

Friday, 6th November 2009

1

2 **(Morning session)**

3 **(10.00 am)**

4

**ANTHONY JOSEPH MCKENNA, sworn**

5 THE CHAIRMAN: Your full names, please?

6 A. Anthony Joseph McKenna.

7 THE CHAIRMAN: You will have find you have to sit fairly

8 close to the microphone.

9

**Examined by MISS CARMICHAEL**

10 Q. Good morning, Mr McKenna.

11 A. Good morning.

12 Q. I think you have provided a signed statement already for  
13 the Inquiry?

14 A. I did, yes.

15 Q. Subject to any changes or subtleties that we may find in  
16 the course of your oral evidence today, are you happy to  
17 adopt that as part of your evidence?

18 A. Yes.

19 Q. Please feel free, either now or at any other time during  
20 your evidence, if we come across something in the  
21 statement that does not seem right, to draw that to the  
22 attention of the Inquiry, Mr McKenna.

23 A. Yes, thank you.

24 Q. I would like to start, please, by looking at  
25 paragraph 11 of your statement. The reference is

1 FI0054-02 at page 2. You will see that we are working  
2 under a heading here in your statement of, "Testing and  
3 training of fingerprint experts as at 1997". What I  
4 would like to ask you about is the last two sentences in  
5 paragraph 11 where you tell us that there was discussion  
6 about difficult marks and that that would help maintain  
7 skills and enhance experience. You say:

8 "This formed the main training as to the 'core  
9 work'."

10 I would like to ask you about the context in which  
11 discussion of difficult marks would come about?

12 A. That would be discussion between experts in looking at a  
13 difficult mark and explaining to each other how they  
14 found their findings.

15 Q. How would it come about that experts would be discussing  
16 these difficult marks with each other?

17 A. There would be various reasons, you know. Somebody  
18 says, "Can you get through from one area to another",  
19 you know, it's a very difficult mark or there's movement  
20 or various things. It would explanations between  
21 discussion -- that's all it would be, discussions, you  
22 know.

23 Q. I am going to have to ask you to try to bring the  
24 microphone a wee bit closer to yourself. I know it  
25 sounds very unnatural when you hear it echoing behind

1           you but it is sometimes very hard for people to hear you  
2           if you can't hear it echoing. We also have a  
3           stenographer here who is trying to get every word so I  
4           will have to ask you to slow down a little bit as well.  
5           I know it's very difficult, Mr McKenna.

6                     What I am trying to get at here is how it would be  
7           that difficult marks would come to be discussed. Would  
8           it be because people were having a difficulty with a  
9           mark in the course of an ordinary identification or  
10          verification process, for example?

11    A.    That could be a possibility, yes.

12    Q.    Can you recall that happening?

13    A.    Yes -- once or twice maybe I was looking at a mark and  
14          having difficulty, saying I can see two areas but I  
15          cannot adjoin the two areas and maybe there was  
16          distortion or movement and maybe refer to a colleague  
17          and say, "Do you agree there is movement there". It was  
18          nothing high level. It was just sort of very low level,  
19          yes, I can see distortion, so it reinforced your view.  
20          It was that sort of discussion.

21    Q.    Would this arise when you were doing perhaps the first  
22          examination of a potential identification or when you  
23          were the checker doing a verification of somebody else's  
24          work?

25    A.    Both possibilities.

1 Q. If you were the first examiner of a mark and you were  
2 perhaps looking at something that you found to be  
3 difficult or complex, who would you go to?

4 A. One of my colleagues. Nobody in particular, you know.  
5 It may be the first available colleague you actually  
6 looked up at and you say, "Excuse me, could you look at  
7 that", you know, for various reasons. It would not be  
8 anybody in particular.

9 Q. What sort of advice would you be looking for from them?

10 A. Maybe to agree with what I was finding they'd say, "Yes,  
11 I'd agree with that, there's movement there or  
12 distortion there". That sort of answer.

13 Q. Would they always agree with you or would they sometimes  
14 say, "I'm sorry, Mr McKenna, I don't see it myself"?

15 A. Yes. Yes, of course they would. Everybody has their  
16 own independent opinion.

17 Q. Thinking to the situation where maybe you are the  
18 checker and someone else has identified a mark and you  
19 find yourself having maybe some difficulty making two  
20 and two make four, what would you do then?

21 A. I'd go back to the person who had checked it and say,  
22 "Can you explain how to get from one area to the other  
23 area", and if they showed me and I agreed with it then  
24 I'd be satisfied.

25 Q. Did it ever happen that you were not satisfied after a

1 discussion of that sort?

2 A. Probably, yes. You know, I'd say, "No, I can't get  
3 through there", sort of thing and I'd say that to them  
4 and record it as such, you know. It's not that it  
5 wasn't the person, it was that because of the 16  
6 standard, at certain times, you know, I'm not satisfied  
7 I can get the complete 16.

8 Q. Would that be a situation where the only difference  
9 between you would be whether you could get to  
10 16 points --

11 A. Yes.

12 Q. -- rather than whether you were really disagreeing about  
13 the identification?

14 A. No.

15 Q. Can you remember any time when, as the checker or the  
16 verifier, you were really disagreeing about the  
17 identification?

18 A. Yes.

19 Q. What would happen then?

20 A. It would be referred to the Quality Assurance.

21 Q. In the situation where you had the difference about the  
22 number of points but you were in basic agreement about  
23 the identification, what would happen then?

24 A. I'd record that I had a strong suspicion but I can't get  
25 through but that would very, very rarely happen.

1 Q. Was that a formal process for recording strong  
2 suspicion?

3 A. Back then in 1997, I wouldn't say -- I couldn't really  
4 tell if it was a formal process or not, you know, if you  
5 understand.

6 Q. Is that because you can't remember what the process was  
7 at the time?

8 A. I can't remember what the process was at the time.

9 Q. The next question I was going to ask you was whether in  
10 that situation where you say you were recording  
11 something of strong suspicion, that was something that  
12 the prosecution authorities would ever hear about?

13 A. That would depend. I couldn't tell you the answer.  
14 It's not something ... it was not what you'd call full  
15 disclosure then I suppose but there was precognition  
16 agents so if the questions were asked you would tell  
17 them what you found.

18 Q. So if somebody came to take a precognition from you and  
19 asked you a specific question about something you would  
20 answer it?

21 A. Yes.

22 Q. But would I take it from that perhaps that if you were  
23 not asked any specific question about it you would not  
24 necessarily volunteer it?

25 A. Probably not because you couldn't remember every case,

1           you know, because you do that many cases and to remember  
2           individual in every case would be very difficult, you  
3           know.

4       Q.    I appreciate that I am asking you to remember things  
5           that were happening quite a long time ago, Mr McKenna,  
6           and if at any point there is something you can't help us  
7           with because you simply can't remember then, please,  
8           just say so.

9       A.    Yes.

10      Q.    I would like to ask you about something that we have  
11           heard about from some of the other witnesses in the  
12           Inquiry, Mr McKenna, and that is about the standard of  
13           certainty that Fingerprint Examiners work to. We have  
14           heard some witnesses express that they themselves are  
15           100 per cent confident in their conclusion as to  
16           identity between a mark and a print and we have also  
17           heard people expressing themselves as being 100 per cent  
18           confident that any other examiner would come to the same  
19           conclusion as to identity.

20                I am wondering if you can tell us what your practice  
21           was when you were working as a Fingerprint Examiner in  
22           relation to certainty. I will ask you the two things  
23           separately.

24                Would you have expressed yourself as being  
25           100 per cent confident in your own conclusion as to

1 identity?

2 A. Yes.

3 Q. Would you have expressed yourself or certainly been  
4 within yourself fully confident that any other examiner  
5 would come only to the same conclusion as yourself?

6 A. That would be second-guessing the second examiner. I  
7 mean I cannot --

8 Q. I am having difficulty catching what you are saying.

9 A. That would be my independent opinion. The next examiner  
10 has his own independent opinion. But was I confident in  
11 my own opinion? Yes. Would I be confident if somebody  
12 checked my work? Yes. But it's up to them to come to  
13 their own conclusion on the mark.

14 Q. Are you telling us that you would not necessarily expect  
15 them to come to the same conclusion as yourself?

16 A. I would expect them to come to the same conclusion but  
17 if they didn't, that's not up to me. I can't influence  
18 another person to say, "You agree with me", you know.

19 Q. If I can put it this way, given your own level of  
20 confidence in your conclusion, how did it feel when it  
21 came about that somebody else differed from you on a  
22 conclusion about identity?

23 A. It didn't bother me. Well, the only time it's ever  
24 happened was in this case. If another expert wants to  
25 have another conclusion then that's their conclusion not

1 mine.

2 Q. You say the only time it ever happened was in this case.

3 Should I take it from that then that there was never any

4 time within SCRO that anybody differed from you as to

5 the identification of a mark and a print?

6 A. No.

7 Q. You are saying that that never happened?

8 A. Never happened.

9 THE CHAIRMAN: I presume you might have differed on a

10 particular point?

11 A. You might differ on different points and if someone come

12 back to me and said they were not satisfied there was 16

13 then we would remove it.

14 THE CHAIRMAN: Yes, of your 16 they might not accepted.

15 A. My Lord, if somebody came back and said, "I can only see

16 13", then that would not go to court, that would be put

17 as an SS and not go to court. It was not a case of

18 anybody trying to force anything through. I mean, if

19 that's what you're trying to establish but for somebody

20 to come up to me and say, "You're completely wrong",

21 that never happened.

22 MISS CARMICHAEL: You are describing a procedure -- sorry,

23 sir -- you are describing a procedure where if you have,

24 perhaps, yourself having 16 points and someone else

25 having 13 points that going forward with a strong

1 suspicion notice of some sort. What we have heard about  
2 in the case involving Y7 is that there was a situation  
3 where Mr MacPherson had identified 16 points and  
4 Mr Geddes had identified I think 10. But what happened  
5 wasn't that a strong suspicion letter went out but  
6 rather that further experts ultimately, including  
7 yourself, were consulted and that those other experts  
8 found 16 points.

9 Can you explain how that would come about in  
10 opposition to the procedure that you have described of  
11 using a strong suspicion warning?

12 A. I was not aware of Mr Geddes having looked at the mark  
13 and so therefore I can't really answer that question as  
14 to that procedure.

15 Q. I should ask you while we are on that topic at what  
16 point did you become aware that Mr Geddes had been  
17 involved?

18 A. In fact, it was after the trial and ... I actually  
19 couldn't tell you but it was well after 1997.

20 Q. 1997, I think we have heard there was a trial of  
21 Mr Asbury and then in 1999 there was a trial  
22 involving --

23 A. It would be after 1999, as well, sorry.

24 Q. -- Ms McKie, so it would be after Ms McKie's trial that  
25 you became aware of that?

1 A. Yes.

2 Q. Again, if you are unsure about anything don't feel that  
3 you need to jump to say yes or no. If the answer is you  
4 don't know then, please, feel free to say. So are you  
5 clear in your mind that that was something you became  
6 aware of only after Ms McKie's trial?

7 A. Yes.

8 Q. I would like to ask for your comment on some other  
9 things that we have heard from other witnesses as to  
10 practice. We have heard some witnesses tell us that  
11 where there is a certain amount of agreement between a  
12 mark and a print, there comes a point in their own minds  
13 where they are satisfied as to identity to the extent  
14 that if there are any differences that appear between  
15 the mark and the print they must have some explanation  
16 and so effectively become irrelevant.

17 What is your position on that?

18 A. My position would always be that if I was satisfied it  
19 was that person, then I was satisfied in my opinion. If  
20 there was movement or distortion to the side of it that  
21 could be explained away.

22 Q. If we can perhaps break that down, can you give us any  
23 idea at what point you would become satisfied? Did you  
24 have a bottom line number?

25 A. No. It was based on experience and the characteristics,

1           you knew that this was the same person but to say it was  
2           5 points, 10 points, you couldn't. It's just your  
3           experience told you, that sort of thing. I know that's  
4           a very difficult thing to understand but it's just your  
5           own experience tells you when you know that this is the  
6           same person.

7    Q.    Would it ever be as few as five?

8    A.    No. I'm sorry, no. Well, there are times you get a  
9           cluster of five characteristics and you maybe find that  
10           five characteristics in another thing and that's all  
11           you'd find but you couldn't take it any further with  
12           five but your own instinct would tell you that they were  
13           so unique within a fingerprint that it can only be that  
14           donor, but to say to take it further without any more  
15           would be wrong.

16   Q.    Would that be wrong only because there was a 16-point  
17           standard in force at the time?

18   A.    Yes, probably.

19   Q.    So if there had not been that standard, would you have  
20           had any inhibition about taking forward something as low  
21           as five?

22   A.    As low as 5. It would be an individual thing. You  
23           could say, look, this individual, it looks like that but  
24           that's all I can say. You wouldn't express -- I  
25           wouldn't go on and, say, express a full opinion, you

1 know.

2 Q. So on five you wouldn't be expressing yourself to  
3 100 per cent certainty?

4 A. No.

5 Q. So --

6 A. I'd maybe say I would discount, you know, other things  
7 but it wouldn't go as low as five, no.

8 Q. If you wouldn't go as low as five are you able to give  
9 us --

10 A. No, I'm sorry, that was just an example.

11 Q. I take it then we can take it that if you did have a  
12 bottom line it was more than five?

13 A. Yes. It was just once you were satisfied within  
14 yourself that you had ident but the number you needed  
15 was 16 for the court purposes.

16 Q. So could you have a situation where -- let us just take  
17 the 16 because it was the standard at the time, where  
18 you had 16 points in sequence and agreement and because  
19 you had those 16 points you knew that there must be  
20 identity between the two, even where there were some  
21 bits of the mark that had differences with the print.

22 A. Once you get reached the 16-point standard you're  
23 satisfied it was an ident and if you're talking about  
24 movement or distortion that does occur in scene of crime  
25 marks but it didn't detract from the fact that you had

1           reached your conclusion it was the same person.

2       Q.    So once you have your 16 points, essentially, that's it;  
3           you're sure?

4       A.    Yes, you were satisfied for court purposes.

5       Q.    That is even where there may be some differences in  
6           appearance or --

7       A.    It wouldn't be a difference in appearance. There may be  
8           movement. It's hard ... I'm trying to explain this,  
9           there could be movement, shift, but once you  
10          reach 16 points you knew it was an ident.

11      Q.    Would it follow because you knew it was an ident from  
12          the 16 that if there was some difference it must be due  
13          to something like movement or distortion or something of  
14          the sort?

15      A.    Well, you would probably look at it and see the  
16          distortion or the movement, you would see that.

17      Q.    I would like to move on to asking particularly about  
18          your involvement in the Marion Ross and Shirley McKie  
19          cases. I would like to put up on screen for you,  
20          please, CO1987. It might help you to know, I think, the  
21          part of your statement where you deal with this is at  
22          paragraph 60 or so, Mr McKenna, starting at paragraph 59  
23          where you deal with mark XF.

24                    What we see here is an annotated photograph of a  
25                    gift tag and a mark that we have come to know as XF?

1 A. What page is it, sorry?

2 Q. Page 10 on to page 11 is the part of your statement  
3 where you deal with this, Mr McKenna.

4 What we see on the screen, if you can have a look at  
5 that for us, please, there is an annotation in black on  
6 the right-hand side of the screen which we understand to  
7 have Mr MacPherson's initials, Mr Alister Geddes's  
8 initials and we understand that the third set may be  
9 your own?

10 A. That's correct, yes.

11 Q. Is that your own writing there?

12 A. Yes.

13 Q. That is your own writing.

14 What you say at paragraph 61 of your statement, if  
15 you can look at that for me is that you don't now why  
16 the writing starts off in black and then changes to red.  
17 Can I refer you on maybe to paragraph 64 as well where  
18 you are talking about a worksheet that you had been  
19 shown. You say there the writing in red may reflect a  
20 change in Mr Asbury's status to suspect.

21 We have heard that the black writing may relate to  
22 elimination and the red writing to identification of a  
23 suspect when it appears on a photograph as well.

24 Does that accord with your own recollection?

25 A. Yes.

1 Q. So it may be then that the explanation is that where we  
2 see the black writing we are talking about an initial  
3 elimination?

4 A. Elimination print, yes. An elimination comparison, it  
5 was always in black and identification was always done  
6 in red.

7 Q. I think we understand from your statement that at the  
8 time of the investigation into Miss Ross's murder you  
9 were not working on the team that was mainly involved  
10 with that murder inquiry; is that right?

11 A. Yes, I was in charge of another team.

12 Q. So how would it come about that you would be called on  
13 to come along and help out?

14 A. Just resources, resource management, looking for bodies  
15 to help out, you know. So that sort of thing. It's  
16 not, you know, you were selected, who's available. As  
17 you can imagine yourself, you've got five/six teams with  
18 different work levels. You do have to resource one team  
19 to another and you may have to release one of your staff  
20 to help another team. That's just resource management  
21 and that happens in every business.

22 Q. Just in practical terms can you remember how it was that  
23 you came to be called on yourself here?

24 A. I couldn't tell you. I don't remember.

25 Q. You do not remember who asked you to become involved,

1 for example?

2 A. No.

3 Q. When you were involved with this mark and on the basis  
4 that we are dealing with an elimination here, how many  
5 points in sequence and agreement were you looking for?

6 A. Probably -- I was the third signature on this mark, as  
7 you can see on this mark --

8 Q. You are the third signature, yes.

9 A. That would mean it was now going to be an identification  
10 so therefore I would be looking for 16.

11 Q. Why would you be looking for 16?

12 A. Because that is the standard for court.

13 Q. Please put me right if I am wrong in any of the  
14 suggestions that I am making to you, but would I be  
15 right in saying that at the stage you looking at this  
16 you wouldn't have any particular idea who Mr Asbury was?

17 A. No.

18 Q. Or whether he had any significance at all in the  
19 investigation?

20 A. Probably, no.

21 Q. I think we know that, in fact, until after the  
22 identification of this mark Mr Asbury have any  
23 significance in the investigation?

24 A. I couldn't have told you that.

25 Q. I appreciate there may be things you are unaware of,

1 Mr McKenna.

2 Who would tell you that this was being identified to  
3 a court standard rather than being treated, I suppose,  
4 in the ordinary way as an elimination?

5 A. See, there is a third option -- I don't remember but  
6 there were things called elim suspects or suspects  
7 elims, somebody who is donating their eliminations but  
8 they were asked to be treated as a suspect. So,  
9 therefore, in a situation like that you would look for  
10 16.

11 Q. In that situation we have heard that there are various  
12 work sheets in a large investigation and we have heard  
13 also that in this case there were police elimination  
14 sheets, civilian elimination sheets and one designated  
15 suspect elimination sheet.

16 In that situation, would you expect somebody who was  
17 subject to a suspect elimination to be a person who was  
18 named on the suspect elimination sheet?

19 A. I can't remember. I couldn't tell you the answer.

20 Q. Do you have any recollection at all of how it might have  
21 come about that this mark was being identified,  
22 effectively, to a court standard with four examiners and  
23 to 16 points?

24 A. No.

25 Q. You tell us in paragraph 60 of your statement that the

1 use of the word "screen" means that you must have  
2 examined this mark on a comparator.

3 A. Yes.

4 Q. Would that mean that you had examined it only on a  
5 comparator?

6 A. The comparator was used to help, as an aid. You'd  
7 probably examine it under glass then move to a  
8 comparator to satisfy yourself there was 16 but, as I  
9 said, if it says "screen" then at one point I would have  
10 it on the screen but I don't remember. I would probably  
11 have a practice of looking under the glass first, then  
12 move back to the screen.

13 Q. We heard that this mark may in fact have been left on a  
14 comparator marked-up for subsequent viewers, such as  
15 yourself.

16 A. I don't remember that.

17 Q. Is that something that you remember happening generally,  
18 marks being left on comparators by maybe the first  
19 person who had looked at it with his points or her  
20 points on it, to assist the people who viewed it later?

21 A. They would maybe be left on for people to examine on a  
22 screen but if there's points on it you'd probably remove  
23 the points and do your own examination.

24 Q. I think you said and I think we can see from the order  
25 of initials here that you are the third checker here?

1 A. That's correct, yes.

2 Q. I suppose we are in a position where you have had two, I  
3 suppose, trusted colleagues looking at the mark before  
4 you?

5 A. Yes.

6 Q. Would that be fair to say?

7 A. Yes.

8 Q. With that in mind, is it possible that really all that  
9 one was doing at that stage was checking whether what  
10 appeared on the comparator from an earlier examination  
11 by one of those colleagues was what you were doing  
12 rather than perhaps going through the whole rigmarole  
13 again?

14 A. No.

15 Q. Why would that be?

16 A. Because you do your own examination.

17 Q. Can you tell me in a situation where -- and if you can't  
18 recall, again please do just say so -- a situation where  
19 perhaps two people have identified a mark and it came to  
20 a third checker, whether a dispute had ever arisen at  
21 that stage? I am not suggesting that there was any  
22 dispute, I should make clear, any dispute whatsoever  
23 about this mark because I don't think anybody has  
24 suggested such a thing but asking you in the generality,  
25 when it came to a third checker, whether any dubiety

1           about a mark had ever been raised at that stage in the  
2           process, after there had already been two colleagues  
3           who'd reached a conclusion?

4       A.    That's a question where maybe you want to ask the  
5           Quality Assurance Officer because anything that that  
6           would be referred to him and I believe that they had an  
7           open policy that if anybody wanted to come in and check  
8           that, he was there -- the authority didn't but there  
9           was, anything like that would go to the Quality  
10          Assurance and they have their policy for it.

11       Q.    But simply from your own recollection, I suppose there  
12          must have been other times when you had been the third  
13          in line just because that's the way the cooky crumbled  
14          that day, was that ever a stage that you recall raising  
15          any problem with a mark?

16       A.    Yes.

17       Q.    I think we can leave this mark and take that down from  
18          the screen.

19       THE CHAIRMAN:    Could I interrupt you just for a moment.  
20          When you were looking or checking or whatever one likes  
21          to call it, you found your own 16 points?

22       A.    Yes.

23       THE CHAIRMAN:    Is it only if the case is being prepared for  
24          court that you have to agree the same 16 points.

25       A.    Yes, for the illustration purposes.

1 THE CHAIRMAN: Yes. So that the four witnesses who are  
2 available --

3 A. Are satisfied.

4 THE CHAIRMAN: -- are all satisfied of those 16 points.

5 What I am interested in is how do you agree the  
6 16 points? Does the lead examiner, if I can call them  
7 that, the first person, put them on the comparator and  
8 then you all come along and look at them and see whether  
9 you can agree those 16?

10 A. If it's for court purposes, my Lord, the person who was  
11 preparing the case would mark up the 16 on the  
12 enlargement, then it was passed round the four witnesses  
13 to agree and if you felt a characteristic was stronger  
14 not that it wasn't there but was a stronger  
15 characteristic you'd maybe say, "I'd prefer to put that  
16 one in", but you always agree on the 16.

17 THE CHAIRMAN: But then they would have to mark it up again  
18 to change the point.

19 A. No. Yes, that could happen because it was not indelible  
20 ink so you could say, "Could you just move that further  
21 up. I think that's just further on than ..." I think  
22 you have seen examples in the court whereupon someone  
23 will mark a certain characteristic and a point and  
24 someone says, "I think it's further down".

25 THE CHAIRMAN: The reason I was asking is it occurred to me

1           it would be easier, really, to do it on the comparator  
2           and then they could change them so that you got 16 that  
3           all four agreed and then mark it up and that would be  
4           one operation of marking-up but that is not the way it  
5           happened?

6       A.   No. Before the charting PC, it was photographic  
7           enlargements received and they were put down and marked  
8           and then passed round the four witnesses who were going  
9           to be involved in the case to say they were satisfied  
10          with that enlargement.

11       THE CHAIRMAN:   And if they were not, it was remarked?

12       A.   You would have a discussion, you know, which is healthy.

13       MISS CARMICHAEL:   Thank you, sir.

14                 I am going to move on and ask you about your  
15           involvement with mark Y7, Mr McKenna. The part of your  
16           statement where you deal with this starts at page 5, if  
17           that helps you. You say at paragraph 25 that the office  
18           was stretched for resources and staff and it wasn't  
19           uncommon to be asked to check marks for other teams.

20       A.   That's correct, yes.

21       Q.   Was the, I suppose, the pressure of work and the  
22           stretching resources something that caused you  
23           difficulties?

24       A.   Not any worse than any other business that has that sort  
25           of resource problems. In other words, you got on with

1           it, you managed it day-to-day. It wouldn't cause stress  
2           and it wouldn't cause problems. It is a problem but  
3           it's a problem any business deals with day-to-day. It's  
4           just a general management resource --

5    Q.    I think elsewhere in your statement you say your own  
6           team had two murders on at the same time that  
7           Mr MacPherson's team was dealing with the Marion Ross  
8           case?

9    A.    That is correct, yes.

10   Q.    Was there ever any issue about the time that you could  
11          spend examining marks because of pressure of work in  
12          that sort of situation?

13   A.    No, no, never.

14   Q.    When you first saw the mark Y7, do you recall whether  
15          you saw it on the comparator?

16   A.    I believe it was on the comparator when I first checked  
17          it, when I first seen it.

18   Q.    Were there any markings on the comparator when you first  
19          checked it?

20   A.    Just signatures on the side. People would sign, "I've  
21          seen it", but apart from that I don't remember anything  
22          else.

23   Q.    When you say you don't remember anything else, does that  
24          mean that there may have been other markings but you  
25          don't remember?

1 A. I don't remember.

2 Q. You simply don't remember?

3 A. I don't remember.

4 Q. Can you tell us to the best of your recollection how you  
5 went about the task of checking mark Y7?

6 A. I took it off the comparator, checked it under the glass  
7 at my desk then went back on to the comparator to ensure  
8 I had 16.

9 Q. When you took it to your desk, can you describe for the  
10 Chairman, please, how you went about your task?

11 A. I'd have the form and the photograph in front of me at  
12 my desk and I'd apply linear glasses to it, fingerprint  
13 glasses, and used pointers to try and carry out the  
14 examination.

15 Q. So you would have two glasses and pointers?

16 A. Yes.

17 Q. Did you move straight to examining the mark and the  
18 print together or did you do something different from  
19 that?

20 A. I examined the mark and the print together.

21 Q. Should we take it from that that there was no stage when  
22 you looked separately at the mark?

23 A. No, I just looked at the mark and the print together.

24 Q. I see. How did you go about ascertaining that there was  
25 a match between the two as they sat in front of you?

1 A. The same I would do in any comparison. Once I started  
2 finding ridges in sequence and agreement I would then  
3 carry on counting in between ridges and so forth and ...  
4 just like a normal comparison.

5 Q. What was your normal comparison? I know it must seem  
6 very obvious to you but to the rest of us ... I'm going  
7 to ask you a few further questions to try and get a  
8 clearer picture for those of us who don't do that every  
9 day in life as to just how you went about it.

10 How would you start finding ridges in sequence and  
11 agreement with these two items in front of you?

12 A. You'd look for a characteristic, you know -- it's very  
13 difficult to explain how you ... it's just automatic,  
14 start looking, scanning the area, to see, start seeing  
15 if any characteristics start forming and then look for  
16 further characteristics in sequence and agreement. It  
17 would be a case of scanning your eye -- it's hard to  
18 explain. Your eyes will just scan the mark and the  
19 form.

20 Q. I am going to put it a particular way and again if I am  
21 putting it a way that is not natural to you do just tell  
22 me but other witnesses have talked about something that  
23 catch their eye?

24 A. Yes, that's why you would scan the mark and the form to  
25 try and catch an eye.

1 Q. The thing that caught your eye, might that be on the  
2 print or on the mark?

3 A. It could be either.

4 Q. Could be either. I appreciate I am asking you something  
5 very difficult in terms of thinking back all the way to  
6 1997, but when you were dealing with mark Y7, do you  
7 remember what it was that caught your eye?

8 A. No, no.

9 Q. We have also heard the expression from some witnesses  
10 "target group".

11 Is that an expression that means anything to you?

12 A. Some people would maybe use a target group of round a  
13 core or a delta, where there's a series of  
14 characteristics, individual characteristics, and they  
15 maybe use that to start looking for, you know, those  
16 sort of cluster groups again. That's my understanding  
17 of it.

18 Q. Is it something that you would do yourself or --

19 A. I think it's something you do naturally by scanning but  
20 some people maybe put a label on it and call it target  
21 groups.

22 Q. Once you had perhaps found one characteristic that  
23 caught your eye, what would you do after that?

24 A. To find another characteristic in sequence and agreement  
25 with it.

1 Q. How would you continue?

2 A. You then once you start to get 1 characteristic, 2  
3 characteristics, you go for 3, 4, 5 and work your way up  
4 to 16.

5 Q. Should we understand that you are looking from one of  
6 the images to the other, from the mark to the print or  
7 the print to the mark or looking at both at the same  
8 time?

9 A. The same time.

10 Q. You are looking at both at the same time.

11 A. Your head was maybe moving from one to the other but one  
12 eye was on this and one eye was on that one. It's just  
13 you're sitting there with the two glasses concentrating.

14 Q. So your head might move but you are describing having  
15 one eye on one on another?

16 A. You are using two glasses where you have one eye on this  
17 area and one on the mark and you moving from one to the  
18 other and counting and you're going across the other  
19 side and look again to see if that characteristic has  
20 appeared, you know.

21 Q. You are describing counting and you are making a motion  
22 with your hands which I would like to try and understand  
23 and record. Again, tell me if I am wrong but are you  
24 making a motion to indicate how you might be moving a  
25 pointer about?

1 A. I may be exaggerating the motion but the pointer was  
2 there (**indicated**) but you would be moving --

3 Q. I know this is very difficult when you are demonstrating  
4 something to us but we still need to hear what you are  
5 saying.

6 A. What it is you would be moving your arms and your eyes  
7 constantly between the two, the mark and the print, the  
8 ten-print form, looking for these characteristics. It  
9 was just a natural thing you did, you know, over the  
10 years.

11 Q. Something else I would like to ask you about that  
12 process: were you keeping a count as you went along or  
13 did you --

14 A. A mental count, yes. A mental count.

15 Q. Why were you doing that?

16 A. That's just what you did, you know, like 1, 2, 3, that's  
17 5, you'd count the ridges in your head, 5, 6, then you  
18 know it's just a mental count in your head.

19 Q. It's probably the fault of the question. Were you doing  
20 it because you knew you had to get to a particular  
21 number if the mark was going to go to court?

22 A. Yes. I mean, you were seeing how many characteristics  
23 you could find and it was just one of these natural  
24 things that you did as your job.

25 Q. I would like to ask you about paragraph 31 then in your

1 statement where you say that you would have stopped when  
2 you found 16 characteristics in sequence and agreement  
3 because there was no need to go beyond 16.

4 Is that right or would there be occasions when you  
5 would just count on and really see how many you could  
6 get?

7 A. I maybe have done that in the past but really if you  
8 were looking for the 16-point standard then it would be  
9 a wasteful resource of time.

10 Q. So it's really 16 is what you need so you stop, you tend  
11 to stop?

12 A. Yes, but you could probably find -- you could probably  
13 on most marks find a lot more.

14 Q. Did you ever have a situation where you maybe had, I  
15 don't know, take nine points that you found very easily  
16 that jumped out at you as you went back and forward  
17 between the mark and the print and then you had to  
18 perhaps work a lot harder to find the points that took  
19 you up to 16? Could that sometimes happen?

20 A. Of course it could happen, yes.

21 Q. Because there was this standard of 16 which we have  
22 heard from some of the witnesses was really a sort of  
23 arbitrary standard that was in force at the time, did  
24 you ever feel that there was any pressure to get to the  
25 16?

1 A. No.

2 Q. In that situation where you maybe have 9 that seem  
3 pretty obvious but you find yourself working harder for  
4 the other ones?

5 A. I wouldn't put myself under pressure. If I got to 16  
6 I've got 16, but I wouldn't, if you say, get stressed  
7 trying to find 16. If I couldn't find 16; I couldn't  
8 find 16.

9 Q. I think possibly from what you say here at paragraph 31  
10 and what you have told us earlier that by the time you  
11 got to 16 characteristics you would be sure in your own  
12 mind?

13 A. Yes.

14 Q. Do you remember in what part of mark Y7 you found your  
15 16 points when you examined it?

16 A. No. I mean, it wouldn't make much difference in the  
17 enlargement you seen, if any, you know. No.

18 Q. So you think --

19 A. The enlargement you seen would probably more or less  
20 cover the 16 that I found.

21 Q. I think we have heard from other witnesses and seen for  
22 ourselves that the 16 points, I think it came to be 17  
23 ultimately across two productions, are all in the lower  
24 part of mark Y7?

25 A. That is correct, yes.

1 Q. You are familiar with that.

2 Do you remember whether you ever considered at all  
3 the upper part of mark Y7?

4 A. The form I seen didn't disclose that area.

5 Q. Because it has certainly been suggested by some  
6 witnesses who disagree with the view that Y7 is properly  
7 matched with Shirley McKie's left thumb that there are  
8 differences in the upper part of the mark that can't  
9 really be explained away.

10 A. That's their opinion. I can't comment on that.

11 Q. Do you remember whether you noticed any differences,  
12 whether or not in areas that were disclosed by the form  
13 that you actually had --

14 A. No.

15 Q. -- at the time?

16 A. No.

17 Q. Is that, no, you didn't see them or, no, you don't  
18 remember?

19 A. No, I don't remember. I remember getting the 16 on the  
20 area and disclosing I was satisfied with that.

21 Q. In this situation you were the fourth checker --

22 A. That's correct, yes.

23 Q. -- so I suppose you would be aware that 16 points had  
24 been identified by Mr MacPherson and Mr Stewart?

25 A. And Ms McBride, yes.

1 Q. The first two of whom had very many years of experience  
2 at that time. I think we heard from them they had been  
3 working since 1970 so I suppose that would be 27 years  
4 at the time and Ms McBride who certainly had experience  
5 into double figures of years at the time herself.

6 In that situation, where you have three experienced  
7 colleagues who have looked at it before you, would it  
8 always be the case that you would go away and carry out  
9 your own examination separately under glasses?

10 A. Yes.

11 Q. Had it ever happened in your experience -- and, again,  
12 it may be a question that you cannot answer for me --  
13 that a query had been raised by the fourth person  
14 looking at a mark in a situation where there had been  
15 three who had identified?

16 A. There must be occasions that happened in SCRO. It's an  
17 organisation going for 40 years so -- I don't remember  
18 it but I would be very surprised if it didn't happen in  
19 an organisation that's been going for 40 years.

20 Q. Did you ever take any notes when you were carrying out  
21 your comparison of a mark?

22 A. No. No, I did not, no.

23 Q. Do you know if anybody did at all?

24 A. No, I do not know.

25 Q. Can we take it that simply just wasn't part of practice

1 at the time?

2 A. I think maybe -- I don't know of any individual who  
3 would maybe do that. Maybe there was individuals in  
4 SCRO that did that but I didn't.

5 Q. You came to be involved in this case also in the  
6 preparation of all the reports for court, I think?

7 A. That's right, yes.

8 Q. In relation to marks that you had not examined the first  
9 time round, if I can put it that way, what would you do  
10 to satisfy yourself that you were happy, in the first  
11 instance, with the content of the report which I think  
12 we understand was drafted in the first instance  
13 by somebody other than yourself?

14 A. Probably the first witness would draft all together and  
15 put all the books together and then it would be passed  
16 round to experts to check and you would check every mark  
17 in the case before you signing it and passed it on to  
18 the next expert or sent it out to the Procurator  
19 Fiscal's department.

20 Q. You may be aware that the Chairman's also been looking  
21 in this Inquiry at a mark, Q12, that was identified as  
22 coming from the victim in the case, Marion Ross?

23 A. That is correct, yes.

24 Q. Do you remember checking the individualisation for the  
25 purposes of signing the report?

1 A. Yes, I would do that.

2 Q. Do you have any particular recollection of checking mark  
3 QI2?

4 A. No, it would just be part of the full court productions.

5 You would check every mark within those court  
6 productions because you were signing for it. You were  
7 putting your opinion and your signature to that. You  
8 had to sign it. You had to check it carefully.

9 Q. When it came to the enlargements that were prepared --  
10 and, again, I will take the example of this mark, QI2,  
11 that was identified as coming from Miss Ross -- how was  
12 the charting agreed among you and your colleagues?

13 A. It was passed -- just passed around with the court  
14 productions and you checked it to make sure you were  
15 satisfied that the characteristics that were shown for  
16 illustration purposes, you were satisfied with. You  
17 also checked the mark as well against the form.

18 Q. When you got the enlargements to check, would that be  
19 before or after you had checked the mark and print with  
20 your own glasses?

21 A. Probably do it round about the same time because before  
22 the charting PC the enlargements were produced by the  
23 Identification Bureau, okay, and there were photographs  
24 so, therefore you could ... with the charting PC it was  
25 printed off so whether or not -- I can't remember if it

1           was mounted in the book at the time with the rest of the  
2           productions coming round but I would check that as well  
3           as check the individual mark against the form. That's  
4           the only way you could actually relate the form and the  
5           mark to the illustration as well.

6        Q.    Because the joint report itself would generally refer to  
7           the book of photographs, wouldn't it?

8        A.    Yes.

9        Q.    So it might be that we could take it then that when it  
10          comes to you for checking it comes as a package, it  
11          becomes perhaps as the joint report and the photographs  
12          together?

13       A.    Yes.

14       Q.    It might well be that you have seen the charting before  
15          you have done your own checking?

16       A.    Not necessarily. You were checking the marks and the  
17          charting PC or the enlargements were always at the very  
18          last page of the book. So --

19       Q.    We have seen examples, Mr McKenna.

20       A.    I don't think checking ... at the end of the day you  
21          would check the mark and you could relate that mark as  
22          part of the statements, you could relate that mark and  
23          that fingerprint to the charting PC because, at the end  
24          of the day, I mean, even when you checked it under the  
25          glass and you were satisfied it was an identification,

1 even though you checked the enlargement, you are  
2 satisfied the illustration was there, you still had to  
3 relate one to the other.

4 Q. I follow that and I would like to ask you some more  
5 questions about that, Mr McKenna. Should we take it  
6 then that when you are doing your independent check with  
7 the glasses in the way that you've described what you  
8 are doing is actually looking at these to make sure that  
9 what is on the enlargement form is something that you  
10 are happy with?

11 A. I don't really think so. You were satisfying yourself  
12 this was an identification. You were then relating that  
13 to the enlargement which had been produced for the  
14 illustrative guides and you checked the illustrative  
15 guide. So there might be a mark you see that you  
16 checked under the glass which has maybe not been marked  
17 on the enlargement but you were satisfied that both were  
18 the standard for court.

19 Q. What I am curious about is whether you might ever be  
20 doing your own comparison, informed by some extent by  
21 what your colleague had illustrated on the charted  
22 enlargement in the book?

23 A. At the end of the day, you had to satisfy yourself. I  
24 mean, I think what you're trying to say is would I look  
25 at the charting PC, "Oh, that's correct, okay", then not

1 check the mark. No, the mark had to be related -- it's  
2 in the statement -- is related to the enlargement so you  
3 would check the mark and the enlargement. If you  
4 checked the enlargement first and the mark after it  
5 didn't make any difference. You still had to satisfy  
6 yourself there were 16 in both areas.

7 Q. I understand that you are telling us quite clearly that  
8 you would never just look at the enlargements and say,  
9 "Well, that's all right then", and not take it further.

10 A. Yes.

11 Q. But I am wondering if there's possibly --

12 A. There would be an influence.

13 Q. -- an intermediate possibility that one looks at the  
14 enlargement and then one goes and checks the mark and  
15 the print and says, "Well, now do I see point 1 that  
16 Mr MacPherson has put? Well, yes, I do. Do I see  
17 point 2 that he's put on the charted enlargement? Yes,  
18 I do", and be checking it in that sort of way?

19 A. But you would actually do that in reverse as well, after  
20 you checked your mark and you were satisfied then you  
21 looked at the enlargement, you would maybe go back to  
22 the mark to make sure that you could see that on the  
23 enlargement was reflected in the photograph or the  
24 fingerprint form. So it's like a two-way -- I don't  
25 think it would make a difference. It's ...

1 Q. You are describing something that's potentially a  
2 two-way process?

3 A. It could be if go back and look at it, after you have  
4 checked it and checked the enlargement, you may go back  
5 to make sure what's on the enlargement you can relate to  
6 because you are saying I can relate this mark to the  
7 enlargement.

8 Q. Would you always though be looking at the mark and the  
9 print at a stage initially before you looked at the  
10 charted enlargement at all?

11 A. Yes, yes.

12 Q. So it would never be the case that you would open the  
13 enlargement book before you went to your own check?

14 A. No.

15 Q. I think Mr Stewart told us yesterday about a process of  
16 consensus in arriving at chartings of marks and prints  
17 for court. My understanding was that that might involve  
18 perhaps some discussion and people knocking out points  
19 that not -- perhaps eliminating quite quickly from the  
20 charting points that not everybody was happy with and  
21 coming to 16 that everybody was happy with.

22 Do you have any experience of that happening?

23 A. Yes. You may put a characteristic in it and somebody  
24 else maybe felt, well, although I see that one I prefer  
25 maybe if you mark that because there is a stronger --

1 not stronger characteristic but ... you came to an  
2 agreement because the marks have more than 16 and people  
3 agreed -- there are usually more than 16 and every  
4 individual would arrive at their own 16 but when it came  
5 to an enlargement you had to satisfy yourself and as  
6 long as you were satisfied of that 16 then you could  
7 call it a consensus.

8 Q. I am asking you this because I am understanding the  
9 process that you have just described as being one of the  
10 report and a prepared charting in a book being passed on  
11 to you to check rather than a process where perhaps you  
12 and your three colleagues all stand round the charting  
13 machine --

14 A. No.

15 Q. -- to make sure you are all happy with the points and I  
16 would like to be clear about just how it was that an  
17 agreed charting would come about.

18 A. When you received the book, you may then stand round the  
19 charting PC and have a debate and --

20 Q. Sorry, I'm losing what you're saying and I think the  
21 stenographer might be as well.

22 A. Because the charting PC, it was a computer, a very basic  
23 thing if you were not -- if somebody was not satisfied  
24 you could go back and maybe go back to the charting --  
25 so you bring it back up and say you prefer that mark

1           there so may be move it down a bit and print it off  
2           again. That could happen but, as I say, you usually had  
3           a consensus but it's very ... I mean, most things you  
4           were ... well, you checked it and if you were happy you  
5           were happy.

6        Q.    So normally you would get a book, you would check it and  
7           you would be happy but sometimes you might go back and  
8           suggest that the charting provided should be something  
9           different?

10     A.    If you were of that opinion, somebody could, that  
11         possibility could arise.

12     Q.    Should we take it then there was no initial meeting  
13         between the four of you where you all sit down and  
14         thrash out which 16 points should go on the machine?

15     A.    No.

16     THE CHAIRMAN:  If I could interrupt you again, I am just not  
17         sure of the order of things and maybe I've missed that.  
18         You were given this mark to look at to check and you  
19         find 16 points and you are satisfied. It is only if the  
20         case is going to go to court that you would be asked to  
21         agree the enlargements.

22     A.    If that was a mark that was required for enlargement  
23         because some cases maybe had more than one mark  
24         identified for an accused and what was then done was the  
25         best mark was taken for an enlargement for illustrative

1 purposes.

2 THE CHAIRMAN: Yes, but the timing of it is just what I want

3 to get clear. You have looked at it today --

4 A. And it could be a year's time before you go to court.

5 THE CHAIRMAN: When will you see the enlargements?

6 A. Whenever the court request came in to prepare the

7 evidence.

8 THE CHAIRMAN: Then you have got to go back to it again on a

9 second visit to see whether the 16 points in the

10 enlargement agree with the 16 that you saw on your first

11 examination?

12 A. That is correct because you are then signing the book

13 that's saying this relates to that because it's just a

14 process of evidence.

15 THE CHAIRMAN: You have no notes of your first

16 examination --

17 A. No.

18 THE CHAIRMAN: -- so you have actually got to start again

19 looking at your 16 points. You might remember some of

20 them, but you've got to plot them again.

21 A. Yes, under the glass and start making sure you're still

22 satisfied that that's the case. I mean, a lot of the

23 information was recorded on the front of the envelope

24 but you didn't actually have any personal note to say

25 what characteristics -- well, I didn't have a note of

1 characteristics I'd seen originally but I would probably  
2 go back and check it again.

3 THE CHAIRMAN: So that by the time that you have agreed the  
4 enlargement, you have actually plotted it twice.

5 A. That's a possibility, yes. Well, it would be the case,  
6 yes.

7 THE CHAIRMAN: It sounds more than a possibility. That's  
8 the way it would happen.

9 A. Yes.

10 THE CHAIRMAN: Thank you.

11 MISS CARMICHAEL: Thank you, sir.

12 I have been asking you both in general terms but  
13 about your involvement with Q12 which was a mark you had  
14 not identified the first time round and I would like to  
15 move on in time to the time when a fresh report was  
16 prepared for the proceedings against Ms McKie in about  
17 January 1999. That was a production that was prepared  
18 under reference to arrest prints that had been taken in  
19 about March 1998. Is that something you remember being  
20 involved with?

21 A. No, no.

22 Q. Are you able to tell us in general terms what you would  
23 do in that situation where you were dealing with a mark  
24 that you had identified before, that you prepared a  
25 report on before but in which or rather you had signed a

1 report before but where a further report was being  
2 prepared in relation to a new set of prints? What would  
3 your role be? What would you do?

4 A. If I was asked to prepare that for court, I would  
5 examine the mark against the current set of prints.

6 Q. Do you have any recollection of doing that?

7 A. I would have -- yes. Well, I would have done it because  
8 I've signed the court production for that. So therefore  
9 I would have compared the new prints against the mark  
10 Y7.

11 Q. We have heard that the image that was selected by you of  
12 Ms McKie's known print for that report was a rolled  
13 print rather than a plain print. I am wondering if you  
14 have any recollection as to whether the use of that  
15 rolled image, which presumably would contain more  
16 information, made any difference to your approach or  
17 enabled you to see any parts of the mark you hadn't seen  
18 previously?

19 A. No, I can't remember that.

20 Q. I think you were asked when you were giving your  
21 statement about the use of case envelopes and I wonder  
22 if you could look, please, at DB0529. I wonder if we  
23 could also look, please, at page 13 of your statement,  
24 paragraph 72. This is really simply to clarify  
25 paragraph 72 because what you say there is that there

1 are five signatures on the case envelope. I think we  
2 can see that.

3 You say that you have no idea why Eddie Bruce has  
4 signed as well. What is perhaps confusing for me at  
5 least about that is that my understanding is that the  
6 signatures there are Mr MacPherson's, Mr Stewart's,  
7 Mr Geddes's, your own and, slightly hidden by the  
8 sellotape, Ms McBride's and I was wondering perhaps  
9 whether there might be a "not" missing or whether you  
10 interpret one of the signatures differently?

11 A. Sorry, I don't understand the question.

12 Q. Our understanding thus far has been that Mr Bruce did  
13 not in fact sign this envelope and that it has been  
14 signed by other colleagues (Mr Stewart, Mr MacPherson,  
15 Ms McBride and Mr Geddes) and, for that reason, I  
16 wondered if in fact what we are missing from your  
17 sentence there is a "not"?

18 A. This was done in February but I don't understand. I  
19 mean, maybe that's what the case was but you must  
20 remember that was the first time I'd seen that and I  
21 didn't realise that I'd actually signed this envelope on  
22 that day.

23 Q. I am not criticising you in any way but --

24 A. But, as I say, I know you're saying why is this saying  
25 that Mr Bruce has signed it as well. I mean --

1 Q. It may be simply that statement-taker has not put in a  
2 "not" --

3 A. Maybe that is the case, yes.

4 Q. -- and missed it in the revision process and it may be  
5 something as simple as that and I am really just trying  
6 to clarify that.

7 A. As I said, I don't see Mr Bruce's signature on it --

8 Q. That's fine. I think that's all I really wanted to  
9 check with you there, Mr McKenna. It is not a trick  
10 question in any shape or form.

11 I think you were also asked when you gave your  
12 statement -- and at this point I should refer you to  
13 pages 17 to 18 and paragraph 104 -- about a report dated  
14 27th March 1997. If we can have up the next pages as  
15 well on the right-hand side, we can take down the case  
16 envelope.

17 You were being asked about a report of 27th  
18 March 1997 which had a particular paragraph in it about  
19 the location and orientation of mark Y7. In your  
20 statement you say:

21 "This is not standard text. I do not know why it  
22 was put in. I presume that it was at the direction of  
23 the Procurator Fiscal's Office."

24 Do you have any recollection as to whether it was at  
25 the direction of the Procurator Fiscal's Office?

1 A. No, I do not remember.

2 Q. Is there any particular reason for thinking it was at  
3 the direction of the Procurator Fiscal's Office?

4 A. Not really, no, but you usually find that your directive  
5 came -- well, I don't know why it was put in and that's  
6 it, you know.

7 Q. If that is the simple answer, that is the simple answer,  
8 Mr McKenna.

9 I would like to ask you a little bit more about  
10 enlargements for court and using the charting machine,  
11 which you have already mentioned in your evidence. I  
12 would like to take you back in your statement to page 4.  
13 What you tell us at paragraph 22 is that the charting  
14 enlargement machine was difficult to use and wasn't  
15 user-friendly. I wondered if you could explain to the  
16 Chairman just what you mean by that?

17 A. You had to capture -- I think it was a new machine and  
18 it was very expensive and you had to capture the mark  
19 first or was it the photograph of the mark first, then  
20 save that and then capture the fingerprint form, the  
21 fingerprint from the form, try and capture that to put  
22 it together. It was just a very cumbersome sort of  
23 process and it's not like modern computers where you  
24 could actually highlight this and just flick it up.  
25 This thing you captured it and you had to wait for about

1 ten -- well, nearly ten minutes.

2 Q. I am losing some of your voice again.

3 A. You'd have to capture the mark or the ... I can't

4 remember whether you capture the mark or the fingerprint

5 form first, and then you'd have to wait for a wee while

6 until the machine sort of then brought up the image and

7 you had to examine it make sure you were satisfied with

8 the square around it where the crop -- they called it

9 cropping round it and if it wasn't you had to start

10 again.

11 So it was a very -- it was no like this just now you

12 can actually flick on to it and just highlight. This

13 thing took quite a long time to produce the image.

14 Q. So it was a slow system?

15 A. Slow system, cumbersome and you're not -- just very,

16 very slow. A very slow system.

17 Q. What about the quality of the images that you got when

18 you were using that system to produce enlargements?

19 What was that like?

20 A. It varied, you know, depending on the mark. If the mark

21 was of poor quality, then that would come off again as a

22 poor quality. If the fingerprint form was of poor

23 quality, once you captured it and it was printed off

24 side-by-side, again that would be a poor quality. It's

25 the old adage if you put rubbish in, you get rubbish out

1 sort of thing. So it was a very cumbersome machine and  
2 very, very basic. Although it was probably innovative  
3 at the time, it was very, very basic.

4 Q. When you say -- it's the old story, you put rubbish in,  
5 you get rubbish out.

6 A. You get rubbish out.

7 Q. Did the use of the charting machine make poor quality  
8 prints worse or did it --

9 A. You tried your best to produce it but it nobody was  
10 happy with it. It's not as if it would change anything.  
11 It's not as if the machine would do anything to the mark  
12 it just produced what the best you could get out of it  
13 and most people were very dissatisfied with it.

14 Q. Thinking about it this way: if one has even a mark that  
15 might be poor quality, in the sense of having things  
16 about that it made it difficult to examine, one would  
17 still get a better image of it by scanning it with very  
18 good machinery at a high resolution than with poor  
19 machinery at a low resolution. Would that be fair?

20 A. Yes, but if you look at computers now, they've come on  
21 in the last ten years. I mean, most people have got a  
22 computer and a great printer at home. This was a new  
23 machine, very expensive, probably the first time it had  
24 been tested so, therefore ... as I said, you got what  
25 you got out of it.

1 Q. If I can put it this way then, perhaps: when you were  
2 getting your enlargements from the machine, were they  
3 worse than you would have expected if you were getting  
4 the same image enlarged just by a photographic process?

5 A. I'd say you were, yes.

6 Q. What about the process of plotting your points using the  
7 charting machine? How did you find that?

8 A. Cumbersome.

9 Q. What was cumbersome about it?

10 A. I mean, as you know, you can highlight on -- if I  
11 remember rightly, you had to drag your point across or,  
12 as you know, yourself sometimes when ... it was  
13 cumbersome. My memory of it is so far back in the  
14 distance the actually processes of it are very, very  
15 unclear but I just remember it was very, very cumbersome  
16 and slow and difficult to use.

17 Q. You have described the process of dragging. Should we  
18 understand you to be motioning as if you were using a  
19 computer mouse?

20 A. Yes, that sort of type thing. It was very cumbersome.

21 Q. We heard from Mr Stewart yesterday that one of the  
22 problems he experienced was that you might feel that you  
23 had your mouse at just the right place to plot your  
24 point, then something would jump or move and you would  
25 find you'd plotted it just not exactly where you wanted

1 to.

2 How does that accord with your recollection?

3 A. That could happen, yes.

4 Q. Thinking to the enlargements that were used in relation  
5 to Y7, either the production for Mr Asbury's trial or  
6 the production specially for Ms McKie's trial, can you  
7 recall if you had any concern about whether -- perhaps  
8 because of that sort of process -- I am not suggesting  
9 anything improper -- but because the mouse had slipped  
10 there were points that were charted with less exactness  
11 than you would have wished?

12 A. No.

13 Q. You had no concerns about that at all?

14 A. No concerns. We examined it and were satisfied.

15 Q. From your point of view as a Fingerprint Examiner who  
16 might go on to give evidence in court in any case where  
17 there are enlargements prepared, what was the purpose of  
18 the charted enlargement?

19 A. An illustrative guide for the jury.

20 Q. An illustrative guide to what, Mr McKenna?

21 A. What an enlargement was, what a fingerprint  
22 identification was, how it came about, you put the  
23 points.

24 Q. We have heard some witnesses say, perhaps, that it is a  
25 guide to the process of how you go about identifying a

1 fingerprint but we have also heard perhaps differing  
2 views about whether it should really be intended as a  
3 guide for the jury as to the actual 16 points that you  
4 are relying on in making the identification. I am just  
5 wondering if you can tell us where you stand on that.

6 A. Would that be for generic or actual ... is that the  
7 question?

8 Q. No, it's the fault of my question. I understand this  
9 does not happen now but thinking to the time when you  
10 did have these charted enlargements with the 16 points  
11 and you needed the 16 points, generally, for a mark to  
12 get to court, thinking back to that time, was the  
13 purpose of the enlargement, from your point of view,  
14 just to show the jury how you, as an examiner, went  
15 about your job in general terms or was it supposed to be  
16 used so that you could show the jury what points you  
17 were relying on in making the identification?

18 A. Well, actually, personally, it was just your first  
19 option, for the simple reason that a lot of the cases  
20 you did do had more than one mark so if that was the  
21 case you would be producing enlargements for every mark  
22 so it was really a guide to see this is how an  
23 identification is made rather than, as you say, to make  
24 your own mind up on it, you know, because if you have a  
25 case where maybe 15 marks had been identified and if you

1 take the process you are trying to show the jury how  
2 your identifications were made, you would be then trying  
3 to produce 15 enlargements. So really it's just an  
4 illustrative guide to how identification -- you know,  
5 the first option you said.

6 Q. Do you think an ordinary member of the public, like a  
7 juror, who comes into court should be able to be shown  
8 by somebody like yourself, a Fingerprint Examiner, any  
9 feature that you have been able to observe in the mark?

10 A. I don't think that would be up to me. I know you are  
11 saying should I be standing there explaining all this.  
12 If it was required of me, yes, I would do it but if it's  
13 not required of me, no, I wouldn't do it. If you  
14 understand I don't think it's really part of my remit in  
15 a court to start saying, this is -- my evidence is to  
16 stand there and give my evidence what my findings are  
17 and here's an illustrative guide to how we go about  
18 getting our findings but to actually say to the jury, "I  
19 want you to look at mark number 1, mark number 2", I  
20 don't think ... I don't think a jury would get that.  
21 Well, that's a generalisation but you just don't know.

22 Q. Obviously, we all understand that you were not actually  
23 involved in Ms McKie's trial but we do know that what  
24 happened was that some of your colleagues did have to go  
25 to court and I think Mr Stewart, in particular, was

1 taken round the clockface of these marks and prints  
2 through from 1 to 16 on two different images. In that  
3 situation he was being asked, I suppose, to show the  
4 jury what he saw.

5 Is that something that you think is just something  
6 that jurors wouldn't get, if I can put it that way?

7 A. I couldn't second-guess juror's. Some jurors might get  
8 that, some jurors might not. I mean, you're asking me  
9 to put an opinion in of somebody else's mind, which I  
10 couldn't do.

11 Q. Of course not and, again, I probably asked the wrong  
12 question there, Mr McKenna.

13 If we think about a situation perhaps where a  
14 Fingerprint Examiner might be asked to stand up and  
15 explain to the jury the various points, perhaps as in  
16 this case, which is obviously relatively unusual in the  
17 case of a dispute of some kind, if you had a situation  
18 where there was something that, I suppose, to the lay  
19 eye, looked like a straight black line not joined on to  
20 anything else and you, as a Fingerprint Examiner, come  
21 along and tell them, "Well, actually it joins on to  
22 something else in this mark and it's actually a  
23 bifurcation", why should the juror not just accept the  
24 evidence of his or her own eyes and take that step of  
25 seeing something, I suppose, that you can see and that

1           you are telling them about but maybe they cannot see for  
2           themselves? Why should they do that?

3       A.    Well, I think they should. A jury should be independent  
4           and make their own mind up. The jury is an independent  
5           jury you're right, why should they? It's up to them to  
6           go away and discuss the evidence and then come back with  
7           their own findings. It's nothing to do with me.

8       Q.    So can I take it from that that you would accept that it  
9           is a legitimate thing for you to be asked to explain and  
10          justify to a jury why you have taken the view that you  
11          have about any of the points that you have identified in  
12          a mark and a print?

13      A.    Uh-huh.

14      Q.    You wouldn't expect the jury, simply because you are  
15          the, I suppose, the expert witness, to take your word  
16          for it. They can go away and form their own  
17          conclusions?

18      A.    That's the reason for a jury.

19      Q.    If I can take paragraph 22 down and ask you a little bit  
20          particularly about paragraph 21 here, you explain that  
21          there had been discussions about getting rid of charted  
22          enlargements and moving to generic enlargements. You  
23          say that is something that SCRO wanted.

24                 Can you tell us why they wanted it?

25      A.    It be probably easier if you had a generic enlargement.

1 It would save resource management for experts to go away  
2 and have to produce enlargements and if you did a  
3 standard enlargement then you could have it for every  
4 case and it would make business sense, you know, in a  
5 sense. It would just be better resource management.

6 Q. You say "probably" there. Is that because you are  
7 speculating what the reason for wanting rid of them was  
8 or do you know that's why SCRO wanted to do away with  
9 them?

10 A. I don't know why. When you say SCRO, do you mean SCRO  
11 as a corporate identity or SCRO as the experts within  
12 it?

13 Q. I think you will have to tell me because the reason I am  
14 asking you is because you have said this is something  
15 SCRO wanted.

16 A. Personally, I think it was -- when I made that statement  
17 I was talking about SCRO as the experts rather than ...

18 Q. So you were talking about your individual colleagues --

19 A. Well, my personal opinion as well.

20 Q. So why was it that you and your individual colleagues  
21 that you worked with wanted generic enlargements instead  
22 of case-specific ones?

23 A. As I said, for resource management purposes. It would  
24 be a lot easier if you had a standard generic  
25 enlargement which you could produce and to show as an

1 illustrative guide the thing we have done, then it would  
2 save time sitting at a charting PC. You could resource  
3 that time into doing more examinations.

4 Q. What would happen then if you did have the difficult  
5 case where you are asked to explain and to show to a  
6 jury just what your findings are in the particular case?

7 What would happen then if you only had the generic  
8 enlargement?

9 A. Well, if they were going to be addressing that, it would  
10 be up to the Procurator Fiscal to come back and ask us  
11 could we, in this case, produce enlargements of the mark  
12 and the fingerprint for this case, as I say, but it was  
13 a thought that generic enlargements would be a good  
14 thing.

15 Q. Do you know why it was that the Strathclyde Procurator  
16 Fiscals who you mentioned wanted to keep the charted  
17 enlargements?

18 A. That's a question you would have to ask them.

19 Q. But you don't know?

20 A. I don't know.

21 Q. Where did you get the information from that other  
22 Procurator Fiscals were content to dispense with  
23 individual enlargements for cases?

24 A. I think some other bureaux in Scotland. You would have  
25 to check with them that they didn't produce enlargements

1 for solemn, sheriff and jury or solemn cases because it  
2 was only sheriff and jury in solemn procedures that we  
3 produced enlargements. Sheriff summaries and district  
4 courts did not need enlargements. So that was a sort of  
5 break in continuity.

6 Q. When you say other bureaux did not produce them, was  
7 that they never produced them or they may have only  
8 produced them when they were requested to?

9 A. I don't know when they stopped or if they did stop.  
10 It's my understanding. I could be wrong but ...

11 Q. Again, as I have said, we all appreciate you didn't give  
12 evidence in the case against Ms McKie but I think you  
13 were originally cited to give evidence along with your  
14 three colleagues; is that right?

15 A. That is correct, yes.

16 Q. When did you first learn that there was a dispute about  
17 the identification of the mark?

18 A. My recollection is after the case.

19 Q. I would like to ask you a bit more about that and to  
20 refer you to pages 20 and 21 of your statement. At  
21 paragraph 122, you say that at some point before the  
22 trial Chief Inspector Ian Hogg of the Identification  
23 Bureau spoke to yourself and your three colleagues and  
24 that he had found out that a Mr Wertheim was involved as  
25 a defence expert and that was the first you had heard of

1 Mr Wertheim.

2 At this stage, what did you understand Mr Wertheim's  
3 position to be about Y7?

4 A. I didn't know anything about Mr Wertheim's position.

5 Q. What exactly is it that you say that happened at this  
6 meeting?

7 A. This meeting took place in the Chief Inspector's office  
8 at SCRO. It lasted two minutes. Chief Inspector Ian  
9 Hogg came in and said that experts who are going to give  
10 evidence are a Mr Pat Wertheim and a Mr David Grieve and  
11 it was shortly before the trial, very shortly before the  
12 trial started, if not after the trial started, but going  
13 back I just remember the meeting but the actual time of  
14 the meeting, it wasn't weeks or months before the trial.  
15 It was a very short time and that's all he said.

16 Q. I am trying to clarify just exactly where this meeting  
17 did fit in because -- I appreciate it may be difficult  
18 for you but if I can perhaps put some further questions  
19 to you, we have heard about your colleagues,  
20 Mr MacPherson and Mr Stewart, meeting with the Advocate  
21 Depute, Mr Murphy, shortly before the trial and seeing a  
22 defence production.

23 Do you remember them at any point coming back to the  
24 office and telling you about that?

25 A. No.

1 Q. Do you remember at all having any knowledge of them  
2 having met with Mr Murphy?

3 A. No.

4 Q. So I take it -- well, it follows from that perhaps that  
5 you wouldn't be able to say whether the meeting with  
6 Mr Hogg took place before or after --

7 A. No.

8 Q. -- any discussion at that time?

9 A. No, as I say, it was very close to the trial. I was  
10 actually cited very late on. I wasn't cited originally.  
11 I was cited a week before the trial started.

12 Q. Do you remember if the meeting was after you had been  
13 cited?

14 A. Yes, I think it was after I had been cited because  
15 that's why I was involved in the meeting. As I said, it  
16 wasn't a big meeting. It was two minutes and they left.  
17 He just imparted that information about who the  
18 witnesses were and that was the first time I'd heard the  
19 name Pat Wertheim or David Grieve.

20 Q. At the time of the meeting, what did you understand  
21 Ms McKie's defence to the charges against her would be?

22 A. I don't know. I didn't have any information.

23 Q. Were you at any stage aware that there might have been  
24 an allegation that the mark had been planted or  
25 fabricated or something of that sort?

1 A. I don't remember that, anything like that.

2 Q. I would like you to try to give the Chairman your best  
3 recollection of when it was that you first became aware  
4 that there was a dispute about the identification of the  
5 mark?

6 A. After the case started I had to go for an operation and  
7 I was off for what was the best part of two months and  
8 it was during that recovery period I remember seeing in  
9 the paper that Ms McKie had been acquitted and it was  
10 based on the fingerprint evidence and that's my  
11 recollection of it. Prior to that I've no ...

12 Q. If we go back to, say, the week before the trial and  
13 even maybe the first part of the trial, you were in the  
14 expectation that you might have to give evidence; would  
15 that be right?

16 A. Yes.

17 Q. Because you had been cited?

18 A. Yes.

19 Q. We have heard that Mr MacPherson and Mr Stewart were  
20 made aware prior to the trial that there was going to be  
21 an argument about the identification of the mark.

22 What I am trying to understand is why it would be  
23 that they might not perhaps come back to you and say,  
24 "Look, something rather unusual is happening here.  
25 We're going to have a challenge in a way that we have

1 not had a challenge previously. We have seen that the  
2 defence have lodged a production here", why they  
3 wouldn't perhaps tell you about that and give you some  
4 forewarning about it on the basis that you might give  
5 evidence?

6 A. Because I might have been off having the operation.  
7 That's what I'm trying to remember, if we could  
8 establish a time that that meeting took place and the  
9 time my operation took place there might be a  
10 possibility I wasn't at attendance in the office.

11 Q. If you just give me a moment here, we can perhaps check  
12 the detail.

13 THE CHAIRMAN: I see we are very near the break so we might  
14 stop. We will sit again just after 11.50.

15 **(11.33 am)**

16 **(A short break)**

17 **(11.52 am)**

18 MISS CARMICHAEL: Before the break, Mr McKenna, you were  
19 telling us that you had been signed off from work from  
20 2nd May.

21 A. No.

22 Q. Sorry, I misunderstood. Thinking back to the time of  
23 Ms McKie's trial, and I am looking at page 21,  
24 paragraph 124 of your statement, what you say is that  
25 you didn't give evidence at the trial. You say you were

1 absent from work from 2nd May to July 1998 though I'd  
2 rather taken that to be a misprint for 1999?

3 A. It must have been but, as I said, I can't remember the  
4 date of my operation. I remember the case started and  
5 shortly after the case started I was taken in for  
6 surgery and was off for two month.

7 Q. Is there any reason why you would have given the wrong  
8 date in your statement?

9 A. I don't remember saying 4th May (**sic**).

10 Q. You don't remember saying 2nd May?

11 A. No.

12 Q. Would I be right in thinking that would have been sent a  
13 statement for revision before you signed it and that you  
14 have gone through it with your solicitors before you did  
15 sign it?

16 A. I remember signing the statement but I don't actually  
17 remember the date of 4th May (**sic**). I can't remember  
18 the actual date of my operation.

19 Q. We can take it from what you say that it was after the  
20 trial started?

21 A. Yes, shortly after the trial started, yes.

22 Q. I think I can tell you that the trial started on 21st  
23 April. If your operation was round about May time --

24 A. Yes.

25 Q. -- the trial would have had a start of at least a week

1 before we got into May. Would that be fair to say?

2 A. Yes, but as I say I can't remember exactly the date of  
3 my operation.

4 Q. I am curious how the date of 2nd May came to be in your  
5 statement.

6 A. I'm sorry about that, yes. I didn't remember that, but  
7 I don't actually remember the actual date of my  
8 operation.

9 Q. Do you remember what month it was?

10 A. It could have been April; it could have been May, but it  
11 was shortly just after that, sort of thing.

12 Q. You were still around to be cited about the week before  
13 the trial.

14 A. Yes, that was it, yes.

15 Q. Were you at work at the beginning of the trial?

16 A. I can't remember.

17 Q. Were you at work when your colleague, Mr MacPherson,  
18 started to give evidence?

19 A. I wouldn't know. Probably not.

20 Q. Do we understand it to be your position in any event --  
21 and it may be that we can check just exactly what the  
22 date was your operation was or if you can check that for  
23 us --

24 A. Yes.

25 Q. -- but do I understand it to be your position that at no

1 time did anybody come back to the office, and by that I  
2 mean Mr MacPherson or Mr Stewart, and say, "Look,  
3 something rather unusual is happening here. We've  
4 spoken to the Advocate Depute in the case and he tells  
5 us there's going to be a challenge to our identification  
6 evidence"?

7 A. I don't remember anything like that, no.

8 Q. Nobody said to you, "Well, you know, there's a defence  
9 production that if you are giving evidence you had  
10 better have a look at"?

11 A. No.

12 Q. We have heard from Mr Stewart and Mr MacPherson that the  
13 first mention of Mr Wertheim may have come from  
14 Mr Murphy rather than from Mr Hogg.

15 I wonder if you have any comment on that?

16 A. No, I don't have any comment on that at all.

17 Q. Do you remember in relation to the meeting that you  
18 describe in your statement whether Mr Hogg said anything  
19 to you other than simply that Mr Wertheim and Mr Grieve  
20 were involved?

21 A. That was all he said, the name of the experts and that  
22 was it.

23 Q. Did you get the impression that he was expecting some  
24 action from you or your colleagues because of what he  
25 had told you?

1 A. No.

2 Q. Why was he telling you?

3 A. That's a question you would maybe ask Mr Hogg.

4 THE CHAIRMAN: It must have been before the beginning of the  
5 trial because if Mr MacPherson went down with Mr Stewart  
6 to see the Advocate Depute, there would have been little  
7 point in telling him that Mr Wertheim was giving  
8 evidence because he knew that. So it must have been  
9 slightly before that.

10 A. As I say, I cannot be certain, my Lord.

11 THE CHAIRMAN: Or it may be the same day.

12 A. I cannot be certain, my Lord.

13 THE CHAIRMAN: But certainly before the trial began.

14 A. I think it would be.

15 MISS CARMICHAEL: Just following on from that if I may, sir,  
16 you don't recall any reaction from your colleagues along  
17 the lines of, "Well, thank you, Mr Hogg, but actually  
18 we've already heard that from Mr Murphy", or anything of  
19 that sort?

20 A. No, that's all I can remember of the meeting, just the  
21 names.

22 Q. Did you at some stage become aware that a Mr Swann had  
23 examined Y7 and Shirley McKie's fingerprint?

24 A. When did I become aware of Mr Swann?

25 Q. Yes, if you did become aware of it, when did you become



1 don't know.

2 Q. What one might think reasonably, that the fact, the  
3 simple fact, there were going to be defence fingerprint  
4 experts, especially a name you hadn't heard before, is  
5 something that would be the talk of the shop. Is that  
6 not a fair assumption to make?

7 A. No, because, as I say, we just heard there was defence  
8 experts but what they were going to speak about I didn't  
9 know.

10 Q. I understand you say you didn't know, but what I am  
11 interested in is why you weren't at least curious. Can  
12 you help us with that?

13 A. No, I'm sorry, I don't know why I wasn't curious.

14 Q. Is there any possibility whatsoever that it was being  
15 discussed but it maybe bypassed you for some reason?

16 A. That's a difficult question to answer, did you know  
17 something you didn't know? If you understand the  
18 answer.

19 Q. With respect, the reason I ask you is you might have  
20 discovered subsequently that it was being discussed?

21 A. No, not that know of. I have no knowledge of that at  
22 all, no.

23 Q. Equally, you knew that there was a risk that you might  
24 be, if you were fit to do so, might be cited as a  
25 witness to go to the trial?

1 A. I was cited to go to the trial but I had a solemn  
2 conscience because of the operation.

3 Q. I understand that but what was it you thought you would  
4 have to be doing in the trial? You would have to be  
5 answering questions of some kind?

6 A. Answering questions on the evidence in my joint report.

7 Q. It did not cross your mind in case you had to give  
8 evidence, you were actually asked to come to court, to  
9 know what the defence position was? It just didn't  
10 occur to you?

11 A. It didn't occur to me to.

12 MR SMITH: Thank you very much.

13 THE CHAIRMAN: Miss Grahame, I have looked at your notice  
14 and I think most matters seem to have been covered  
15 but --

16 MISS GRAHAME: That is correct. We were advised that those  
17 matters would be covered and we are content with that  
18 but there is one issue that has arisen today in evidence  
19 that relates to the situation prior to the trial, the  
20 citation and Mr --

21 THE CHAIRMAN: Yes, well I notice one aspect of that has not  
22 been covered so certainly I give you leave to ask that.

23 **Cross-examined by MISS GRAHAME**

24 Q. Mr McKenna, I understand from other evidence that we  
25 have heard that there would be the four people who would

1 sign the joint report; that's correct, isn't it?

2 A. Yes.

3 Q. The normal position was, as I understand it, that two of  
4 the signatories would be called to give evidence, if  
5 required, at the trial and the other two would be there  
6 as effectively substitutes in the event of annual leave?

7 A. That is correct, yes.

8 Q. So it would be normal for the two main signatories to be  
9 cited to give evidence at the trial?

10 A. That is correct, yes.

11 Q. So it was not common for all four experts to be cited  
12 prior to a trial?

13 A. I think that's question you would have to ask Sheriff  
14 Murphy.

15 Q. But, as far as you know, normally there would be two  
16 signatories who would go to court and give evidence to  
17 the joint report and two people who were the substitutes  
18 who would not?

19 A. That is correct, yes.

20 Q. Had you ever, in your experience prior to the McKie  
21 trial, heard of the Crown citing all four of the experts  
22 and requesting that all four give evidence to the joint  
23 report?

24 A. Not to my knowledge, no.

25 Q. So that was an unusual situation?

1 A. If it is unusual --

2 Q. You had never come across it before?

3 A. -- I'd never heard of it, sort of thing.

4 Q. But you have told us that you were cited at the very

5 last minute before the trial?

6 A. That is correct, yes.

7 Q. Was Ms McBride also cited at the very last minute?

8 A. That's a question to ask Ms McBride.

9 Q. You have no knowledge?

10 A. I don't know when Ms McBride was cited.

11 Q. Were you surprised to be cited?

12 A. At a late stage, yes -- the lateness of the citation, it

13 did surprise me.

14 Q. At that time, were you aware why the Crown were citing

15 more than simply two experts to speak to the joint

16 report?

17 A. No.

18 Q. You weren't curious about that?

19 A. If you're cited for the court, you're cited for the

20 court.

21 Q. We have heard evidence that Mr Stewart attempted, after

22 meeting with the Advocate Depute, that he attempted to

23 speak to Mr Mackenzie and he wasn't available and he

24 then spoke to another line manager, if you like, another

25 boss, a Mr Gorman?

1 A. I think, is it Brian Gorman?

2 Q. We have also heard from yourself that Chief Inspector

3 Hogg spoke to you about the matter, about the McKie

4 trial?

5 A. Yes, a quick two minute meeting, just to say what the

6 names were.

7 Q. He was the head of the Identification Bureau?

8 A. That's correct, yes.

9 Q. So he wasn't part of SCRO. He was not your boss?

10 A. No.

11 Q. He called all four experts into his room before the

12 trial?

13 A. No, he came into the office and we went into the Chief

14 Inspector's room in SCRO. As to who was actually in the

15 meeting, I thought -- well, my colleagues were there but

16 12 years ago. I remember I being there and all he said

17 was the two names of the experts and that was basically

18 it, what the meeting was about.

19 Q. So Chief Inspector Hogg actually came to SCRO?

20 A. Yes, but it's not a far distance. It's only across a

21 corridor.

22 Q. But he came to SCRO --

23 A. SCRO.

24 Q. -- and went into the Chief Inspector's office, the head

25 of SCRO?

1 A. I don't think the Chief Inspector was there but that's  
2 where we ended up to talk.

3 Q. So you went into the Chief Inspector's office?

4 A. Yes.

5 Q. And all four of you went in?

6 A. As I said, my recollection, I was there. As to who else  
7 was there, I thought my all three colleagues were there  
8 but I could be wrong.

9 Q. So you were there with Chief Inspector Hogg?

10 A. Yes.

11 Q. Had you been cited by that time?

12 A. I think I had been, yes.

13 Q. So it's at a very late stage before the trial starts,  
14 you are cited and then at some point after that Chief  
15 Inspector Hogg calls you into the Chief Inspector's  
16 office?

17 A. He didn't call me in. He just arrived and asked if he  
18 could speak to us. It wasn't a case he was demanding a  
19 meeting. He just come in and explained, you know, the  
20 names of the experts.

21 Q. When you say he asked to speak to us do you mean --

22 A. Well, I say us. He just came in and -- there was  
23 no ... it was just an **ad hoc** meeting. There was  
24 nothing ...

25 Q. Do you remember now if Fiona McBride was there?

1 A. You'd have to ask Fiona. My memory is I was there but  
2 you'd have to ask the people if they were there.

3 Q. I didn't quite catch that?

4 A. What I said is at that time you would probably have to  
5 ask Ms McBride if she was at the meeting, you know. I  
6 just remember I was there.

7 Q. What is your recollection?

8 A. In my recollection I thought all four of us were there  
9 but I could be wrong.

10 Q. But that is your recollection?

11 A. Yes.

12 Q. That all four were there --

13 A. Well, my --

14 Q. -- with Chief Inspector Hogg?

15 A. Yes.

16 Q. That wasn't an everyday occurrence?

17 A. No.

18 Q. You have said that you were just given the names of  
19 Mr Wertheim and Mr Grieve as witnesses?

20 A. That is correct, yes.

21 Q. And no other information was given?

22 A. No.

23 Q. There would be no need to call, there would be no need  
24 to have a meeting with all four experts with Chief  
25 Inspector Hogg, just to give you the names of potential

1 defence witnesses.

2 A. Sorry, I don't understand the question. You mean it  
3 could have been related to one person and passed on? Is  
4 that what you're saying?

5 Q. It could have been related to one person and passed on.  
6 It could have been passed through in a message. It  
7 could have been a phone call to SCRO. There wouldn't  
8 need to be a visit by Chief Inspector Hogg and a  
9 meeting --

10 A. That's a question you would have to ask Chief Inspector  
11 Hogg, not me.

12 Q. Your recollection is that none of you said to Chief  
13 Inspector Hogg, "So what are they going to say", or,  
14 "Why are we being asked to speak about this", or,  
15 "What's the position", nobody expressed any curiosity?

16 A. I didn't anyway so. That's my recollection. That is  
17 all I really remember of it.

18 Q. You didn't. Did anyone else?

19 A. Not that I remember, no.

20 Q. So nobody expressed any curiosity that Chief Inspector  
21 Hogg has come to the Department, all four of you are in  
22 the room with him speaking about a case shortly before  
23 it starts and nobody says to him, "What's this about?  
24 You don't normally come through and tell us this sort of  
25 information"?

1 A. As I say, I'm only relating what happened, my  
2 recollection. I can't speculate on any other things  
3 like that.

4 MISS GRAHAME: Thank you very much.

5 THE CHAIRMAN: Mr Holmes?

6 MR HOLMES: No, thank you, sir.

7 THE CHAIRMAN: I just want to ask you about, first of all, a  
8 general matter. I noticed at the beginning that your  
9 particular division, if that is the right word, or your  
10 geographical area, I think, included the English Bureau,  
11 the MoD and British Transport --

12 A. Yes, outside agencies they were called.

13 THE CHAIRMAN: Well, obviously crime knows no frontiers but,  
14 for example, would the English Bureau ask you to look at  
15 prints for them or to obtain prints for them or just  
16 what was the roll?

17 A. The roll of that was if an English Bureau or MoD or any  
18 other bureau -- well, we will deal with English  
19 Bureaux -- felt that the criminal involved in it was  
20 Scottish, they would send the marks up for us to search  
21 through our database to identify the criminal and that  
22 was --

23 THE CHAIRMAN: If you saw something that looked like a match  
24 you would send it back to them.

25 A. You'd send a reply back to them. If we searched it

1 through the AFR database, if there was a suspect, they  
2 maybe asked for a suspect form to be sent down for  
3 comparison but if they didn't know who the perpetrator  
4 was but thought they were Scottish they would send the  
5 marks up for us to assess, to put through our AFR  
6 database to see if we could get an identification and if  
7 we did we would communicate that to them.

8 THE CHAIRMAN: But you wouldn't make the identification for  
9 them?

10 A. No, we were just given the supply naming the person that  
11 had identified but they would then take that on board  
12 and take that identification and prepare it theirself  
13 and do their own comparison.

14 THE CHAIRMAN: So if it was going to court in England they  
15 would give the evidence?

16 A. Yes.

17 THE CHAIRMAN: I tale it the others would be if the crime  
18 was in Scotland and the MoD approached you or the  
19 British Transport Police --

20 A. If it was a crime in Scotland.

21 THE CHAIRMAN: And the other way round. Would you then, if  
22 you thought it was an English criminal, would you then  
23 send --

24 A. Marks.

25 THE CHAIRMAN: -- and they would send it back to you and you

1           would make --

2       A.    The result, yes.

3       THE CHAIRMAN:   Or see if you could make an identification?

4       A.    That is correct, yes.

5       THE CHAIRMAN:   You have answered a lot of questions about

6           the meeting with Chief Inspector Hogg.  Would I be right

7           in getting the impression that he was just telling you,

8           just letting you know?

9       A.    Yes, it was a piece of information.  It wasn't anything

10           other than a piece of information.

11       THE CHAIRMAN:   Did it raise any curiosity on your part as to

12           who was this Pat Wertheim or --

13       A.    It might have done, but not that I remember.

14       THE CHAIRMAN:   It is a long time ago.

15       A.    It's a long time ago and, as far as I was concerned, my

16           evidence was there and if anybody wanted to challenge

17           it, well, please challenge it.

18       THE CHAIRMAN:   There was just one other matter that I wanted

19           to touch on with you about the charting machine.  It had

20           cost a lot of money and when things cost a lot of money,

21           you are expected to use them whether you like them or

22           not.  Once you got the charting machine, was there no

23           room any more for having photographic enlargements?

24       A.    We weren't allowed to request photographic enlargements

25           after the charting PC.

1 THE CHAIRMAN: So you had no choice?

2 A. No choice but to use it.

3 THE CHAIRMAN: Whether you liked it or not, it had to be the  
4 charting machine?

5 A. Yes.

6 THE CHAIRMAN: Thank you very much and thank you for coming  
7 to give evidence.

8 **(The witness withdrew)**

9 **FIONA MCBRIDE, sworn**

10 **Examined by MISS CARMICHAEL**

11 THE CHAIRMAN: Have you any other names than Fiona?

12 A. No, it's Fiona McBride.

13 MISS CARMICHAEL: Good afternoon, Ms McBride.

14 A. Hi.

15 Q. I know that you will have heard me say over and over to  
16 witnesses that the microphone needs to be quite close.

17 I should say that if for any reason at any time you need  
18 a break, then please do let the Chairman know.

19 A. Thank you.

20 Q. You have provided two statements to the Inquiry,  
21 Ms McBride, an initial one and a supplementary  
22 statement?

23 A. Yes, that's true.

24 Q. And you signed those?

25 A. I did.

1 Q. Subject to any changes that you want to make or any  
2 subtleties that you draw to our attention today, are you  
3 happy to adopt both of those statements as part of your  
4 evidence?

5 A. Yes, I am.

6 Q. I would like to start, Ms McBride, by asking you about  
7 paragraphs 27 and 28 of your statement on page 7 and  
8 also about paragraph 84 of your statement which we have  
9 on page 20.

10 THE CHAIRMAN: Have you a copy?

11 A. I have. Sorry, I thought it would come up on screen.

12 MISS CARMICHAEL: Please feel free to look at the paper  
13 copy, Ms McBride, but I would like if we could have  
14 page 7 and page 20 of FI0039-02 and I think the fault is  
15 mine because I didn't read out the Fingerprint Inquiry  
16 reference first of all.

17 If I can draw your attention particularly to  
18 paragraph 28 of your statement here, what you are  
19 discussing is the procedure for eliminations and the  
20 numbers of people who would have to be involved in that.

21 A. That's correct.

22 Q. What you say in paragraph 28 is that:

23 "If there was a case where there was no suspect, a  
24 whodunnit, then the procedure would be for four experts  
25 to confirm the elimination to the 16-point standard in

1           some cases."

2       A.    In some cases, that's true.

3       Q.    You have emphasised "in some cases".

4       A.    Of course.

5       Q.    I take it from that that's not normal procedure?

6       A.    I suppose it's how you define "normal" procedure. I

7           didn't think there was anything abnormal about being

8           asked to sign up to four signatures for an elim when it

9           was required. So I don't think abnormal/normal really

10          applies. It's whatever's necessary for the case.

11       Q.    Maybe I can put it this way: how often in your

12          experience had four experts been asked to sign up for

13          eliminations?

14       A.    Not very often -- not very often. I can't remember any

15          specific time. However, I was unsurprised and was aware

16          that could have been an outcome, so ...

17       Q.    Can you remember any situation before the Marion Ross

18          murder investigation where you can recall that

19          happening?

20       A.    It's a long time ago and I can't say that it didn't

21          happen and I can't say that I was surprised when I was

22          asked to. I just thought it was normal. So I would

23          imagine, yes. However, I can't be entirely sure because

24          it's such a long time ago.

25       Q.    In the Marion Ross investigation, was it your

1 understanding that it was just because it was a  
2 whodunnit case all the marks were going to be eliminated  
3 to 16 points and four experts?

4 A. Well, I was informed that it was a whodunnit and that it  
5 was necessary to check them to 16 and that it was  
6 necessary for four of us to sign it and that's why I  
7 thought that was the case.

8 Does that answer your question? I'm not sure what  
9 the question was.

10 Q. I may ask some follow-up questions from it, Ms McBride.

11 We can take down paragraph 28 and put up  
12 paragraph 84 as well, please. What you explain to us  
13 there was that, as you explained above, sometimes four  
14 signatures would be required in a whodunnit but you go  
15 on to say:

16 "This was an elimination of a print close to where  
17 the body was found and that Hugh MacPherson was simply  
18 taking a belt and braces approach."

19 A. Yes.

20 Q. That might be read, Ms McBride, as suggesting that a  
21 particular approach was being taken to mark Y7 because  
22 of its location rather than that all the marks in the  
23 case were being treated in the same way.

24 A. Mm-hm.

25 Q. Could you comment on that suggestion, please?

1 A. Hugh MacPherson just gave me further information. So I  
2 couldn't say which was or how much weight should be  
3 attached to either pieces of information. However, I  
4 did know that that was the case and I didn't ask him  
5 what was most important or whatever because, to me, it  
6 seemed perfectly reasonable and normal. So I didn't ask  
7 any questions. I said, "That's fine", so ... there was  
8 no suggestion that there was anything in particular  
9 about Y7, other than it was a cop and it was near the  
10 body and people thought cops might have put some sort of  
11 significance on the fact that it was close to the body.  
12 But, on top of that, it was a whodunnit. So both of  
13 them would have resulted in identifications to a  
14 16-point standard and four signatures. I didn't ask  
15 which was the most important.

16 Q. Can I bring up, please, on the screen paragraph 76 on  
17 page 18 of your statement. That should, I think, appear  
18 on the screen very shortly for you.

19 A. That's okay. I can see it thanks.

20 Q. Perhaps I can start reading it out and it should come up  
21 for members of the public to see. You say:

22 "At the time, Hugh MacPherson told [you] that it  
23 appeared the mark had been made by a police officer near  
24 to Marion Ross's body and so he was taking a belt and  
25 braces approach, that is eliminating the mark to a

1           16-point standard."

2                   Why was it that Hugh MacPherson gave you to  
3           understand that this was being treated in the way that  
4           it was with 16 points and four experts?

5    A.   He was asking me to confirm the identification to  
6           16 points for court purposes, I would imagine; so he  
7           would have to tell me that. He couldn't not give me  
8           that information. He might not have needed to tell me  
9           that it was close to the body, but he did have to tell  
10          me that although it's an elim (an elimination), it  
11          requires to be tested to the 16-point standard.

12   Q.   You see, what I am trying to get at really here is  
13          whether Y7 was just one of the many, many marks in the  
14          case that was treated in this way with four people and  
15          16 points and that's what Mr MacPherson told you, "Look,  
16          Ms McBride, this is just how we are doing it in this  
17          case for everything" or whether he said to you, as you  
18          would seem to suggest here, that he is treating mark Y7  
19          in a special way because it's made by a police officer  
20          and/or because it's in a significant location near to  
21          where Miss Ross's body was found?

22   A.   It would have been a significant location, I suppose,  
23          but Hugh MacPherson didn't need to tell me anything. He  
24          didn't need to give me all that information. All he  
25          needed to say was it was to the 16-point standard and I

1 would have done it. So I'm not sure exactly what the  
2 question is. Is the inference that you're asking  
3 whether it was because it was Y7, whether it was because  
4 it was a cop, or whether it was because all marks were  
5 being checked at the 16-point standard?

6 Q. What I would like really is your best recollection of  
7 exactly the instruction that Mr MacPherson gave you.

8 A. I don't think he gave me instruction. He asked me if I  
9 wanted to check the mark if I didn't mind. I was in the  
10 middle of another case and I usually do put whatever I'm  
11 working to one side if it's an important matter and I'll  
12 check that. So obviously it was sufficiently important  
13 to interrupt my work to ask me to check the mark and so  
14 I did.

15 So it wasn't really an instruction, it was a request  
16 and I was ready to walk away and find someone else if  
17 necessary and I said no, that was no problem and I  
18 checked it for him. It would have just been in  
19 conversation, him explaining why he was interrupting me,  
20 you know. So he wasn't really -- he wasn't giving me an  
21 instruction and he wasn't giving me information about  
22 the case that I needed to know. So it was as casual as  
23 that.

24 Q. By what words did he come to make you understand that  
25 you had to look for 16 points in this elimination?

1 A. Well, of course I don't remember the exact words.

2 Q. Just as best you can at this stage, Ms McBride?

3 A. I think he must have just -- I'm trying to remember,

4 because it was so casual and unimportant. I think he

5 said "I'm checking it to the 16-point standard, it's a

6 case, a murder case, prints close to the body and it's a

7 whodunnit" so ... well, that's fine. You can't rely

8 upon that because I can't even remember exactly what he

9 said. So anything I say today would be misleading.

10 Q. If you simply can't give us any reliable recollection on

11 that point, Ms McBride, it's perhaps not worth my

12 pursuing it.

13 A. It is a reliable -- sorry, it was a reliable

14 recollection that he mentioned it was a whodunnit and

15 that he mentioned 16-point standard and he mentioned it

16 was close to the body and that it was a cop's. I didn't

17 notice it was a female cop's. But as to exactly what

18 his words were, I don't know.

19 Q. So he said it was a whodunnit, close to the body and he

20 asked you to eliminate it to 16 points?

21 A. Yes.

22 Q. I would like to ask you a little bit about what you tell

23 us in your statement regarding differences that might

24 arise from time to time between different experts in a

25 case, Ms McBride. I would like to refer you, please,

1 first to paragraph 30 on page 8 of your statement. I  
2 think you start the paragraph trying to help us  
3 understand what some of the different terminologies used  
4 in fingerprint cases are, but I am particularly  
5 interested in the last sentence there where you write:

6 "If five experts checked the mark and four experts  
7 could find 16 characteristics in sequence and agreement,  
8 but the fifth could not, after discussion, the mark  
9 would be 'sufficient' and an 'identification' would have  
10 been made."

11 The first thing I would like to ask you about is how  
12 the discussion amongst the experts would come about in a  
13 situation like that?

14 A. I'm not sure exactly what you mean "come about". You  
15 mean physically or what were the words? What exactly do  
16 you mean?

17 Q. If you have the situation where four experts see  
18 16 points in sequence and agreement and another one  
19 doesn't see that and will perhaps go into different  
20 reasons why somebody might not agree, would it be that  
21 those who could find the 16 characteristics would seek  
22 the other one out and say, "Well, let's have a chat  
23 about this?" or would it be the one who disagreed who  
24 would perhaps come and say, "Well, perhaps we could have  
25 a discussion about this and see what our differences

1           are"?

2                   I am trying to understand the way that the

3           discussion might come to happen?

4    A.   Well, to use the Shirley McKie case as an example, Hugh  
5           MacPherson checked the mark to 16. He evidently had a  
6           discussion with Alister Geddes because he came round to  
7           me and told me that he had had a discussion with Alister  
8           Geddes. He didn't tell me that Charles Stewart had seen  
9           the mark before me and the reason he said he had a  
10          discussion with Alister was Hugh was a very fair person  
11          and he was making it easy for me. If I thought it was a  
12          difficult identification and I wasn't particularly --  
13          not that I required to have it made easy for me -- he  
14          was alerting me to the fact that someone else had said  
15          that they hadn't made it to 16 so that I would be aware  
16          of that and if I wished to, I didn't have to sign it  
17          either, which of course is the case anyway but Hugh just  
18          likes to emphasise these things. So I was aware of a  
19          discussion.

20                 I didn't go back to Alister and have a discussion  
21                 with him and I don't think Charles Stewart would have  
22                 either. So how it occurred and how it would occur in  
23                 any case would be that there would be a debate and there  
24                 would be a decision made whether to progress or not and  
25                 others might be aware of it, or I was certainly made

1           aware of it, but it wouldn't impact on the later  
2           signatories.

3       Q.    What I perhaps understood -- and I may have been wrong  
4           in reading your statement this way, Ms McBride -- is  
5           that you were describing something rather more general  
6           to us in this sentence than meaning to refer  
7           specifically to Y7.

8       A.    Of course.

9       Q.    Am I wrong about that?

10      A.    Well, it looks that way as well. I can't remember  
11           actually but, of course, I will have been responding to  
12           questions so it will have been something more general.  
13           But the Y7 case is a good example of how things would  
14           usually be dealt with anyway; so I think it's a good  
15           enough example to use.

16      Q.    I would like to try and leave that aside just for the  
17           moment if I might, Ms McBride, and ask you if you can  
18           think of another situation where there have been five  
19           experts with four of one mind and another. Let us just  
20           take the example where they find points in sequence and  
21           agreement but not the full 16. Can you think of another  
22           example of that happening?

23      A.    I can't think of a specific example. It happened often  
24           but I can't think of a specific example because it's not  
25           worth retaining in your memory because it was quite

1 common. It wasn't a big deal.

2 Q. Are you telling us then it might be a situation where,  
3 as in Y7, perhaps you are turning to that example since  
4 you have been happy to use it, one had an expert in  
5 Mr MacPherson's position, I suppose, who finds  
6 16 points, another colleague doesn't, there's some  
7 discussion and then there's a movement on to other  
8 experts to take their views?

9 A. Yes, that's right.

10 Q. And you can think of other examples where the result of  
11 that further investigation with other experts has been  
12 that they have succeeded in finding 16 points?

13 A. Sorry, I couldn't hear you. I was too busy listening to  
14 what they were saying. Sorry, what were you saying  
15 again? Could you repeat that, please?

16 Q. If there is something that is distracting you, I'm  
17 sure --

18 A. Sorry, there was just a noise there.

19 Q. -- everyone will take note and try to avoid that.

20 A. No, I don't mind. It's just I couldn't hear you there  
21 for the distraction.

22 Q. What I was asking you was whether you could think of  
23 another time when there had been an expert who maybe  
24 found 16 points, the second examiner says, "Well, I  
25 don't see 16 points, I see 9 or I see 10" and then the

1 matter is progressed on to other experts to see what  
2 their views are and those experts will come to the view  
3 that there are 16 points in sequence and agreement.

4 I am asking if you can think of an example of that  
5 happening other than Y7?

6 A. Yes. As I said, there were many.

7 THE CHAIRMAN: Was part of the idea by telling you that  
8 somebody else hadn't found 16 points to alert you to  
9 that fact that there wasn't unanimity when it came to  
10 you?

11 A. Yes. Hugh MacPherson was being --

12 THE CHAIRMAN: That seems quite sensible.

13 A. Absolutely.

14 THE CHAIRMAN: So that when you approach it, you know this  
15 isn't coming down the line where everyone has taken one  
16 view about it.

17 A. Yes, that's true.

18 MISS CARMICHAEL: In that sort of situation, which you say  
19 was not an uncommon situation, was any record kept of  
20 the fact that there had been one person who had not been  
21 able to see the 16 points for the court standard at the  
22 time?

23 A. Not that I'm aware of, although I could be wrong. I  
24 could be forgetting but I don't think so.

25 Q. It would follow from that that there would be no way for

1 the prosecution authorities to become aware that there  
2 had been this, I suppose, difference of opinion at least  
3 to the extent of the number of points within the Bureau?

4 A. This is something of course that's been asked of a lot  
5 of witnesses and what I don't think's come out in the  
6 evidence yet is that as a matter of course  
7 identifications are led in courts on fewer than 16  
8 characteristics over many years. The only difference is  
9 that they are called "eliminations" and when we  
10 eliminate someone and we go to court, it's not included  
11 in the joint report. But if we're asked of the  
12 eliminations, we give the names of the people who were  
13 identified and which marks were identified.

14 So the idea that there's a difference between -- I  
15 mean, the Fiscals were aware that that was the case  
16 because if they were to change an elimination to a  
17 suspect, they would get in touch with the office and ask  
18 us if there were 16 characteristics in sequence and  
19 agreement. So they were well aware of that.

20 So I think it's strange that now it's become an  
21 issue that somehow we were withholding information. I  
22 don't know how we could possibly have known that they  
23 would have wanted that information as idents. Under the  
24 heading "elimination" we're in court constantly with  
25 fewer than 16 characteristics.

1 Q. You have told us that in a situation where there was a  
2 change from somebody being an elimination to an ident,  
3 the Fiscal would have to call you up because of the  
4 difference in procedure you have described?

5 A. Yes, that's right.

6 Q. That would happen presumably quite frequently?

7 A. It might not be the Fiscal, it might be the police  
8 officer, officer in charge but certainly Fiscals or  
9 Fiscals' Office would be in touch sometimes and ask.

10 Q. If this procedure was available, I'm wondering why it  
11 would be that you might have investigations where, as a  
12 matter of course, everything was looked at to what is  
13 presumably the rather demanding and time-consuming  
14 standard of 16 points if there was this other way of  
15 dealing with it.

16 A. For a start, I think the last thing you said there was  
17 "more demanding and time-consuming standard of  
18 16 points". That's not true. In the Shirley McKie  
19 case, I identified over 16 points in fact and the reason  
20 I know that is because I investigated all areas of the  
21 mark and the part that I decided that 16 -- well, not 16  
22 but there was sufficient detail and a clear area that an  
23 identification could be obtainable, I went through the  
24 entire mark and that entire section and including I  
25 remember down toward the bottom -- of course I don't

1 remember exactly -- I checked it against the rolled and  
2 the plain impression.

3 Later on, for court purposes, there was an  
4 enlargement made and there were 16 characteristics  
5 marked on it but I fully investigated the entire print  
6 and that is my habit. So time-consuming to get to 16  
7 really didn't feature for me. It was more likely than  
8 not that I would have investigated the entire mark. If  
9 there are more than 16 characteristics on it, unless it  
10 was really over the top, the chances are I've looked at  
11 them all anyway, all of the characteristics on that  
12 mark.

13 Q. If I can just stay with that theme for a moment,  
14 Ms McBride, if I may. It wasn't in every investigation  
15 obviously that you were required to eliminate marks to  
16 16 points?

17 A. No.

18 Q. In fact, in perhaps more routine matters things could be  
19 eliminated on fewer points?

20 A. That's true.

21 Q. That, I suppose, follows from what you have told us  
22 about the Fiscal having to phone up because the Fiscal  
23 wouldn't obviously naturally assume that any elimination  
24 was to 16 points?

25 A. The thing is when I say that you can eliminate on fewer

1 than 16, you would eliminate on fewer than 16 when there  
2 were fewer than 16 characteristics available. Chances  
3 are, though, if there were more than 16 characteristics  
4 available, people eliminated on more than 16  
5 characteristics. The difficulty is of course that in  
6 the identification process we don't count  
7 characteristics until it's necessary at a later stage.  
8 At first, we're looking to see if the characteristics  
9 are in sequence and agreement and we follow through and  
10 look at every little nuance and check to see if there is  
11 a difference.

12 I remember I think yesterday you wondered whether I  
13 think it was an iterative process where you would go  
14 over it again. What I would do is I would check it and  
15 then I would maybe go back one and say, "Does it really  
16 look like that characteristic or is it similar." I  
17 would assign value -- it's obviously subjective value --  
18 but I would assign value to each characteristic as I  
19 went along and I might just want to double-back and have  
20 another look at that characteristic to see.

21 So the idea that there might be fewer than 16  
22 characteristics was usually if there were fewer than 16  
23 characteristics present. If there had been more, the  
24 chances are that the Fingerprint Examiner has checked  
25 them all because I'm not counting to a number and

1           stopping, if you understand what I'm saying.

2       Q.    I think we heard Mr Stewart yesterday and Mr McKenna  
3           today saying that essentially there wasn't much point in  
4           going beyond 16 because that's what you needed for court  
5           and that, frankly, anything else would be a bit of a  
6           difficult waste of time and resources. Should we take  
7           it that your reaction is really very different from  
8           theirs?

9       A.    No, not at all. We're actually saying the same thing.  
10          They would have checked the mark the same way I did and  
11          they wouldn't have been counting characteristics until  
12          it came to the later stage in the process. So the point  
13          I'm making is you check the entire mark, you analyse it,  
14          you start looking for sequence and agreement, you're not  
15          counting it. If there are more than 16 characteristics  
16          in sequence and agreement, I have no way of knowing that  
17          I got to 16, if you know what I mean, until I start  
18          counting them. So if they are present, they are  
19          checked.

20                 Later on, when you start counting them, yes, you  
21          would stop at 16 no doubt just to make sure -- well, not  
22          just to make sure actually because there's no point in  
23          going any further, but you've already carried out an  
24          analysis of the mark that includes at least the majority  
25          of the characteristics available to you. Does that make

1 sense?

2 Q. I think you have given your position very clearly,  
3 Ms McBride.

4 Moving back to the situation where you would be  
5 permitted, if I can put it that way, to eliminate on  
6 fewer than 16 points, do I understand your position  
7 rightly to be that in what we've heard is quite a busy  
8 bureau -- probably the busiest, I suppose, in the  
9 country by some way -- you would not just stop at 8 or  
10 10 for an elimination to get that through the system  
11 knowing that that was all you had to do for an  
12 elimination?

13 A. Well, again, the number of characteristics that are  
14 required for an elimination I said the minimum that I  
15 was taught at the time I was training was around  
16 eight -- around eight. However, again that depends on  
17 the quality of the mark and the quality of the  
18 characteristics and how closely represented they are on  
19 the scene of crime mark and the inked, how  
20 closely ... how can I say? Or how common the  
21 characteristics, if it was particularly unusual  
22 characteristics not at the core, not at the delta,  
23 although there are unusual characteristics at cores and  
24 deltas too. So it's all to do with how unusual the  
25 characteristics are and how clear they are and that

1 would help form your opinion on whether it was that  
2 person or not.

3 So there's no such thing as only requiring eight  
4 characteristics for elimination purposes, it's actually  
5 a requirement for an identification is that you have  
6 come to the conclusion based on all the information in  
7 front of you that there is enough there to say it's an  
8 identification. So, again, the numbers aren't helpful  
9 here because an elimination of a particularly poor mark  
10 might not be eliminated on eight, it might require a  
11 great deal more characteristics before the person's sure  
12 in their own mind that that is that person.

13 Q. I will ask you a little bit more about that later,  
14 Ms McBride. I think we got to this discussion, which is  
15 a helpful discussion, via questions about what might or  
16 might not be intimated to the Crown.

17 A. Oh yes.

18 Q. And you pointed out to me eliminations may be very  
19 important in an investigation and may be mentioned in  
20 court, that there have been eliminations. So they can  
21 be significant in their own right?

22 A. Quite often we wouldn't know that in advance. We  
23 usually didn't. That's why it wasn't included in the  
24 report but it might be the Advocate Depute or the  
25 defence that asked us those questions, maybe inferring

1           that the person that was eliminated was really  
2           the person that did it or something along those lines  
3           and that's why they needed to know who was eliminated  
4           and where from.

5       Q.    But back in 1997 while eliminations were reported to  
6           court and they were important things, it would not be  
7           normal for anybody to be in a position where they might  
8           go to gaol on the basis of the elimination standard.  
9           That would generally only arise where people had found  
10          16 points in sequence and agreement.

11     A.    You had dire and crucial and I did -- I heard you asking  
12          whether people had any experience of it. I did.

13     Q.    Tell us about it.

14     A.    I checked a case and I can't remember the details I just  
15          know that I couldn't reach the 16-point standard. I'm  
16          guessing here that it was probably a robbery because I  
17          did robberies around that time, although it may have  
18          been prior to that time and it might have been -- I  
19          don't know what would have been dire and crucial about  
20          the case if it wasn't the robbery section perhaps it was  
21          something about another case I was working on for  
22          specials or something but at least a serious crime. I  
23          couldn't get 16 and I reported it to Alan Dunbar and he  
24          instructed me to mark it as an identification, however,  
25          fewer than 16. I did the casework as usual and at the

1 end of it I presented to Alan Dunbar and he took it  
2 through to the Chief Super of the time -- and I don't  
3 now who the Chief Super of the time was -- and I think  
4 he came back and said that's fine but at that time you  
5 didn't have to appear in court with whatever you'd  
6 actually checked. Nowadays that's the case.

7 If you sign for a identification you definitely go  
8 to court with it, whereas in those days, because of  
9 annual leave, et cetera, it was handed out to whoever  
10 happened to be available for when roughly they thought  
11 the court case was going to be, with substitutes to  
12 cover with different annual leave dates.

13 He came back and said that's fine and I heard no  
14 more about it. So either the case was progressed or the  
15 Fiscal didn't need it or -- I don't know what happened  
16 after that.

17 Q. Leaving aside that situation, Ms McBride, normally  
18 people wouldn't find themselves in court charged on the  
19 basis of fingerprint evidence unless there were experts  
20 who had seen 16 points and who were prepared to come  
21 along and answer questions from the Crown to say they  
22 had found 16 points.

23 You would accept that in the generality, leaving  
24 aside the dire and crucials?

25 A. I really don't know. I mean, I would prepare the

1 fingerprint evidence and what the Crown did with it and  
2 whether they decided to take it further, I don't know.  
3 I will say this much: I had a court case in the High  
4 Court in Glasgow. It was a drug case and I appeared  
5 thinking I was to give evidence and the Fiscal said that  
6 wasn't necessary. He was more interested in the  
7 insufficient marks and whether any of them could be  
8 attributed to the accused or his co-accused. I said  
9 well, that's not possible if it's insufficient but he  
10 said, "Is there anything with similarity that you think  
11 could be, possibly could be", or whatever, and I said,  
12 "Well, we don't usually do this", but I was instructed  
13 to do it so I went back to the office and checked and it  
14 just so happened that there was absolutely nothing  
15 between the marks and the people I'd been asked to  
16 check. There was absolutely nothing to suggest that it  
17 could be, that there was something in sequence and  
18 agreement. So I went back and I went to tell the Fiscal  
19 what the result was. This was the next day. I turned  
20 up at court and he said he didn't want to know because  
21 they'd pled guilty so he didn't want to know what had  
22 happened. That was the end of it.

23 Q. I think perhaps the end result of many cases that you  
24 thought you might be going to be involved in at some  
25 stage, Ms McBride.

1 A. That's true. From that, that's why I'm saying I don't  
2 know exactly what the Crown does with certain number of  
3 characteristics or whatever. I was asked to go back and  
4 can you see if two or three or four and what does that  
5 mean. I couldn't see any and why they were asking me  
6 that I would suppose would be introduced into evidence  
7 or given to or put to an accused and I don't know  
8 whether it would be put to an accused in court or  
9 outwith the court or whatever. I just prepare the  
10 evidence. I don't know what they to with it afterwards.

11 Q. Indeed, you -- and I don't think mean this  
12 discourteously in any way -- but I think you are  
13 speculating about what the significance of that is just  
14 as much as I would be speculating if I tried to work  
15 that out myself.

16 A. Yes.

17 Q. We know from what you have told us that in this case,  
18 the case involving Y7, there was a reason for going and  
19 seeing if people could find 16 points after Mr Geddes  
20 hadn't been able to.

21 A. Yes.

22 Q. That is because that was the normal standard for court  
23 at the time, if I understand you rightly?

24 A. Again, normal standard. There were various standards.  
25 There's the dire and crucial, strong suspicion. You

1           have heard about them all. So they are all normal  
2           standards. It was the most commonly used standard but I  
3           wouldn't say it was the normal standard.

4       Q.    Are you suggesting that you would have expected Ms McKie  
5           to be prosecuted for perjury on the strength of anything  
6           less than a 16-point identification?

7       A.    Again, I'm a fingerprint person; I'm not a legal person,  
8           therefore, I don't know. It could have been a dire and  
9           crucial. If Ms McKie had not been a police officer with  
10          a reason to be there but instead had been another  
11          elimination, she may have turned into a suspect because  
12          her print was near the body and she could have been  
13          charged with murder and that would have been dire and  
14          crucial and, yes, it would have gone on less than 16.

15      Q.    That is not the situation, is it? We are talking about  
16          a prosecution for perjury, not a prosecution for murder.

17      A.    I'm just making the distinction between fingerprint  
18          experts, our officers and legal people. We provide the  
19          evidence that we provide on the information in front of  
20          us. What anybody else does with it later on is not a  
21          matter for us. There were different standards. That  
22          was the standard that was reached. What decision would  
23          have been taken by a Fiscal or anyone else after that,  
24          had it not reached that standard, I don't know.

25      Q.    I think we have heard from Mrs Greaves and from

1 Ms Climie, the two Fiscals who were involved in the  
2 cases here, that each of them would have been very  
3 interested indeed to know about fingerprint experts who  
4 had not been able to see the 16 points and that is  
5 because the Crown was seeking to lead evidence to a  
6 16-point standard at the time?

7 A. Mm-hm.

8 Q. You do accept that?

9 A. I accept that that was what their evidence was. It  
10 would have been useful if Ms Climie or Mrs Greaves or  
11 some other fiscal had informed the fingerprint  
12 department that they wanted to know such information.  
13 We did provide evidence to court on fewer than 16  
14 characteristics.

15 It was allowed. It was within, as I said earlier  
16 on, there were procedures, dire and crucial, et cetera.  
17 So that was acceptable. There were also eliminations  
18 going to court regularly, in fact commonly, on fewer  
19 than 16. We're not mind readers so it would have been  
20 very useful if the Fiscals had let the fingerprint  
21 department know there was something missing and we would  
22 have provided it of course.

23 Q. Why would it be then that the joint report in this case  
24 could not just have been signed by Mr MacPherson,  
25 Mr Geddes, Mr Stewart and yourself?

1 A. I don't now what you mean by that question.

2 Q. Mr MacPherson found 16 points, Mr Geddes finds 10, you  
3 find 16 and Mr Stewart finds 16. What is wrong, on your  
4 scenario, with the report going forward in those names,  
5 including the name of Mr Geddes who can only find  
6 10 points?

7 A. Because normal procedure was that we all found 16.  
8 Those who didn't weren't included on the joint report  
9 and the report was sent out.

10 It wasn't normal procedure for Mr Stewart and  
11 MacPherson to provide a report with an enlargement with  
12 two signatures but they were asked to do so and they did  
13 so.

14 It wasn't normal procedure for four Fingerprint  
15 Experts to be cited for a court case. We didn't know  
16 until the last minute we were going to be cited. I was  
17 Hugh MacPherson's substitute merely for annual leave  
18 purposes. That wasn't normal procedure either but we  
19 did exactly as we were requested.

20 So I don't understand what exactly, what the  
21 question is inferring. We provide evidence based on  
22 whatever we're required, whatever we were asked for. It  
23 was normal procedure in the office. No-one said,  
24 "Please tell us about Allister Geddes" or, "Please, tell  
25 us about anyone who may have looked at the case and not

1 reached a 16-point standard". There were many cases  
2 that went out that way and I'm sure since have gone out  
3 that way as well.

4 So there's nothing -- I'm not sure exactly the  
5 importance. There's obviously an importance being  
6 placed on it by the Fiscals Office and I have to say  
7 that is something in the last, listening to the evidence  
8 session, that I found particularly of concern, the idea  
9 of, I think, full disclosure was used. I'm aware that I  
10 think, in fact, a police officer -- in fact, I've got  
11 the article here --

12 Q. Could you tell us what you are looking at, Ms McBride?

13 A. I certainly will, sorry. I'm looking at an article  
14 printed off, it was published on November 29th 2008 and  
15 it says:

16 "Police in dock over crime data kept secret from  
17 Fiscal."

18 Q. Can you tell us what publication this comes from,  
19 please?

20 A. It's from the Glasgow Herald and it's Lucy Adams is the  
21 Chief Reporter.

22 Q. Can I ask you, perhaps, not to read from that at the  
23 moment and I can perhaps take a look at it over  
24 lunchtime and see whether it would be useful to ask you  
25 questions about that.

1 A. Yes.

2 Q. I don't want to cut you off in any way.

3 A. I don't mind. I can speak in generalities. I was just  
4 using this as evidence that it's a very, very serious  
5 allegation that there was not full disclosure on the  
6 part of the SCRO officers or the Department and that's  
7 what's concerning me, that this question is being  
8 brought up.

9 I am aware that whatever happens in this forum may  
10 be acted upon later on. So if the Crown -- and I'm not  
11 saying that they are, but the questions came from the  
12 Crown, I believe, and from Digby Brown and if they are  
13 thinking of criticising the Bureau or of taking further  
14 action against the SCRO officers involved in this case,  
15 I think it only fair that we should know now so we can  
16 explore it in-depth in this forum. It is the  
17 fingerprint Inquiry, unless of course they can say  
18 unequivocally that they do not intend to take further  
19 action because there has not been -- because they admit  
20 that -- they agree that there was full disclosure to the  
21 best of our knowledge, to the best of our abilities to  
22 satisfy the Fiscals' Office requirements, then that  
23 would be fine. But otherwise I think this has to be  
24 taken much further in far more depth.

25 After all, over the past 13 years we have had many

1           accusations levelled at us and I'm not saying that there  
2           are accusations, I'm just saying it needs to be thrashed  
3           out now and we need to know exactly -- I need to know  
4           exactly -- what the inferences are from this line of  
5           questioning, if you understand what I'm saying.

6        Q.    Can I suggest this to you, Ms McBride, that we might  
7           proceed in this way, that I ask you questions and if  
8           either your lawyers or the Chairman think that I'm  
9           asking you anything improper, they will no doubt stop  
10          me.

11       A.   That's quite all right. I didn't think you were being  
12          improper at all.

13       Q.    I should put you this way: if I am asking you any  
14          question that for some legal reason you shouldn't answer  
15          either your solicitors will object or the Chairman will  
16          tell me to stop.

17       A.    To be clear, just to be clear, I'm not seeking to ask my  
18          lawyers to intervene. Of course I will answer all  
19          questions and I'm not seeking to hand in a sick line and  
20          not make it to the Inquiry. I'm perfectly happy to  
21          answer all questions.

22                However, I would like to know if there is something  
23          that we should know about that will be taken further and  
24          then I can chat to my lawyers and still answer the  
25          questions but at least it will be in full knowledge of

1           what's going on and I do think it's actually rather  
2           useful to explore these issues in this forum. It's not  
3           that I don't want to answer the questions. It's that I  
4           want to know precisely what the ramifications might be  
5           and whether they can be explored now, just so that no  
6           accusations or allegations or things can go on the web  
7           and all the rest of it.

8                     I'm aware that this is going into a transcript, it's  
9           being published on the web. I think that's extremely  
10          useful and in that way, if there are any issues and they  
11          are explored by the Inquiry team and the Chairman, then  
12          at least then they can be put to bed and finished with  
13          instead of another ten year saga.

14    THE CHAIRMAN: I should make it clear that, as far as I'm  
15          concerned, I am really just trying to discover what the  
16          practice was in SCRO at the time and I can't answer for  
17          others but I agree with you that it is better that it  
18          should be discussed here and not in other places.

19    A. Thank you.

20    MISS CARMICHAEL: Should I take it perhaps from what you  
21          have said, Ms McBride, that it simply never occurred to  
22          you to pass information to anybody about Mr Geddes's  
23          identification of 10 points because it was simply not a  
24          matter that you thought of any significance at all?

25    A. That's absolutely true, yes.

1 MISS CARMICHAEL: I am moving on to a different topic.

2 THE CHAIRMAN: This would be a good time then. We will sit

3 again at 1.50.

4 **(1.00 pm)**

5 **(Luncheon Adjournment)**

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