understand.

8 Q. Do you have, yourself, any knowledge of how they managed  
9 to present the evidence in court without the assistance  
10 of case-specific enlargements?

11 A. I understand that some of the bureaux used generics of  
12 the type we saw yesterday for Alec McGinnies or similar  
13 to that.

14 Q. Do you know -- and if you don't then, please, simply say  
15 so -- how they went about demonstrating their  
16 identifications and the points that they'd used in  
17 making identifications in individual cases when they  
18 went to court?

19 A. My understanding is they didn't point out the specific  
20 points relative to the case they were talking to in  
21 court. They would just use the generic to illustrate to  
22 the ladies and gentlemen of the jury how you go about  
23 making a comparison; how you reach a conclusion.

24 Q. You refer to this matter again at a later stage in your  
25 statement at paragraph 299 on page 61. We should see

1 paragraph 299 here where you talk about the Crown Office  
2 and Procurator Fiscal Service. You again give the  
3 example of lobbying with no success for the dropping of  
4 chartered enlargements.

5 I have been asked to clarify with you whether there  
6 were any other examples that you would be able to give  
7 of circumstances where you tried to involve Fiscals to  
8 allow them to learn more about what they required or  
9 what you required but that was not taken up?

10 A. I think historically over the years as a bureau we tried  
11 to involve Fiscals in part of our training, for mock  
12 trials, et cetera, to give our trainees a more real  
13 experience of a court setting and to have somebody who  
14 wasn't a fingerprint expert asking them questions so  
15 they would get the questions worded in a different  
16 manner.

17 Q. Can you tell us when those attempts were made?

18 A. I think that was ongoing over many, many years. We had  
19 always tried to have more involvement from the Fiscal  
20 Service in training but we never seemed to be  
21 successful.

22 Q. Was this before or after Ms McKie's case?

23 A. Oh, I think it had been going on for quite a few years  
24 beforehand.

25 Q. I would like to turn to the discussions and meetings

1 that you had with Mr Murphy and as that arose at an  
2 earlier point I perhaps do not have very much to ask you  
3 about that just now.

4 If I understand you correctly, your only  
5 recollection is of the meeting immediately before the  
6 trial?

7 A. I was thinking about that earlier and I think we met  
8 with Mr Murphy after each day during Mr Wertheim and  
9 Mr Grieve's evidence. He was asking us for our opinion  
10 of what they were saying and what they could do and I  
11 just wonder it that's where Mr Murphy is getting all his  
12 information from. He's putting it all in one meeting  
13 whereas I think perhaps we did have a briefing session  
14 with him each day during the trial, from memory.

15 Q. That isn't quite what I was meaning to ask you about,  
16 Mr Stewart. Sheriff Murphy has told us that he had a  
17 meeting first with yourself and Mr MacPherson on  
18 30th March 1999, that's some weeks before the trial  
19 started.

20 Is that something you recall at all?

21 A. I don't think so, I must admit. No, I don't remember  
22 that. The first meeting I really remember is  
23 immediately before the trial we were shown the  
24 production for a few seconds. I don't remember an  
25 earlier meeting I must admit.

1 Q. I would like to ask you more particularly some matters,  
2 when they came to your attention and whether you told  
3 Mr Murphy, as he was then, about them.

4 When did you first become aware that a Mr Swann had  
5 been involved in the case?

6 A. I certainly was aware that there had been two  
7 independent experts involved, only one of whose name I  
8 knew and that was Malcolm Grahame. We'd heard stories  
9 that another independent expert had been used and had  
10 agreed with our evidence but I didn't know his name  
11 until I think it was about the first day I was giving  
12 evidence. I went back to the office that night and I  
13 think somebody told me then who it was and I  
14 communicated that to Mr Murphy the next day -- I think.

15 Q. You think you told Mr Murphy, possibly on the second day  
16 that you were giving evidence, that Mr Swann had been  
17 involved?

18 A. I'm sure it was reasonably near the start of the trial.  
19 I really can't remember which day it was but I'm sure it  
20 was near the start.

21 Q. Because Sheriff Murphy's recollection is that that is  
22 not something certainly that he had any certainty about  
23 until after a stage when Ms McKie had given evidence,  
24 which obviously would be some time later than you had  
25 given evidence.

1 Do you have any comment on that?

2 A. From memory, no, I can't really confirm any more  
3 accurately what date I thought it took place on.

4 Q. Where had your information come from?

5 A. Somebody in the office told me. I don't know where they  
6 got it from but we certainly had been looking to see if  
7 this was the case that had another independent expert  
8 examined the material, what their findings were and who  
9 they were.

10 Q. Would it be fair to say that the best information that  
11 you would have been able to give Sheriff Murphy was that  
12 somebody in the office had mentioned Mr Swann's name as  
13 a person who had looked at the matter?

14 A. I would think that would be right, yes.

15 Q. But at that stage it perhaps would be fair to say that  
16 there had not been any independent checking or  
17 verification of whether that was actually correct as a  
18 matter of fact?

19 A. No.

20 Q. I don't mean this at all pejoratively but at that stage  
21 it's hearsay?

22 A. Yes, it would be.

23 Q. Going back to just before the trial, who was it that  
24 made you first aware that Mr Wertheim was involved with  
25 as a witness? Can you recall whether that was Sheriff

1           Murphy or some other person?

2       A.    I think it was Sheriff Murphy the day we were called  
3           down to see the production was the first time we found  
4           out there was a challenge based on identification  
5           because up to that point the challenge we understood was  
6           based on transferring or transplanting.

7       Q.    Leaving aside the precise nature of the challenge at  
8           that stage, was that the first occasion that you became  
9           aware of Mr Wertheim's involvement?

10      A.    Yes, it would be, I think.

11      MISS CARMICHAEL:   Thank you, Mr Stewart. I don't have any  
12           further questions for you at the moment.

13      THE CHAIRMAN:   Once again we will begin with you, Mr Smith.

14      MR SMITH:   Yes, sir, again, I do have an application to  
15           make. There are a number of matters, most of these are  
16           points of fairly narrow detail. The first is this  
17           witness's understanding of the current status of the  
18           mark, the various definitions that have been discussed.

19                The second point is a very particular matter  
20           relating to his involvement with the tin, in particular  
21           the question of the dust impression we heard something  
22           about.

23                The third relates to Q12 and whether any pressure  
24           was being brought to bear for an identification and I  
25           will avoid, as much as I can, any questions already put

1 in that respect.

2 I would like to ask some further questions regarding  
3 the charting enlargement machine and, if I may, a couple  
4 of points made about the opportunity to explain that in  
5 the trial.

6 The fifth matter is relating to the position of this  
7 witness regarding what information is given by one  
8 examiner when a print, in particular Y7, is passed down  
9 the line for further examination.

10 Six relates to, again, some further questions  
11 regarding the preparation for the trial and his  
12 involvement with the Advocate Depute and what he did  
13 with the that information.

14 The seventh relates to questions of distortion,  
15 again generally speaking, and this witness' experience  
16 in training with regards to recognition of distortion  
17 and I have a couple of miscellaneous points relating to,  
18 in particular, the conclusion of another report and what  
19 that report involved in its analysis.

20 THE CHAIRMAN: I am not quite sure what that means, the  
21 conclusion of another report.

22 MR SMITH: It is simply, I can make it absolutely clear just  
23 now, the Black Report that has been referred to by the  
24 witness and the question will be whether the Black  
25 Report actually had an analysis carried out of either Y7



1 A. Yes, I did phase 1.

2 Q. I take it from these answers you are less than  
3 comfortable about actually expressing particular views  
4 in the way that Mr MacPherson was asked to yesterday and  
5 the day before.

6 Would I be right in that assumption?

7 A. Well, I just find it -- I found the last few years of my  
8 employment very stressful and traumatic and I don't  
9 intend to go through that, again, sir.

10 Q. I am really interested and I am we can all understand if  
11 the answer to this is, "No, I don't feel comfortable  
12 looking at it", your position, I take it, is that from  
13 an experience and a retraining point of view you are  
14 less than comfortable about engaging in that, is that as  
15 much as the stress of it?

16 A. Basically, the two factors, the stress, but also I feel  
17 I haven't worked as an expert for long enough. I  
18 haven't been competency tested. I haven't been peer  
19 reviewed, so as to how accurate my considerations and  
20 deliberations would be I don't know.

21 Q. I take it from that answer then, as far as the  
22 presentation by Mr Zeelenberg is concerned, did you see  
23 and hear him giving his evidence?

24 A. No, I did not.

25 Q. As far as any other presentations are concerned

1 regarding the question of identification or  
2 mis-identification that has been before this Inquiry, is  
3 your position that you are neutral about it?

4 A. Well, I haven't seen any of the other presentations so I  
5 wouldn't know.

6 Q. You haven't even looked at Mr Zeelenberg's presentation  
7 on the database?

8 A. No, I haven't.

9 Q. Let me deal if I can with some further questions  
10 regarding the preparation and build-up to the criminal  
11 trial of Shirley McKie. Obviously, the question of  
12 challenge to the fingerprint was a first for you, was  
13 it? Challenge to identification in the court process,  
14 was it a first for you?

15 A. The challenge to identification, yes.

16 Q. As far as you were aware, was it a first for SCRO?

17 A. I would think so, yes.

18 Q. Were you aware of, in fact, any other challenges in the  
19 United Kingdom taking place at that time? Forget about  
20 subsequent, but at that time any other challenge that  
21 had been presented of an expert witness for the  
22 prosecution of their identification of a fingerprint  
23 mark?

24 A. I don't think so, sir.

25 Q. This was a unique thing when you became aware that there

1           was going to be a challenge to the identification,  
2           wasn't it?

3     A.    Yes, it would be.

4     Q.    By the time you got to the meeting with Sean Murphy, the  
5           pre-trial meeting, you would very quickly be aware that  
6           there was challenge to the identification that you had  
7           carried out for the purposes of Shirley McKie's trial?

8     A.    Yes, sir, I would.

9     Q.    Indeed, if we can perhaps have DB0172H and 1008 as well,  
10          please. This is the acetate prepared by Mr Wertheim.  
11          As we were flicking through these I think we can see  
12          that the acetates were being built-up in layers.

13                 Do you recall the physical appearance of the  
14                 original document?

15    A.    It was similar to that. It was a couple of images with  
16           acetates coming from different directions with coloured  
17           lines and markings on it but whether it was that  
18           document or not I couldn't honestly say.

19    Q.    I wonder, just for the sake of fairness to you, if we  
20           can have the defence production number 2 which I think  
21           is on the table hopefully just passed to you and may,  
22           therefore, perhaps refresh your memory. **(Handed)**

23                 If you take it from me, first of all, that the  
24                 document on the scene is an image taken from that  
25                 document that you have in front of you.

1 Do you recognise the folder in front of you now?

2 Does it jog your memory at all?

3 A. When I was shown it this morning, sir, it didn't jog my  
4 memory. It's similar, whether it's the exact same one  
5 or a different one I really couldn't say.

6 Q. I think what we can see from the notation in this  
7 document that we can see on the screen, to the left-hand  
8 side we see the handwritten legend "Traced ridges and  
9 points as they exist in the crime scene mark". It is  
10 pretty clear what that is doing, especially since it  
11 looks to be in black pen and there's black pen used to  
12 trace apparent ridges. You understand very clearly what  
13 the creator of this document is trying to represent. It  
14 is obvious, isn't it?

15 A. If his interpretation's accurate, yes.

16 Q. Let us leave aside the question whether his  
17 interpretation is accurate. What is clear is what this  
18 document is saying, the creator is trying to represent,  
19 "Traced ridges and points as they exist in the crime  
20 scene mark", and then we can see, even without that  
21 legend, we can see that someone has attempted to draw in  
22 lines on top of an image, which is Y7. You understood  
23 that to be what was taking place?

24 A. Yes, sir.

25 Q. Equally, we see at the top of the page we see, first of

1 all, in black writing:

2 "Target group."

3 Then we get to green writing:

4 "Points in crime scene mark which clearly do not  
5 exist in left thumb of Shirley McKie."

6 Again, we are looking from our computer generated  
7 image but there are certainly towards the top, working  
8 in an arc down towards the right, I can certainly see  
9 possibly four green circles.

10 Again, I am going to suggest to you that it is very  
11 clear what the creator of this document is suggesting,  
12 that there are points of difference which are marked in  
13 green and the legend gives a very clear direction as to  
14 what was being suggested.

15 Would you agree with that?

16 A. Well, looking at it now with the amount of time I've  
17 seen it, it's quite easy to see this but the first time  
18 I've saw it and the only time I've seen it previously,  
19 if indeed this is the same document, we were given it  
20 for seconds. We didn't have time to study it or examine  
21 it, sir.

22 Q. I am trying to imagine the position of the Advocate  
23 Depute, Sean Murphy QC. He has invited you and one of  
24 your colleagues down to speak to him about a trial that  
25 is coming and he shows you a defence production. You

1 say you saw it for seconds.

2 Did you touch it?

3 A. I think it was handed to us. We looked at it. We

4 lifted the acetates. We asked for time to examine it.

5 He said, no, he had to return it to the defence and that

6 was it.

7 Q. Are you quite sure about that, Mr Stewart --

8 A. From my recollection, to the best of my abilities after

9 all these years, yes.

10 Q. You are saying you asked to examine it and he said,

11 effectively, "No, you can't"?

12 A. He said he had to return it to the defence.

13 Q. You will appreciate that there are a number of

14 possibilities here. Either you are mistaken or he is

15 mistaken or he is lying or you are lying.

16 You understand there is that range of possibilities?

17 A. I appreciate that, yes, sir.

18 Q. No doubt as an experienced, very experienced, prosecutor

19 he was anxious to be given the ammunition with which to

20 cross-examine defence experts, he would want to know

21 what guidance you could give him. That is obvious,

22 isn't it?

23 A. Well, we could only give him guidance if we were given

24 the materials to examine and study.

25 Q. You see, of course, his position is that the purpose of

1           you coming down was to give him guidance as to what this  
2           was about and how he could actually cross-examine the  
3           defence experts. You understand that's his evidence?

4    A.    If you say so, sir.

5    Q.    Well, it is not what I say. It is what he said in the  
6           course of his evidence before this Inquiry.

7                   Were you aware of that?

8    A.    No, I haven't read Sheriff Murphy's evidence.

9    Q.    When was the first time, Mr Stewart, you were aware that  
10           Sheriff Murphy was suggesting that this was a fairly  
11           lengthy meeting with you for the purposes of discussing  
12           what evidence was going to be led? When did you first  
13           know what Sheriff Murphy's position was?

14   A.    I really couldn't say so. I don't know.

15   Q.    Was it today?

16   A.    No, I don't think it was today.

17   Q.    It is a matter of extreme importance because, on one  
18           view, what has been called into question is Sheriff  
19           Murphy's integrity. You will appreciate that.

20                   Can you please apply your mind to it and tell us  
21           when you first became aware, as accurately as you can,  
22           of Sheriff Murphy saying that he had a lengthy meeting  
23           with you and Mr MacPherson?

24   A.    I'm sorry, sir, from memory, I can't honestly remember.

25           I think it was in reasonably recent times that somebody

1 pointed me in the direction that Sheriff Murphy's  
2 version of events was different to mine, but as to when,  
3 I don't know. It may have been one of my ex-colleagues  
4 when I was talking to them. I couldn't honestly tell  
5 you, sir.

6 Q. Was it prior to this Inquiry starting, Mr Stewart?

7 A. I don't think it could be prior to the Inquiry starting  
8 because Sheriff Murphy's statement wouldn't be available  
9 then, would it, sir?

10 Q. I am asking you a question. Was it prior to the Inquiry  
11 starting?

12 A. I don't honestly know, sir.

13 Q. I am not asking about the content of discussion with  
14 your lawyers who are representing you, but are you  
15 saying that, even with the opportunity of discussing  
16 with your lawyers, you were unaware that there is such  
17 major factual dispute between you on one hand and  
18 Sheriff Murphy on the other? Is that what you are  
19 asking us to accept, you were --

20 A. I don't honestly remember having a discussion with my  
21 lawyers about the discrepancy or variation or difference  
22 or whatever you want to call it, sir.

23 Q. Let us take your version of events then and just see how  
24 it follows through. You say that it was taken away from  
25 you by Sheriff Murphy who said, apparently, it, a

1 production lodged with the court as we understand it, it  
2 had to be for some reason returned to the defence. That  
3 is your recollection, is it?

4 A. I understood when we were shown it, he had arranged to  
5 borrow it from the defence. It was, at that time, not  
6 lodged in the court as a production.

7 Q. Did you not say to him at that time, "Hold on, Advocate  
8 Depute, if you want me to give you some guidance on this  
9 I'd like to hang on to it. I'd like to examine it. I'd  
10 like to give you some guidance about it. I need to take  
11 it away"? Did it never cross your mind to say something  
12 like that?

13 A. I think I said earlier, sir, we asked for time to  
14 examine and compare the material.

15 Q. And he said no?

16 A. He said at that stage he had to return it to the  
17 defence. We assumed it would be available again at some  
18 point for our consideration.

19 Q. So I take it you followed it up, did you, and say,  
20 "Advocate Depute we expected to get this back before you  
21 expect me to go into court and be cross-examined"? Did  
22 you follow it up?

23 A. I can't honestly say whether we had any further  
24 discussions with Mr Murphy about it. I assume we would  
25 have asked but whether we did or not I'm afraid I can't

1 remember.

2 Q. Mr Stewart, when you left that meeting, whatever the  
3 content was, you were clearly aware there was going to  
4 be a direct head-to-head challenge by American experts  
5 against SCRO, you knew that.

6 A. Yes, I did.

7 Q. I take it, armed with that information, a unique  
8 experience in SCRO, far less with you, armed with that  
9 information you would be most anxious to, first of all,  
10 consider how you were going to deal with this direct  
11 challenge, were you not?

12 A. Well, I think our first concern is it's the Crown that  
13 deals with these things, how witnesses react to how or  
14 what the Crown wants, we were looking for guidance from  
15 the Crown as to what we were expected to do.

16 Q. Did you ask for it from the Crown?

17 A. From memory, I believe when we saw Mr Murphy that day we  
18 asked could we have it at some point to compare and  
19 consider.

20 Q. Did you ask for guidance from the Crown as to how you  
21 were supposed to handle your position in the witness  
22 box?

23 A. I assumed, logically, I wouldn't have to ask for  
24 guidance. I assumed the Crown would instruct us as they  
25 normally do.

1 Q. Are you telling me the Crown instructs as to how to  
2 answer questions? Is that what you're saying?

3 A. No, they don't give you instructions how to answer  
4 questions but the Crown would normally say, "We're going  
5 to explore this area or that area. Can you give me some  
6 idea of questions we should ask, the potentials, the  
7 pitfalls, the strengths and the weaknesses of any  
8 arguments therein".

9 Q. Mr Stewart, for the first time in your career you were  
10 going to be in a witness box where there was going to be  
11 evidence directly challenging your opinion. You knew  
12 it. Are you telling us you were quite content to go  
13 back to the office and wait and see what happened? Is  
14 that your evidence?

15 A. That is essentially the way we worked. I mean, I went  
16 back to the office. I told my line manager's -- well,  
17 neither of them were there. I told the deputy, well,  
18 the superintendent who was in charge of the Bureau that  
19 there was this challenge to fingerprints. I was  
20 expecting guidance from him. Didn't have any.

21 Q. Your line manager was whom?

22 A. My line manager would be the Quality Assurance Officer.  
23 After that it would be the Head of Bureau. As neither  
24 of them were there, for whatever reason, holidays or  
25 courses, I then went to the superintendent who was the

1 next person up the tree.

2 Q. I am sorry, you will have to remind me, the name of the  
3 line manager?

4 A. Alan Dunbar would be my first port of call.

5 Q. You did speak to him, did you?

6 A. No, he wasn't present.

7 Q. Was he absent between the point that you spoke to  
8 Sheriff Murphy and the point that -- I am sorry the  
9 Advocate Depute, Mr Murphy as he then was, and the  
10 trial? Mr Dunbar was absent during that entire period,  
11 was he?

12 A. I believe so. I think he was on annual leave.

13 Q. Who was substituting for him during his annual leave?

14 A. Well, I would report to the personal above him, who was  
15 the deputy head of bureau, who was Mr Mackenzie.

16 Q. You did this all simply verbally, you didn't consider  
17 you should report it in writing, there was going to be a  
18 challenge and you were awaiting guidance from the Crown  
19 as to how to deal with it?

20 A. I don't see why I would do it in writing. The quickest  
21 way is to go and contact somebody and say flag up here  
22 as an issue. Why would I do it in writing? It's  
23 quicker to knock on the door and say, "I want to make  
24 you aware of this".

25 Q. The reason you would do it in writing, since you ask the

1 question, is because of the importance of the matter.

2 Was it not an important matter?

3 A. I thought I was treating it in the correct manner by  
4 giving it the due deference to its importance by going  
5 straight to the person concerned and knocking on their  
6 door and talking to them.

7 Q. Very well. What was Mr Mackenzie's response?

8 A. Mr Mackenzie, as I said, wasn't present. I believe he  
9 was away at a conference for a few days, which is why I  
10 went to the superintendent.

11 Q. Who was?

12 A. Brian Gorman.

13 Q. You told Mr Gorman about the potential? He was there,  
14 was he?

15 A. I told him what I'd found out from our short meeting  
16 with Sheriff Murphy. I updated him and left it with him  
17 to hopefully come back to me and give me some guidance  
18 on the matter.

19 Q. Did he do?

20 A. No.

21 Q. Did you go back to him and ask what guidance you were  
22 going to get and when?

23 A. Well, I was in court the next day. At the end of the  
24 day I came back to the office, talked to him about it.  
25 It seemed to be it was a unique situation, nobody knew

1           how to handle it and that was it. We were left on our  
2           own, effectively.

3       Q.    You were just left, really, to your own devices at that  
4           stage, were you?

5       A.    More or less, yes.

6       Q.    Did you never think of contacting the Advocate Depute  
7           again and saying, at that stage, "I've tried to get help  
8           from my superiors. I'm not getting help or guidance. I  
9           don't know what I should be doing here but this is  
10          unique, Advocate Depute"? Did you never think of  
11          raising it with someone?

12      A.    Not really, sir, no.

13      Q.    Did you think there was any possibility that the  
14           challenge against you and your colleagues would be  
15           successful?

16      A.    Any debate over a fingerprint mark you don't know how it  
17           can go. One person says black; one person says white.  
18           It could be successful, it may not have been successful.  
19           You don't know. We don't know if it even -- the result  
20           of the case was based on the fingerprint evidence. We  
21           understand there may have been other matters involved.

22      MR SMITH:    Sir, I see the time.

23      THE CHAIRMAN:    I did not want to interrupt you earlier.

24                    Just on this topic so that I can understand it, to  
25                    have a proper opportunity to examine this production,

1           you would have had to take it away back to your  
2           laboratory and look at it. It wasn't a question of you  
3           being able to look at it in any depth in the courtroom  
4           where you were meeting?

5       A.    Oh, no, even if Mr Murphy had said, "You've got 5  
6           minutes", we wouldn't have been able to do it justice.  
7           You would have to take it away, fully understand it,  
8           look at what Mr Wertheim's interpretations were to see  
9           whether you agreed with him or disagreed with him, try  
10          and learn where he's coming from, then you'd talk it  
11          over with the Advocate Depute, give him advice,  
12          information, whatever he's looking for. It wouldn't be  
13          a 5-minute job. It would take a period of time.

14       THE CHAIRMAN:   That's what I was thinking, in an ideal world  
15          you would get an opportunity to take it away and examine  
16          it.

17       A.    We didn't, unfortunately. It would have been nice if we  
18          had.

19       THE CHAIRMAN:   No, but that's what you would have wanted to  
20          do.

21       A.    Yes, sir.

22       THE CHAIRMAN:   Have a proper examination.

23       A.    Yes, sir.

24       THE CHAIRMAN:   What I suggest is that we sit again at 3.10  
25          and we might continue until 4.15 today in the hope that

1 we can perhaps allow Mr Stewart to complete his  
2 evidence.

3 **(3.00 pm)**

4 **(A short break)**

5 **(3.10 pm)**

6 MR SMITH: If I can perhaps move on, Mr Stewart, to  
7 something else now. I'd like to ask you about the  
8 question of disclosure. I think you acknowledged  
9 earlier today that you recognise that if there was a  
10 16-point standard within the office and there were  
11 certain individuals within the office who could not  
12 reach 16 points, then that is something you recognise  
13 that the defence in a case would wish to know.

14 Did I note you correctly when you said that earlier?

15 A. I'm sorry, sir, are you talking about in more recent  
16 times or are you talking about in the times of ...?

17 Q. Let us deal with the point in time when Y7 was being  
18 examined carefully, which I think was in about 1997, if  
19 I remember, '98, about that time.

20 You were aware that a 16-point standard was the  
21 court requirement, were you not?

22 A. That is correct.

23 Q. You were aware, I think you acknowledged that you knew  
24 within the office there were some individuals who were  
25 unable to reach 16 points in examining Y7?

1 A. At that time I was not aware of it. I only became aware  
2 of Mr Geddes's position at some point later on.

3 Q. After the trial?

4 A. I couldn't honestly say. I think it was probably at the  
5 time we were preparing the productions for the trial  
6 against David Asbury, but I really couldn't say.

7 Q. Nonetheless, prior to the trial of Shirley McKie you  
8 were aware that someone in the office was unable to  
9 achieve the 16-point standard?

10 A. Yes, sir.

11 Q. Accordingly, even at that time, you would be aware that  
12 any defence counsel worth his or her salt would use that  
13 as a cross-examination tool?

14 A. With the greatest of respect, sir, it's not up to me to  
15 decide what a defence counsel would do. I can only  
16 supply to the Crown information that they indicate they  
17 want and at that stage they hadn't indicated to us that  
18 was information they expected from us on a regular  
19 basis.

20 Q. We will move on to the blame game in a minute. I am  
21 just asking you the question just now. You would  
22 recognise that any defence counsel would be able to say  
23 to you was there anyone in your office who failed to  
24 achieve the required legal standard, to which you would  
25 say yes. That would be important, wouldn't it,

1 cross-examination material?

2 A. It could be.

3 Q. It would be, wouldn't it? Anyone would know that.

4 A. I'm not a defence counsel, sir. I wouldn't know.

5 Q. Did you ever receive training about how to give evidence  
6 in court?

7 A. Yes, we did.

8 Q. Did anyone ever tell you that defence counsel might like  
9 to ask questions that may damage the prosecution?

10 A. I think that was the name of the game, sir.

11 Q. Accordingly, if someone in your office was unable to  
12 achieve the required legal standard that would be  
13 something that could damage the prosecution, wouldn't  
14 it?

15 A. In this case, as far as we're concerned, was the person  
16 had identified the mark, therefore, there's not an  
17 issue.

18 Q. Mr Stewart, can you, please, attend to the question.  
19 You would realise that that would be a useful piece of  
20 cross-examination weaponry to say that there was someone  
21 who was unable in your office to achieve the required  
22 legal standard?

23 A. It may be.

24 Q. It is inevitable, Mr Stewart, isn't it?

25 A. I can't say it's inevitable because I don't see things

1 from defence counsel's point of view, sir.

2 Q. As an independent expert -- independent -- who do you  
3 owe a duty to?

4 A. My employers.

5 Q. Your employers were who?

6 A. Strathclyde Police or the Scottish Criminal Record  
7 Office.

8 Q. So accordingly you didn't owe any duty to the defence;  
9 is that your position before this Inquiry?

10 A. Information that the defence normally would get would be  
11 disseminated from the Crown. We had a facility that the  
12 Crown instructed us, they told us what they wanted and  
13 that's what they got.

14 Q. Mr Stewart, at that time did you consider you had any  
15 duty whatsoever to the defence?

16 A. I don't think it would have crossed my mind, sir, to be  
17 honest.

18 Q. What about to the Court? Did you have any duty to the  
19 Court?

20 A. Well, our duty to the Court was to present the evidence  
21 as best we could, as honestly as we could, in the best  
22 manner that the Court may follow our evidence and  
23 understand it.

24 Q. And independently?

25 A. Well, as independent as you can be if you are employed

1 by the Police Service, I suppose.

2 Q. Let us cut to the chase on this, Mr Stewart. Did you  
3 consider that you were there to provide as much  
4 assistance as you could to the police and Crown and you  
5 did not owe any obligation of fairness to the defence/is  
6 that your position?

7 A. Well, I would assume the Crown would take care of the  
8 fairness to the defence, sir.

9 Q. So I take it then if there was someone in your office  
10 who actually directly said, "No, this is not a match",  
11 it goes to someone else who says, "Yes, it is", you  
12 would be quite happy to have concealed that from the  
13 Crown, would you?

14 A. If somebody said no, it wasn't a match and somebody else  
15 said it was identified, it would be flagged up to our  
16 management and they then would have to deal with it and  
17 resolve it. It wouldn't be an issue I would have to  
18 deal with.

19 Q. Let us suppose you say yes, someone else says no, it  
20 goes to management, it comes back with a "yes, we go  
21 ahead with this". You are in the witness box in a trial  
22 and you are asked by defence counsel, "Are you sure  
23 about this? Is this one beyond any doubt?", you would  
24 be quite happy to conceal the fact that there was a  
25 contradictor within the offices of SCRO, would you?

1 A. Well, if the defence asked me if anybody in the  
2 department had a different opinion I would say so but if  
3 I was asked was I quite happy beyond all reasonable  
4 doubt, I would say yes.

5 Q. If someone asked you an open question trying to find out  
6 how certain in fact that SCRO were about this, this is a  
7 production by SCRO, and you tell me there's no doubt  
8 about this, would you have been happy to give the  
9 answer, "Yes, sir, I'm telling you that is the  
10 position"?

11 A. All I can give is my position as an expert based on my  
12 interpretation of the evidence. I don't say what the  
13 organisation's view is.

14 Q. Equally, you don't say if it's someone else who has an  
15 expression of positive doubt about it, you would be  
16 quite content -- unless you are asked a direct question  
17 about that, you would be quite happy to keep that to  
18 yourself. Is that your position?

19 A. I think that's why procedures have changed over the  
20 years now and we're going for full disclosure in the  
21 submission of reports.

22 Q. All I'm suggesting to you, Mr Stewart, is it was  
23 abundantly clear, even in the late 1990s, that something  
24 like this, something about a failure to achieve a  
25 standard by someone else in the office, obviously should

1           be disclosed to the Crown. Do you disagree with me?

2       A.    No, I suppose in principle yes.

3       Q.    So why wasn't it?

4       THE CHAIRMAN:   I think the first question is who do you

5           think would have been responsible for disclosing it?

6           Would it be you or your line manager or whoever?

7       A.    I would have thought it would have been our line

8           manager, sir. Even the head of the organisation would

9           have to disclose that to the Crown.

10      THE CHAIRMAN:   But not you as an individual?

11      A.    It wouldn't be my function as an individual.

12      MR SMITH:   Let us assume for a moment something slightly

13           different, that you were the person who failed to

14           achieve the 16 points. Would you have ensured that

15           that went as far as your line manager?

16      A.    If I was the only person didn't achieve 16?

17      Q.    Yes.

18      A.    And others had?

19      Q.    Yes.

20      A.    My line manager would deal with that in the appropriate

21           manner, as however they saw fit.

22      Q.    They would definitely know about it, would they?

23      A.    Well, part of the verification process is somebody

24           somewhere will know about it. Someone is in control of

25           the whole process.

1 Q. Let me ask you about something in particular: the tin  
2 that we have heard some evidence about. I would like to  
3 ask you what your first involvement was or your first  
4 knowledge of the importance of the tin that Q12 was  
5 found on?

6 A. I think my first knowledge of that would be the item we  
7 had up on the screen earlier -- I can't remember what  
8 one it was -- that I had taken a note when I was on  
9 working a weekend and left a note for Mr MacPherson.

10 Q. Let us look at a document, please, DB0256. Can I ask  
11 you about this. Is that your writing?

12 A. It is.

13 Q. Just reading it out:

14 "Gift tag bought 18/11/96."

15 It goes on to say:

16 "They are hopeful about the tin the money was in.

17 There is an area the same size as the tin on her bedside  
18 table, clearly seen with dust round it. Tin recovered  
19 at accused's."

20 This note, as you have indicated, was written by  
21 yourself but what was the purpose of this note? Where  
22 was that, as far as you can recall it, sent to?

23 A. Basically, I would have received information from  
24 whichever officer from division came up to the office.  
25 Mr MacPherson wouldn't be present; therefore, if I was

1 the senior man available, I would talk to them. I would  
2 take a note of the information and I would leave it in  
3 the case papers for Mr MacPherson to catch up with next  
4 time he was on duty.

5 Q. Did you yourself ever actually visit the **locus** and see  
6 this dust mark?

7 A. No, I did not.

8 Q. I don't think we necessarily need to bring it up but I  
9 can read through it slowly, but Mr Les Brown suggests  
10 that he had spoken to you about the dust evidence, if I  
11 put it that way. Do you have any recollection of  
12 Mr Brown having discussed this piece of evidence with  
13 you?

14 A. Offhand, no. I remember officers of the Identification  
15 Bureau talking about it but I don't remember Mr Brown  
16 talking about it.

17 Q. Just so that those of us can track this back, can we  
18 have in front of us Mr Brown's statement to the Inquiry  
19 at paragraph number 55. I will read it slowly in order  
20 that you can perhaps absorb:

21 "Evidence was led at the trial that one of Marion  
22 Ross's rooms was covered in dust. My information is  
23 that on the dust-covered shelf there was a dust-free  
24 shape identical to the shape of the tin found at  
25 Asbury's room and in which police found £1,700 in notes

1 and a fingerprint identified as that of the murdered  
2 woman. This evidence is crucial and I spent some time  
3 attempting to identify the source of this information."

4 He says:

5 "What I discovered is that Charles Stewart,  
6 Principal Fingerprint Officer, who attended the scene at  
7 the material time, has the answer."

8 You didn't attend the scene?

9 A. I certainly was not present at that **locus** at any time,  
10 no.

11 Q. To the extent that Mr Brown's seems to have derived some  
12 information that you "have the answer", as he puts it,  
13 you have no recollection of any discussion with Mr Brown  
14 about that, I take it?

15 A. I'm not aware of that and I think some of that  
16 information isn't as accurate as information I was aware  
17 of so ...

18 Q. Just to be clear about it, do you even have any  
19 information to assist the Inquiry on the question of  
20 dust and the tin and where it was found? Are you able  
21 to assist with that at all?

22 A. I think one of the IB witnesses at one stage said it was  
23 on a bedside table and that was it because we didn't  
24 understand where the tin really fitted into the Inquiry  
25 until I took this message.

1 Q. I would like to ask you about the relationship between  
2 SCRO and Strathclyde Police. Would you describe it in  
3 context. Let us deal with this particular murder  
4 inquiry. Would you describe it as a close working  
5 relationship?

6 A. Do you mean Strathclyde Police in general or are you  
7 talking about the Scenes of Crime Branch, sir?

8 Q. I'm actually talking about the police officers involved  
9 in the investigation, in particular Mr Heath and  
10 Mr McAllister.

11 A. Really, in terms of discussions about this inquiry,  
12 Mr MacPherson was our point of contact. He would be  
13 doing the liaison with Mr Heath and Mr McAllister. I  
14 would only have been involved on the other occasion if  
15 Mr MacPherson wasn't in the office and I was the senior  
16 person present and I would act in his capacity.

17 Q. I think in your Inquiry statement you indicate that  
18 contact or dialogue with the SIO (Senior Investigating  
19 Officer) was critical and I think the phrase you use is  
20 "often that dialogue would be daily."

21 Is that something that you consider is accurate?

22 A. It was virtually case-specific, sir. There were some  
23 cases the dynamics of the case changed daily so you  
24 needed a very regular contact so that we could change  
25 our comparison work to suit the requirements of the

1 investigating officer. What the contact was in this  
2 case you would need to ask Mr MacPherson because, as I  
3 say, I wasn't the point of contact.

4 Q. I am simply interested even as a general point and I may  
5 say it is not a criticism. I must say, I would be  
6 rather surprised if there wasn't regular contact. But  
7 could it be, according to your impression, more or less  
8 on a daily basis updates are required, discussing the  
9 progress of the case? Is that an accurate impression to  
10 take from it?

11 A. To be honest, sir, sometimes it could be contact several  
12 times a day. You don't know. Every case is unique.  
13 Certainly you would have to have contact to make sure  
14 you were doing the right things, that you would be  
15 contacting them to disseminate information back the way  
16 of people that had been identified, you would have asked  
17 questions over a period of time. So regular contact, I  
18 would have thought, would be more likely.

19 Q. Can I ask you to look at another document. It is the  
20 case envelope which I think we have seen something of  
21 already, DB0253. Can we flick through the pages. I am  
22 not sure precisely what page we have got. I am looking  
23 for a note that begins "DI McAllister."

24 Can you try another document, DO0258. Can you go  
25 back one page. Again, is this your writing?

1 A. It is, sir.

2 Q. It indicates, just not necessarily reading every word,

3 but:

4 "DI McAllister was in on Saturday. He did not know

5 about other mark eliminated. He is setting elims for

6 the two plumbers who installed the shower, et cetera.

7 Told him marks, if any, from ..."

8 And can you help me with that word?

9 A. "From money not with us yet."

10 Q. Thank you. "Not with us yet." I think it's "CS", the

11 initials, and then we see:

12 "Sunday. Steve Heath brought in accused's ten-print

13 [I assume, something] and elims."

14 We heard some evidence -- and I'm sure you won't

15 know this if you haven't listened to much of the

16 evidence -- Stevie Heath, the reference there. Was

17 Stevie Heath someone known to you?

18 A. Well, I'd worked on other inquiries occasionally with

19 Stevie Heath as the SIO, yes.

20 Q. Is that how he was known? Was it Stevie Heath?

21 A. Yes.

22 Q. As far as Mr Heath is concerned, did you have any

23 informal contact with him outwith the context of

24 investigations; for example, a social contact? Is that

25 something that ever happened?

1 A. I don't think so, sir. No, I wouldn't have thought so.

2 Q. What was your understanding of how important the mark  
3 which became known as Q12 was to the investigation?

4 A. Certainly from the fact that I'd taken a note I would  
5 have known that these marks were of interest to the  
6 investigating team.

7 Q. Did you become aware that it was going to be critical to  
8 the case against David Asbury?

9 A. A lot of the time you're not aware how critical the  
10 marks are. You can identify X number of marks and the  
11 one we think's important by the time it goes to trial,  
12 the Crown is actually much more interested in something  
13 else. As to assessing which one is more critical or  
14 not, it's sometimes very hard for us to say.

15 Q. I am interested in the -- and, again, I am not sure  
16 anyone can really criticise this itself -- the close  
17 professional relationship through other cases with  
18 Mr Heath, it would not be unnatural, I would suggest to  
19 you, where he would say Q12's really important in the  
20 case against David Asbury. Was that something that was  
21 discussed informally?

22 A. I don't think there was ever discussions like that and  
23 SIOs normally wouldn't discuss it like that. They would  
24 be giving you guidance saying, "We're particularly  
25 interested in marks A, B, C, D against this person, then

1 marks such and such, such and such, such and such  
2 against a different person". I doubt if very often  
3 anybody said the marks would be of critical importance  
4 or dire importance. Sometimes it was obvious if there's  
5 a print in blood but, apart from that, half the time we  
6 weren't aware of what we were comparing.

7 Q. Can I ask you a little bit more, just briefly I hope,  
8 about the question of the charting enlargement machine  
9 and the position that Y7 had in the course of the trial.

10 As I understand your evidence earlier today, you  
11 gave an indication that the apparent differences in  
12 Mr Wertheim's acetate demonstration showed bifurcations  
13 going in the opposite direction to anything that could  
14 be seen on Shirley McKie's inked mark. As I understand  
15 it, your position today was that the area of these  
16 bifurcations would be off any inked print you actually  
17 had?

18 A. I think at the time we didn't have an inked impression  
19 that disclosed the relevant areas for comparison against  
20 those characteristics.

21 Q. But you did have available to you in her ten-print form  
22 a rolled impression of the relevant thumb, didn't you --  
23 her left thumb?

24 A. Yes, we would have.

25 Q. I take it that a rolled impression taken is bound to

1 include almost all of the ridge detail on a digit, is it  
2 not?

3 A. Regrettably, officers have ability to take fingerprints  
4 in different ways. Some are better at it than others.  
5 Sometimes you get rolled impressions you only get half  
6 the finger fully rolled. Sometimes you well a  
7 well-rolled finger. Sometimes you get it cut off at the  
8 top. There's infinite variations. It depends on the  
9 experience of the officer taking the fingerprints.

10 Q. Can I ask you then on the basis that you didn't have the  
11 entire print available to you, there is clearly  
12 something missing from the rolled impression, why didn't  
13 you ask for a proper rolled impression to be taken from  
14 Shirley McKie?

15 A. I would think the simple answer to that would be that if  
16 we had already decided we had enough detail to allow us  
17 to make a decision, carry out a comparison and reach a  
18 conclusion, there wouldn't be any need to further look  
19 at it.

20 Q. Let us deal with the question of pressure and distortion  
21 then. Did you see any differences on any part of Y7 as  
22 compared with Shirley McKie's inked print when you were  
23 initially examining it? Did you notice any differences?

24 A. There was some very heavy areas of dark deposition  
25 pressure at the top. Whether it is movement, whether it

1 is just a pressure or indeed whether it is a double  
2 touch, I can't say.

3 Q. But I think I am right in saying in the course of your  
4 evidence at the trial you were not suggesting it was a  
5 double touch, other than it was a very slight movement  
6 between the bottom section and the top section. Do you  
7 recall what you said at the trial?

8 A. I cannot remember. If I've said that, I would have said  
9 that, yes.

10 Q. Let us deal with the question of distortion, et cetera.  
11 Did you receive any specific training in how to  
12 recognise distortion and what effect it may have on an  
13 analysis?

14 A. I think Mr McGinnies covered that yesterday, sir. It's  
15 training from your mentor. As you're learning you talk  
16 to them about a mark, you've got a problem in a mark,  
17 they give you the benefit of their experience. You look  
18 at it, you talk to other experts, you learn from their  
19 experience, and eventually with this guidance you can  
20 formulate your own opinion.

21 Q. But, as far as distortion is concerned, I take it you  
22 are aware that that is almost a science in its own  
23 right, what can happen with fingerprints when distortion  
24 takes place. You are aware that it's quite a refined  
25 topic?

1 A. Distortion is amazing on the finger. The finger is such  
2 an amazing piece of equipment. The skin is so flexible,  
3 distortion and movement is infinite and variable.

4 Q. But there are some things it can't do. That's right,  
5 isn't it?

6 A. I don't know. My experience of looking at fingerprints  
7 over the years is we always say "always expect the  
8 unexpected" because we've seen some amazing twists and  
9 variations in what's there.

10 Q. Could you ever through pressure and distortion get a  
11 left opening bifurcation flip 180 degrees and open right?

12 A. I wouldn't have thought so, sir.

13 Q. Just again a matter of detail, have you heard of any of  
14 the work of Alison Maceo?

15 A. I've heard the name, sir.

16 Q. Her work specialises in questions of distortion and  
17 movement and how that can affect ridge analysis. You  
18 are aware of that much, I take it?

19 A. I have never read the work, sir.

20 Q. You see, the reason I am asking you, Mr Stewart -- and,  
21 again, I am not necessarily saying it is your fault --  
22 but the question of distortion on one view might be  
23 simply almost an excuse for a difference without  
24 actually explaining how it happens. Do you see the  
25 danger in that, that someone could say, "Yes, I see

1           there's a difference but it must be distortion". Do you  
2           see the danger of that approach?

3       A.    There is a danger in that but we're always taught over  
4           the years that all you can do is look at the mark with  
5           what you have learnt over the years and see if you are  
6           happy to work with the mark.

7       Q.    Let me deal with a related topic if I can. You were  
8           asked some questions by Miss Carmichael on the issue of  
9           being able to demonstrate to the lay person, if I put it  
10          that way, a feature in a fingerprint. As I understand  
11          the position we have reached with your evidence, and you  
12          said it yourself, you can't make an expert from a jury  
13          member in 15 minutes. You can't really do that?

14      A.    It would be nice if you could, sir.

15      Q.    The thing is, though, that one of course can accept that  
16          if you are trying to persuade a juror that you can see a  
17          ridge ending -- and of course that happened in the  
18          trial, didn't it? You were asked to say what is  
19          this point and you said, "That's a bifurcation going up"  
20          or something like that. Do you remember that?

21      A.    I think from memory going through every enlargement and  
22          every characteristic in each enlargement in detail, sir,  
23          yes.

24      Q.    I take it you recall at one stage -- and I think part of  
25          this passage was read out -- even the judge who had a

1 magnifying glass said, "I'm sorry, I just can't see this  
2 at all. It just looks like a blob to me." Do you  
3 remember that exchange taking place?

4 A. Yes, sir.

5 Q. Of course, one possibility is that your expertise allows  
6 you to see something that others without your expertise  
7 just can't see. I recognise that is a possibility.

8 Do you recognise the other possibility, which is  
9 that you are seeing something or convincing yourself  
10 about the existence of something that doesn't actually  
11 exist? Do you recognise that that's a possibility?

12 A. I think that's always a possibility but we're working  
13 the assumption that by having the level of checking that  
14 four people have to independently verify each  
15 identification, it would be something that would be  
16 precluded.

17 Q. Yes. Of course, that requires there to be no  
18 confirmation bias going on. Do you understand what I  
19 mean by that?

20 A. I do.

21 Q. Again, you must recognise that there is a risk of  
22 confirmation bias that you may genuinely, but  
23 mistakenly, agree with someone else's persuasion. Do  
24 you recognise that's a difficulty?

25 A. It is possible but, as experts, we're always taught to

1 approach every comparison with a fully open mind. You  
2 don't go in with a closed mindset. You start from  
3 afresh, you carry out your own comparison and reach your  
4 own conclusion.

5 Q. I would like to ask you, if I can, about the information  
6 passed by one expert down the line to the other with  
7 regard, in particular, to Y7.

8 I think if we can have your Inquiry statement up,  
9 please, which is FI0036, I would like paragraph 136.  
10 136 says this:

11 "I was asked to look at mark Y7 and Shirley McKie's  
12 ten print form by Hugh MacPherson. I was not given  
13 background information. The photograph may have had the  
14 mark number 6 with an arrow on it, to indicate that it  
15 was a left thumb and the direction of the mark.  
16 However, in this situation I would not read the form in  
17 detail, I would simply get on and compare the marks to  
18 the print."

19 The clear understanding of what happened there was  
20 that you had virtually no information provided. "I was  
21 not given background information." Is that your  
22 recollection of what had happened?

23 A. Normally with Mr MacPherson he would just give you a  
24 mark. On the mark would be a directional arrow  
25 indicating which way was up for the impression or

1 impressions, the digit number suggesting what was  
2 identified and you would go and carry out your  
3 comparison and reach a conclusion.

4 Q. Can I ask to compare that with FI0055, which is  
5 Mr MacPherson's Inquiry statement. Again, it is  
6 paragraph number 55. What is said there is:

7 "I identified XF as David Asbury's number 2 finger  
8 based on the 16-point standard. Once I had made this  
9 identification I believe I then passed the photo and  
10 elimination/fingerprint form on to the next person.  
11 They could then look at it under glasses or in the  
12 comparator machine. Sometimes I would put the mark and  
13 the form on the comparator machine and mark up my points  
14 of comparison. It could then be examined from there by  
15 other experts. I will return to this below when  
16 discussing Y7 as I remember using this method for that  
17 mark. Who I passed it to depended on who was available,  
18 having regard to the shifts we were working."

19 As I understand what he is saying there is with  
20 regards to Y7, as probably XF, the comparator machine  
21 would be there and points of comparison would be on it.  
22 Do you understand that that's what is being suggested?

23 A. Yes, I do.

24 Q. You would agree that that is a different position to  
25 your own position about not being given background

1 information. Do you understand that or are the two  
2 reconcilable?

3 A. Well, I mean, I don't -- I think in the question of the  
4 context I was answering, background information would be  
5 information about whose print it was or the significance  
6 of it. I don't think I would be talking specifically  
7 about background information as to whether or not it's  
8 the comparator.

9 Q. Very well. Are you saying he might be right that you  
10 went to the comparator machine, there may indeed have  
11 been points marked up on it as to what he considered the  
12 appropriate points --

13 A. Yes, sir, it's possible. I think I covered that  
14 earlier, that if I was asked to look at something on the  
15 comparator I normally have a quick look, take it off, go  
16 to my desk, sit down, carry out my normal comparison  
17 process and see if I can reach a conclusion.

18 Q. I mentioned earlier one of the particular points that I  
19 wanted to ask you about was the Black Report, which I  
20 think is referred to in your statement. I do not need  
21 to go to it but the reference is paragraph 280. What  
22 you said in your statement was this, that:

23 "A non-standard external discipline inquiry was set  
24 up which was carried out by an external person, Jim  
25 Black. That inquiry found that I had properly carried

1 out my duties and recommended that I return to work and  
2 resume full duties."

3 I take it you are able to confirm that the Black  
4 Report did not have Y7 or Q12 independently assessed, as  
5 it were, by an Independent Fingerprint Expert? Can you  
6 confirm that for us, please?

7 A. From memory, sir, I don't think the Black Report did  
8 anything other than look into our procedures, how we  
9 worked. I don't think they had any external independent  
10 examination but I would need to read the Black Report to  
11 confirm that, sir.

12 MR SMITH: Thank you very much, Mr Stewart.

13 THE CHAIRMAN: Miss Grahame, you would be next.

14 MISS GRAHAME: There are four brief matters that I wish to  
15 raise. I would say I am grateful to my learned friend,  
16 Mr Smith, for raising a number of matters regarding the  
17 meeting with Mr Murphy but there are one or two matters  
18 that I feel, in fairness to this witness, I should put  
19 to him. I don't intend to go over again matters that  
20 have already been raised.

21 THE CHAIRMAN: Without detailing them then, you can do that.

22 MISS GRAHAME: The first three issues relate to Mr Murphy  
23 and the meeting and the final one relates to discussions  
24 within the Bureau itself prior to the trial. I am  
25 obliged.

1 **Cross-examined by MISS GRAHAME**

2 Q. Mr Stewart, I would like to ask you some further  
3 questions about the meeting with Sheriff Murphy. The  
4 Crown contacted SCRO at the time once the defence  
5 productions were available -- you are aware of that --  
6 and, in response to that, you and Mr MacPherson  
7 travelled to the High Court in Glasgow?

8 A. We went down to the High Court as a result of a phone  
9 call from Mr Murphy. We turned up to meet Mr Murphy.  
10 He said, "I'll just go and get the productions". He  
11 left the room, came back. As far as I remember, we had  
12 a brief look at the productions and he said he had to  
13 return them to the defence and that was it.

14 Q. So two very senior fingerprint officers went to the High  
15 Court in Glasgow for the purpose of looking at defence  
16 productions?

17 A. Yes, that's right -- in simple terms, yes.

18 Q. You met personally with the Advocate Depute who was  
19 going to be prosecuting the trial?

20 A. We did.

21 Q. You sat in a courtroom?

22 A. Honestly, I'm not sure. If it was the High Court the  
23 chances are it would be a courtroom but I really can't  
24 remember.

25 Q. If Sheriff Murphy gave evidence that it was a courtroom

1 in which you sat you wouldn't disagree with him?

2 A. He'll be right, I assume.

3 Q. Sheriff Murphy said in evidence that the materials, the  
4 defence productions, had been lodged by the defence at  
5 that point and he had a copy -- and for those of us with  
6 the benefit of LiveNote, that's at line 33 on day 14 in  
7 the transcript:

8 "The materials had been lodged by the defence and I  
9 had a copy and we sat in one of the court rooms and  
10 looked at this process, placing the acetates over and  
11 they made certain comments to me, which I had noted and  
12 I seem to recall them examining the defence materials.  
13 They carried basically what looked to me effectively  
14 like magnifying glasses on feet and they examined some  
15 of the defence materials."

16 If Sheriff Murphy is correct in that, do you accept  
17 that the copies would not have to be returned to the  
18 defence and you would be mistaken?

19 A. Well, I mean I just don't remember having the  
20 opportunity to examine the materials at the time, I must  
21 admit, was my recollection. I could be wrong but I  
22 really don't recollect it.

23 Q. So do you accept that you could be mistaken in your  
24 recollection?

25 A. It's possible. It was so many years ago.

1 Q. Is it possible equally that, perhaps, Sheriff Murphy has  
2 a better recollection than you?

3 A. It's possible.

4 Q. The purpose of the meeting, obviously to look at the  
5 defence productions for the first time and there were  
6 potentially three outcomes of that meeting. One could  
7 be that you said to Sheriff Murphy, "We need more time  
8 to look at the defence productions and we won't be ready  
9 in time for the trial starting next week". That was one  
10 possibility.

11 A. I must admit, I think we said to Sheriff Murphy that we  
12 would like time to examine the productions and from  
13 memory I think he said time wasn't available. That was  
14 it.

15 Q. I will come back to that in a moment. One of the other  
16 possibilities was that you were going to provide Sheriff  
17 Murphy with, effectively, ammunition which would allow  
18 him to cross-examine defence experts.

19 A. For us to do that I think we would have had to have the  
20 time to study the productions to be able to look at  
21 possible avenues that he could use for  
22 cross-examination.

23 Q. But you would appreciate that that was something that  
24 Sheriff Murphy would consider important, that he would  
25 seek from you?

1 A. I would have thought so.

2 Q. The third possibility is that potentially you might have  
3 agreed with the defence productions and said, "Well,  
4 actually, we got it wrong", and that's certainly  
5 something Sheriff Murphy would have wanted to know in  
6 advance?

7 A. Again, to do that we would have had to have time to  
8 study and consider the defence productions, yes.

9 Q. So do you accept that perhaps it's a little unlikely  
10 that, against that background, Sheriff Murphy would have  
11 called you to the High Court for a meeting to show you  
12 the productions and then simply to have either rushed  
13 you out the door without letting you see them or to only  
14 give you seconds to look at them?

15 A. I must admit, I think from memory that Sheriff Murphy  
16 just called us down to make us aware of this challenge.

17 Q. He could have done that simply over the telephone?

18 A. He could have.

19 Q. But he asked you to come to the High Court?

20 A. He did.

21 Q. To look at the productions?

22 A. Well, quick glance at the productions, yes.

23 Q. You have said today in your evidence three things:

24 "As far as I'm aware, we had no opportunity to study  
25 or examine the productions."

1                    You said to my learned friend, Mr Smith:

2                    "We were given it for seconds", and you have said

3                    now:

4                    "We only had a quick glance."

5                    Is it possible that you are simply not correct on

6                    that?

7                    A.    As I say, I'm trying to do it from memory. It's very

8                    difficult. I don't remember at any period having a

9                    lengthy time to actually carry out a significant,

10                   meaningful examination of that material.

11                   Q.    I would like to put a statement to you for your

12                   consideration and I will give you a moment to read

13                   through it. It is CO2036. This is a statement given by

14                   Sheriff Murphy.

15                              You will see on the front page which is on the

16                   screen now that it was given by him on

17                   6th September 2000. Do you see the date, just around a

18                   third of the way down the page, slightly to the

19                   left-hand side?

20                   A.    Yes, I do.

21                   Q.    Do you see that it is given by Sean Francis Murphy?

22                   A.    I do.

23                   Q.    If you take it from me for the moment that this is a

24                   statement which he gave to Operation Alba or the Mackay

25                   Inquiry to a Detective Sergeant Brown in Chambers Street

1 in Edinburgh, which was Crown Office, when he was an  
2 Advocate Depute. It was at the time that a criminal  
3 prosecution was being looked into or investigated  
4 against the four SCRO officers, one of whom was  
5 yourself, Mr Stewart.

6 A. That's correct.

7 Q. So it was a very serious matter, you would accept that.

8 Could I ask you to look please at page 2. Do you  
9 see from the second paragraph there, I wonder if you  
10 could just take a moment to read through that page and  
11 then let me know when you have had an opportunity to  
12 read it. **(Pause)**

13 Have you managed to read the page?

14 A. I've read it, yes.

15 Q. Thank you, Mr Stewart.

16 This is a statement which was given just over a year  
17 after the McKie trial. Do you see that Sheriff Murphy  
18 there indicates that you were discussing this in the  
19 courtroom at Glasgow High Court for the best part of  
20 afternoon? Do you see that phrase is in paragraph 3?

21 A. I do.

22 Q. He says you were going over the defence productions  
23 produced by Wertheim and going back over your own  
24 presentations, which he also had in court?

25 A. I'm sorry to say I still have no recollection. It

1           hasn't helped jogged my memory.

2       Q.    Do you accept that perhaps Sheriff Murphy's statement  
3           could be correct?

4       A.    Well, if he gave that statement in 2000, there is a  
5           chance his recollection then would be more accurate than  
6           mine is over 12 years. His was only over 2 years then,  
7           but I really don't know.

8       Q.    With that in mind in relation to paragraph 3 do you  
9           accept the remainder of that on that page, given by  
10          Sheriff Murphy in 2000 to the police, could be an  
11          accurate recollection of the events?

12      A.    I'm not saying it's not accurate. It's just I don't  
13          remember it. I don't recognise it. That's it, it could  
14          be accurate.

15      Q.    Finally, I would like to move on to one last thing. The  
16          fact that Mr Wertheim was giving evidence against the  
17          four SCRO officers, including yourself, and challenging  
18          the identification of a print for a first time, that was  
19          viewed as a very serious matter in SCRO?

20      A.    It would be, yes.

21      Q.    After your meeting with Sheriff Murphy, the Advocate  
22          Depute, before the trial, you have told us that you  
23          tried to speak to Mr Mackenzie who was a senior member  
24          of staff but in the end you spoke to Mr Gorman?

25      A.    That's correct.

1 Q. He was a superintendent at the time?

2 A. He was.

3 Q. So again, a very senior member of staff?

4 A. He was.

5 Q. As far as you are aware, did Mr MacPherson also view it  
6 as a serious matter?

7 A. I would assume so.

8 Q. Did he also speak to the senior members of staff, as far  
9 as you are aware?

10 A. I think the reason I spoke to senior members of staff  
11 was when we come out of the court it was after shift  
12 finishing time. I was on late shift that night so I  
13 went back to the office. Mr MacPherson had other things  
14 to do so he would go away and do that and I would just  
15 go back and I would try and report to whatever managers  
16 were present.

17 Q. Was that something you discussed with Mr MacPherson,  
18 that you intended to do that?

19 A. I would have thought so. From memory, I don't know.

20 Q. The officer the charge of the Bureau at that time, was  
21 that Chief Inspector Ian Hogg?

22 A. No, Inspector Hogg was in charge of the Identification  
23 Bureau, the Scene of Crime branch.

24 Q. Sorry, that's my mistake. So he was in charge of the  
25 Identification Bureau?

1 A. Yes.

2 Q. They were also aware of the situation prior to the  
3 trial?

4 A. I would assume so, yes.

5 Q. Is it correct that Chief Inspector Hogg discussed the  
6 matter with yourself, Mr MacPherson, Mr McKenna and  
7 Ms McBride?

8 A. Sorry, I can't remember. He may have done. I really  
9 don't know.

10 Q. If the Inquiry hears evidence from Mr McKenna in  
11 relation to a statement he has given the Inquiry that he  
12 did discuss this with all four of you, would you accept  
13 that that's correct?

14 A. His recollection may be better than mine, so yes.

15 Q. But that would be a reflection of how seriously the  
16 SCRO and the Identification Bureau were taking the  
17 challenge by Mr Wertheim?

18 A. I would assume it was being taken seriously, yes.

19 MISS GRAHAME: That is fine. Thank you very much. I have  
20 no further questions.

21 THE CHAIRMAN: Ms Jones?

22 MS JONES: Sir, just one small point on the issue to do with  
23 Mrs Collette Orr and Richard Luckraft and the challenge  
24 made by Mr Luckraft to Mrs Orr.

25 THE CHAIRMAN: Yes.

1 **Cross-examined by MS JONES**

2 Q. Mr Stewart, there is just one small point I wanted to  
3 ask you about. You were asked questions this morning by  
4 Miss Carmichael about Mrs Collette Orr and Richard  
5 Luckraft. I think you said you couldn't really remember  
6 anything very much about it; is that right?

7 A. That's correct.

8 Q. Can I just ask you whether you would agree with me that  
9 at no point was Mrs Orr ever transferred to any other  
10 unit because of any question over her competence? You  
11 see the reason I ask you is that Mr Luckraft appears to  
12 have suggested in his evidence that after the challenge  
13 he was move to one unit and Mrs Orr was moved to another  
14 unit and he seems to imply that the reason Mrs Orr was  
15 moved was because then her work would be subject to an  
16 additional check. I just ask you whether, so far as you  
17 are aware, in fact, Mrs Orr was never moved for any  
18 reason to do with competence?

19 A. From memory, to be quite honest, I can't remember.  
20 Management would have dealt with the issue once I  
21 flagged it up to them. They would have taken whatever  
22 actions they thought appropriate. Whether or not one or  
23 both of them would be moved, retrained or whatever, I  
24 couldn't tell you. You would need to talk to the  
25 management of the time to see what happened, what the

1 actions were.

2 Q. So you can't help us with that at all?

3 A. I can't remember.

4 MS JONES: Okay, thank you.

5 THE CHAIRMAN: Mr Holmes?

6 MR HOLMES: Yes, sir, there are three matters I would like

7 to ask about all of which arise from answers given to

8 questions Mr Stewart has been asked today.

9 The first relates to questions that he was asked

10 about the position of Mr Bruce in relation to Q12. The

11 second relates to Mr Stewart's own evidence during the

12 trial and the third relates to a comment made by

13 Mr Stewart about the latter part of his employment at

14 SCRO.

15 THE CHAIRMAN: Yes. You may ask those questions or cover

16 those issues.

17 **Cross-examined by MR HOLMES**

18 Q. Mr Stewart, if I can first ask you about the questions

19 you were earlier asked about the position of Mr Bruce.

20 It was put to you that Mr Bruce gave evidence that

21 he thought on re-examination of Q12 that he could see

22 12 points and that in 1997, when he first examined it,

23 he would have found fewer than 16 because he didn't sign

24 the case envelope.

25 In 1987 how many checkers were required for an

1 elimination?

2 A. Are you talking in general terms or case-specific to  
3 this case?

4 Q. In general terms.

5 A. In general terms, it would be two.

6 Q. How many were required for an identification?

7 A. Four.

8 Q. So if you were the third or fourth checker, you would  
9 have been well aware that you were being asked to  
10 confirm an identification to 16 points?

11 A. I would think that's a very fair decision, sir, yes.

12 Q. By the time that Q12 was examined, do you recall whether  
13 Mr Asbury was already a suspect?

14 A. Having seen the form 13 this morning that was displayed  
15 on the screen it was clearly indicated on that that he  
16 was a suspect at the time.

17 Q. That being the case, any examination against Mr Asbury  
18 would have been carried out to 16 points; is that  
19 correct?

20 A. It would be, sir.

21 Q. The second thing I would like to ask you about is your  
22 own evidence during the trial. You were asked by my  
23 learned friend, Miss Carmichael, whether you would be  
24 aware that you would have to show the 16 points that you  
25 relied on to make the identification on the enlargement.

1                   Can I ask, did charted enlargements ever show the  
2                   16 points that you personally relied upon to make an  
3                   identification?

4       A.    Regrettably, any time you produced an illustration it  
5            was always a compromise between the four experts. We  
6            could all have looked at the mark and reached our  
7            conclusion based on different characteristics, so what  
8            was illustrated had to be a compromise.

9       Q.    So is it the case that the enlargement that was produced  
10            for court would have 16 points on it that you were  
11            content with but those may not necessarily have been the  
12            points that you relied upon to make your identification?

13      A.    I think that's always the case. One expert could look  
14            at the top of the mark, one expert at the bottom, one at  
15            the left, one at the right, you all reach the  
16            same conclusion but for illustration you've got to have  
17            a consensus.

18      Q.    Indeed, you have given evidence that you would reach a  
19            conclusion as to identity before there were 16 points in  
20            any event so it wouldn't be the 16 that were marked on  
21            any enlargement that you relied upon, would it?

22      A.    No, sir, it wouldn't.

23      Q.    One more question in relation to the trial. I see from  
24            the transcript that Mr Findlay was asking you to look at  
25            things on a screen.

1                   How were enlargements displayed at the trial?

2     A.    I can't remember, sir. I think it was an overhead  
3           projector. They put them down on the bed of the  
4           projector and projected them up on a screen.

5     Q.    So that would be yourself, the jury and the judge  
6           looking at the screen, rather than at copies of the  
7           enlargements?

8     A.    Yes, sir.

9     Q.    Do you recall whether that had any effect on the quality  
10          of the images that --

11    A.    I think that certainly would be detrimental because I  
12          don't think many of these overhead projectors ever have  
13          a particularly good quality.

14    Q.    Finally, there was a question that you were asked about  
15          your employment at SCRO and you have said in relation to  
16          the later part of your employment, the later years at  
17          SCRO, that they were stressful and traumatic.

18                 Can I ask why?

19    A.    Well, I think we all react to the pressure, particularly  
20          of being falsely accused of being criminal, et cetera,  
21          it affects -- it affected me as an individual. It  
22          affected my relationship with my wife and my kids. I  
23          became short tempered, irritable. I was off with stress  
24          for a period of time. It was just a very traumatic  
25          experience, the whole thing.

1 MR HOLMES: Thank you.

2 THE CHAIRMAN: Yes?

3 **Re-examined by MISS CARMICHAEL**

4 Q. Very briefly indeed, sir.

5 You were asked questions there by Mr Holmes about  
6 things being projected on a screen. I think if we go to  
7 the transcript we can probably find simply one example  
8 of something that I think maybe we can read for  
9 ourselves throughout it elsewhere but if we go to  
10 SG0526, at page 40, we see at line 9 the Advocate Depute  
11 requesting that copies of 180, which we have seen is one  
12 of the productions with an enlargement of the  
13 fingerprint and fingermark, if these could be made  
14 available to the jury. So it would certainly appear  
15 from that that documentary productions of these items  
16 were available to the ladies and gentlemen of the jury  
17 as well as their simply watching it on the screen.

18 Would that be fair?

19 A. Certainly in previous years our court productions always  
20 used to be copied so there was a copy there for each  
21 juror. I can't remember when we stopped that practice  
22 because we used to send photographic enlargements down,  
23 as good quality as the original. Then they spent -- to  
24 save money, they photocopied them and the copies weren't  
25 very good. Now whether that was still being done at

1 that point or whether we'd stopped that point I don't  
2 know but certainly that would appear to indicate that  
3 copies of the productions had been made and were  
4 available to the jury.

5 Q. Thank you.

6 If I may just have one moment, my Lord, there is one  
7 matter I would like to check before closing. **(Pause)**

8 Again, in answer to Mr Holmes you said that the 16  
9 points on a production would be a matter of compromise  
10 and I just want to clarify with you what we should take  
11 from that.

12 Would it be the case that you might be agreeing to  
13 points being marked up on the enlargement to be signed  
14 by all of you that you personally were unhappy with in  
15 any way?

16 A. I don't think you would be unhappy with them. It was  
17 always a compromise. You might -- you'd sit there and  
18 say, "Well, I don't like that one and I don't like that  
19 one". Somebody else would say, "Well, I don't like  
20 that. I'm quite happy with that". So you would soon  
21 between you rule out some and rule in others and  
22 hopefully on that basis you would have 16 on the  
23 illustration.

24 Q. What I have in mind is that what transpired in this case  
25 was that three of you, yourself, Mr MacPherson and

1 Ms McBride, all had to go to court with the potential  
2 that each one of you might be asked about any one of  
3 those 16 points. With that in mind, I just wanted to be  
4 clear whether, on what you describe as a compromise, you  
5 would be happy speaking to any one of those 16 points?

6 A. Well, at the end of the day it had to be a compromise  
7 you were happy with because, yes, as you say, you were  
8 aware you could be asked or questioned on any of it.

9 THE CHAIRMAN: I think you have maybe covered the one matter  
10 I wanted to ask you about. In your very long  
11 experience, which I think is about 37 years --

12 A. It was, sir.

13 THE CHAIRMAN: During that time, when you were giving  
14 evidence would you always produce the enlargements?

15 A. For any solemn procedure where there was a jury present,  
16 yes, sir. It was the standard practice, particularly  
17 for cases within Strathclyde because the Fiscals seemed  
18 to like them, the Fiscals were comfortable with them;  
19 they always wanted them and that's the way we did it.

20 THE CHAIRMAN: Would you be expected to go through all the  
21 points or if the defence indicated they weren't  
22 challenging it --

23 A. No, sir, that was rare. You sometimes used the  
24 illustration just to show the ladies and gentlemen what  
25 the fingerprint pattern was and what the different

1 characteristics were, just purely as an illustration and  
2 that was it.

3 THE CHAIRMAN: So really you wouldn't have had, even with  
4 your long experience, you hadn't had a challenge before  
5 and you wouldn't have had really much experience of  
6 having to demonstrate all your points because you hadn't  
7 been challenged.

8 A. No, sir, it was definitely a learning experience that I  
9 think we took on board and decided we could, perhaps,  
10 make better illustrations for future use or it  
11 strengthened the desire to go down the generic road.

12 THE CHAIRMAN: So really how you demonstrated your points at  
13 this trial, that is the trial of Shirley McKie, was a  
14 new experience really?

15 A. Yes, sir, we were virtually making it up as we were  
16 going along. We hadn't done it in that depth before at  
17 any time.

18 THE CHAIRMAN: You were not happy with the charting  
19 computer?

20 A. No, sir, I certainly was not.

21 THE CHAIRMAN: And so there undoubtedly would have been  
22 better ways of demonstrating, had they been available to  
23 you?

24 A. There would have been, sir, yes.

25 THE CHAIRMAN: Thank you very much. Sorry to have had to

1 bring you back to this issue but it was very good of you  
2 to come and I am pleased to say we have completed your  
3 evidence today.

4 A. Thank you very much for sitting on to accommodate me,  
5 sir.

6 THE CHAIRMAN: Thank you.

7 Tomorrow then we will continue with ...?

8 MISS CARMICHAEL: Mr McKenna and, I hope, also Ms McBride.

9 THE CHAIRMAN: Yes, at 10.00. Thank you very much.

10 **(4.10 pm)**

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

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