

1

Wednesday, 11th November 2009

2 (Afternoon session)

3 (1.50 pm)

4

ROBERT MACKENZIE

5

Cross-examined by MR SMITH (continued)

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MR SMITH: Mr Mackenzie, I would like to move on to

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something else now, please, and that is the question of

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the reference print of Marion Ross and, in particular,

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the question mark over the difference in thickness of

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the bifurcation to the right of the core. You

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understand the part of the print I'm talking about. We

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don't need to go to it unless you wish to do so, but I

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think your explanation for that is that there was

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probably less of the powder attached to the finger or

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some difference in pressure when the tape was used to

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lift the print.

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Is that your evidence, that that accounts for the

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thin ridge compared to the thick ridge?

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A. I think what I said yesterday was that when the fingers

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were powdered, then there would be white adhesive tape

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applied to each finger and the tape would be rolled

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round the finger and where it has come to the right-hand

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side of the core there, at the point where there's a

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thin and a thick, from the thick side, the right-hand

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leg, if you want to call it that, and going further out

1 the ridges become thicker, which suggests to me that it
2 was nothing more than down to pressure of the tape being
3 applied to the powdered finger and that was the
4 explanation for the thick and the thin.

5 Q. As far as the application of powder is concerned, what
6 kind of powder was used to apply to the finger of Marion
7 Ross?

8 A. I understand it was black powder.

9 Q. As far as the difference in pressure is concerned, which
10 I think is what you are suggesting, either a difference
11 in application of powder or a difference in pressure
12 whenever the tape was removed or placed on, as far as
13 that is concerned, can you help us with this: if there
14 was a difference in pressure accounting for that
15 difference in thickness would it not be a reasonable
16 expectation there might be other ridges showing a
17 similar thin quality compared to the main run of play?
18 Is that not a fair comment?

19 A. On Marion Ross's right forefinger there is consistency
20 from that right-hand leg out across to say probably
21 about a dozen ridges or so anyway where they are thicker
22 and more dense in colour than they are to the left of
23 the core area.

24 Q. Perhaps we should have the image up, just in fairness to
25 everyone, FI0102, please, and the right-hand image, if

1 we can have that brought to the front as it were. I
2 think that size of image is probably sufficient.

3 Would you agree with the suggestion that if we look
4 at the thin ridge that we're talking about, which I
5 think is approximately in that position, it's just under
6 the line that goes from point 10, if you follow that
7 line up, the red line sort of crosses it just before it
8 terminates, would you agree with the suggestion that to
9 either side of that thin ridge the ridges appear to be
10 of a reasonably thick quality and consistent with the
11 rest of the print? Would you agree with that?

12 A. Sorry, can you repeat the question?

13 Q. Yes, I will repeat the question. I am suggesting that
14 on either side of the thin ridge -- you know which is
15 the ridge we're talking about?

16 A. The one immediately to the right of point 16 is the thin
17 ridge you're referring to.

18 Q. Let me try it this way: point 3 on the chart, follow the
19 line right down.

20 A. Point 3?

21 Q. I beg your pardon, I am having trouble seeing the
22 colours on this. Yes, it's point 2, if you follow the
23 red line down you get to a bifurcation, correct?

24 A. Yes. Sorry, no, well ... what's been interpreted here
25 as a bifurcation but I interpret that differently but

1 what's been marked here as a bifurcation at 2.

2 Q. Yes. I am really interested not so much in the
3 description of it rather than the point of reference.

4 So we get to what may be a bifurcation or it may be a
5 ridge ending -- let us not argue with that much at
6 least -- but we can see from that point going down to
7 the left-hand side of that point as we look at it is a
8 ridge going down and curving around the core --

9 A. Okay.

10 Q. -- and to the right-hand side a ridge that follows
11 roughly the same path but slightly to the right of the
12 one I've just described.

13 A. Okay.

14 Q. What I am suggesting to you is that if we follow down
15 the thinner of the two, the one to the left, on either
16 side of that, if we come down to a position maybe about
17 5 o'clock, if the core is a clock, about 5 o'clock, if
18 we look either side of that the ridges are relatively
19 thick in quality compared to the thin one between.

20 Would you agree with that suggestion?

21 A. Relative to the first thin one? They're all thicker to
22 the right of the first thin. Going in the direction of
23 5 o'clock they are all thicker.

24 Q. Do you have control of the mouse just now, Mr Mackenzie?

25 A. Yes. That one, that one, that one, that one, that one,

1 that one (**indicated**) and that one and probably another
2 one or two.

3 Q. Yes. Let us look at it. Go back to the thin one,
4 please, and just hover over that. If you go to the
5 left, one ridge --

6 A. One here?

7 Q. Yes, and indeed again to the chilli pepper, if you go to
8 that, and then next one and the next one and right the
9 way across they appear to be of relatively uniform
10 thickness, don't they?

11 A. On this group, these are of relatively the same
12 thickness, yes.

13 Q. The point I am trying to make is that the distance
14 between the thin ridge and each of the adjacent ones
15 must be less than half a millimetre in real life, isn't
16 it?

17 A. I've never measured between ridges so I wouldn't
18 actually know what millimetres were or whatever.

19 Q. On the image we are looking at it must be no more than a
20 centimetre between the two thick ridges either side of
21 the thin one; agreed?

22 A. As I said I've never considered and I wouldn't know what
23 a millimetre was, actually.

24 Q. Sorry, you wouldn't know what a millimetre was?

25 A. No, I don't. I don't measure in millimetres.

1 Q. The simple point, Mr Mackenzie, is this: the image we
2 are looking at on the screen is a considerable
3 magnification of real life. We know that much. I think
4 even the non-experts in here might have worked that out.
5 It's a considerable magnification, isn't it?

6 A. Sorry, it's a considerable ...? I can't hear you.
7 Could you speak up?

8 Q. The image we're looking at, Mr Mackenzie, on the screen
9 is a considerable magnification of real life, isn't it?

10 A. Considerable magnification of real life, yes.

11 Q. Yes. Therefore, if we were to imagine the real life
12 version of this it would be much smaller and distance
13 between the ridges would be much narrower, wouldn't it?

14 A. Obviously.

15 Q. What I am saying to you is that if we did that exercise
16 then the real life distance between the thin ridge and
17 each of the adjacent ridges would be a tiny distance,
18 wouldn't it?

19 A. Yes.

20 Q. What I am suggesting to you is that it would be somewhat
21 surprising if it was as an application of incorrect
22 pressure that resulted in the ridge either side being
23 corrected applied with powder, being correctly
24 pressurised but somehow in between these two ridges that
25 appear to have come out properly there is one that comes

1 out that gives an incorrect version of how it exists.

2 Is that not a reasonable point to make?

3 A. I see the theory you're putting but in the area to the
4 right of the thin ridge the gaps between the ridges are
5 actually smaller than they are on the left-hand side
6 because the ridges are themselves thicker.

7 Q. A point the Chairman made yesterday was that, in the
8 course of the investigation in to the murder of Marion
9 Ross, it is likely, isn't it, that somewhere else she
10 would have left her own fingerprints in her own house.

11 That's a fair assumption, isn't it?

12 A. I would understand that a number of marks identified in
13 the house would be attributed to Marion Ross, yes.

14 Q. If we wanted to track down photographs of these other
15 marks left by Marion Ross, which may indeed have
16 included the digit that we're looking at on the screen
17 just now, where would there be a record of that so that
18 we can go and dig them up and have a look and see
19 whether there's a thin ridge?

20 A. I presume the case envelope will be retained somewhere
21 and there will be photographs in it but remember the
22 photographs are of chance impressions. What we are
23 talking about here is the finger of Marion Ross taken by
24 powder and applied on to sticky tape so we wouldn't be
25 talking like-for-like anyway. I think I've explained

1 already you'd never get two marks recorded the same or
2 two fingers in a control print taken the same.

3 THE CHAIRMAN: Yes, but if there's a peculiarity or was in
4 Marion Ross's print of a thin line at that point, then
5 one might see it on some of the other examples of her
6 mark?

7 A. It's possible, but on Q12 it doesn't appear thinner so I
8 don't know what other marks would look like.

9 MR SMITH: All I am trying to find out is where we might
10 find them so we can go and look --

11 A. Sorry, I won't be going to look at anything.

12 Q. But the point is if we were able to discover that latent
13 prints of Marion Ross of that digit showed the thin
14 ridge compared to the others then that, frankly, would
15 cause a bit of a problem for your theory about
16 difference in pressure, wouldn't it?

17 A. It's another theory and you would be quite welcome to
18 actually try and source the material and look at it but
19 I'm only giving you what I think is my explanation of,
20 you know, what this is, the thin and thick, and I don't
21 know how I termed it yesterday but I think it's a
22 complete red herring that's been put in here.

23 Q. Well, it's not a red herring though, Mr Mackenzie, is
24 it, if we manage to track down latent impressions of
25 Marion Ross in her house that showed us a thin ridge in

1 that position? That's not a red herring then is it?

2 A. Sorry, you have tracked down, did you say?

3 Q. Please listen. Attend to the question. The way it

4 works is that I ask the questions and the question is

5 this: if we were to track down latent prints of that

6 digit belonging to Marion Ross which showed a thin ridge

7 between the two thick ones just to the right of the

8 core, then your theory about difference in pressure

9 would be one that would have no validity, wouldn't it?

10 A. It's a possibility. You would need to make a detailed

11 comparison between the control prints and the marks but

12 it's an exercise if you wish to try and do it then you'd

13 maybe come up with another reasoning but my reasoning is

14 as I've suggested. I'm only just giving my explanation,

15 that's all.

16 THE CHAIRMAN: If the print comes out that both are the same

17 thickness then your theory would be confirmed.

18 A. Equally, yes. I mean, I don't know why --

19 THE CHAIRMAN: One way or the other it might resolve it. It

20 may not.

21 MR SMITH: Of course.

22 But you say there'd be a case envelope somewhere

23 that will probably contain the other analyses relating

24 to Marion Ross's latents within the house?

25 A. I'm presuming, unless it's been lost with the Fiscal's

1 file.

2 Q. Whatever.

3 The one matter I wanted to return to, the final
4 matter I wanted to ask about was the one that we stopped
5 in the middle of.

6 During the lunch break did you have the opportunity
7 of looking at the extract from the book by Lee and
8 Gaensslen? Did you have a chance to look at it?

9 A. Yes, I did and I actually to -- you mentioned about
10 Mr Berry and Mr Leadbetter. Actually this book I found
11 to be very useful, not saying in its entirety but there
12 were very useful chapters within this book, particularly
13 the first one by Mr Berry was used within the Bureau as
14 a good condensed history of fingerprints. But, yes, the
15 answer to the question is I have looked at it. There's
16 the two grids one by --

17 Q. I think the first one is by Osborne on page 46.

18 A. Yes.

19 Q. And the other is by Osterburg on page 47?

20 A. That's correct and I think the difference it suggests is
21 it's a different size of grid and the theories of
22 applying this are mentioned and about the relativity, I
23 think, of one characteristic to another but, again, it's
24 suggesting that the box within the boxes, you would
25 actually highlight the characteristics and then relate

1 them one to another.

2 What I did find, because you asked me to look at it,
3 was in the last two sentences under the Osterburg grid
4 it said:

5 "No agency has officially adopted this method of
6 establishing the identity of latent prints. Its
7 application in latent print comparison is entirely
8 theoretical at this time."

9 So I certainly don't recall having seen it in the
10 book but it's obviously in the book and I must have seen
11 it at some point but, equally, it talks about it being
12 theoretical and it's certainly nothing that I, in my
13 time as a trainer in SCRO, considered the relevancy of
14 it, bearing in mind, as I've already explained, the
15 distorted marks, et cetera, and the likelihood of one
16 grid containing a sequence of characteristics and the
17 same of the other grid having the same sequence in the
18 same boxes would be very slim, particularly with
19 distorted marks.

20 Q. That's not really the point though is it, Mr Mackenzie?

21 I wonder if we could have the reference number for
22 that?

23 MISS BAHRAMI: It is DB0767.

24 MR SMITH: Thank you.

25 The point is, Mr Mackenzie, as I understood your

1 evidence earlier, you indicated that you had never seen
2 a method of analysis like the grid method that you
3 assume Mr Zeelenberg was using. That is my
4 understanding of what your evidence was. I am not
5 entering into a debate with you as to whether it's a
6 good method but the fact is that there is in published
7 literature two people who have adopted a grid method of
8 analysis in a book that you say you have familiarity
9 with.

10 Would you like to tell us how it is you can give
11 evidence to the effect that you have never seen such a
12 thing but it's in a book that you tell us you have
13 actually seen?

14 A. I remain corrected and I've said it's obviously in the
15 book. It's 20 years since this book was written. In
16 that 20-year period I'm still not -- have any knowledge
17 of anyone using this, obviously other than
18 Mr Zeelenberg's attempt to use it, but as far as saying
19 I hadn't seen it before, obviously, if I've seen this
20 book 20 years ago, which when it came out I did, then,
21 yes, technically, I've seen it before but I haven't --
22 and, again, it doesn't say about anyone using it. It
23 just says it's a theory.

24 Q. The book is published, the second edition, a copy of
25 which I think is in your hand, was published in 2001,

1 not 20 years ago. The second issue was published in
2 2001.

3 Are you aware of that?

4 A. No, but the book -- the edition I looked at in 19 ... in
5 fact, it says it on here ... 19 -- there's a date on
6 this somewhere. It talks about Robert Olsen and it says
7 date of birth 30.40.89 (**sic**) so ...

8 THE CHAIRMAN: Well, is it enough to say you read it a long
9 time ago?

10 A. It's of that age because -- the reason I know is that --
11 sorry, when did you say the second edition was
12 published?

13 MR SMITH: It was published in 2001, Mr Mackenzie.

14 A. I used this book so it must have been the first edition
15 when I became the trainer in 1993. So whether this was
16 in the first edition or -- this is presumably the first
17 edition, and if it was there I did see it but I'm not
18 aware of it being used and even in the interim period
19 from when I first saw it, this book, obviously, I've
20 never seen it used and the only time I've ever seen that
21 used is --

22 THE CHAIRMAN: Well, I don't think we need to go into a lot
23 of detail about it. The point that was being made, as I
24 understand it, is you were saying you've never heard of
25 such a thing and it looks as if there is such a thing --

1 A. Again, I say --

2 THE CHAIRMAN: -- whether you have forgotten it or not --

3 A. 20 years ago and certainly I used chapters out of it in
4 1993. So we're talking 16 years ago and I don't recall
5 it, so apologies if I've seen it in the book then it's a
6 moot point but if that's the point you're trying to make
7 then, yes, I must have seen it. It was in the book, but
8 it hasn't been recognised as an actual method that had
9 been used and it basically talks about it being a theory
10 at that point.

11 MR SMITH: Thank you, sir. I have no further questions.

12 THE CHAIRMAN: Mr Holmes?

13 MR HOLMES: There's just one matter I would like to clear up
14 with Mr Mackenzie, sir, that relates to a question that
15 was asked by Inquiry Counsel.

16 It is the question of whether points defined
17 differently by two examiners can be described as
18 mutually inconsistent.

19 THE CHAIRMAN: Yes.

20 **Cross-examined by MR HOLMES**

21 Q. Mr Mackenzie, you have been asked if two experts acting
22 properly could come to mutually inconsistent
23 conclusions.

24 Is one expert interpreting a unique event as a
25 bifurcation and another expert interpreting that same

1 unique event as a ridge ending, for example, something
2 that you would describe as mutually inconsistent?

3 A. Mutually inconsistent, no. I would basically say they
4 are describing the same event in the ridge structure but
5 their interpretation of it can quite easily differ, as
6 we've seen from a number of experts coming before the
7 Inquiry and I think if we turn it back to my first day
8 of evidence in my presentation on Y7, I actually was at
9 pains to point that out within the demonstration booklet
10 that actually two images of Shirley McKie's print, one
11 taken by the police and one taken by Mr Wertheim,
12 actually showed examples of bifurcations that were
13 looking as ridge endings in the other. So it's the same
14 event and that's been consistent, I think, through most
15 of the experts' evidence.

16 MR HOLMES: Thank you very much.

17 THE CHAIRMAN: Miss Grahame?

18 MISS GRAHAME: No, thank you.

19 THE CHAIRMAN: Miss Jones?

20 MS JONES: No.

21 THE CHAIRMAN: Have you any ...?

22 MR MOYNIHAN: Sir, I have no further questions.

23 THE CHAIRMAN: I just want to ask you, I can understand the
24 last point that is being made, the difference between a
25 bifurcation and a ridge ending because I think in the

1 course of the Inquiry we have heard experts agreeing
2 that that's a difference, but when you get a major ...
3 is there no difference, so to speak, between two
4 interpretations between a lake and something that is
5 open and not enclosed, is that sufficient to be a
6 difference or would you say that's the same?

7 A. I said, I was being referred to Mr MacPherson's
8 yesterday and that particular lake that we were talking
9 about in this mark, then I don't have a problem with, if
10 Mr MacPherson's interpreted that as that, that feature,
11 the whole lake, and that's quite easy because, again, a
12 lake is made up of two bifurcations so it could be open
13 in some instances and closed in another. So I really
14 don't have any great problem with two different
15 interpretations of that.

16 THE CHAIRMAN: That is really what I want to know. You
17 don't see any difficulty about that?

18 A. No, not at all.

19 THE CHAIRMAN: We have had a lot of discussion in the course
20 of the Inquiry about being 100 per cent sure and so on.

21 Would you say or would you agree that it is
22 sufficient if you are confident that no other person
23 could have made this mark other than the person in the
24 print?

25 A. I think, as I probably answered earlier, that when you

1 commit yourself to signing for your decision-making, be
2 it whatever number of points and you commit yourself,
3 then you would expect that another individual coming
4 along later on would agree with the identification. As
5 to how many points they saw or not ... but if you are
6 signing up to that as identification then you've got to
7 be sure, just as I said if you were saying it was
8 negative or insufficient, you've got to be sure in your
9 decision-making when you sign up to that that an equally
10 qualified expert would come to the same conclusion. As
11 I say, it didn't need to be the same amount of points,
12 et cetera, but as far as what the answer to what you
13 were actually saying before.

14 THE CHAIRMAN: Thank you very much and thank you for coming
15 back. I know you have done a great deal of work
16 producing your examples that you have given us and I am
17 grateful to you for all the time that you have given to
18 it.

19 A. Can I make a couple of minor points and --

20 THE CHAIRMAN: Yes.

21 A. -- I won't go on at length but just a couple of points?

22 One of them was that I produced this for
23 Mr Gilchrist, marked up 29, over the last two days I've
24 added a 30th. It wouldn't have mattered -- well, first
25 of all, Mr Gilchrist asked me to look at this cold. If

1 it had been negative then Mr Gilchrist would have been
2 told it was negative. If it had been 11 or 12
3 characteristics that I saw, I would have produced 11 or
4 12 characteristics but, as I've explained today, the
5 sheer volume and very fine detail within Q12 and Marion
6 Ross's control print made me want to actually illustrate
7 everything I could see there.

8 There was one more point, if I could just touch on
9 it, because I don't think it's been clarified. It might
10 have been touched on by Mr Padden and I think he was
11 asked about the anonymity process.

12 THE CHAIRMAN: Yes.

13 A. Basically we've been getting told about would it not be
14 better doing it blind. Now, round about -- I'm guessing
15 here if somebody could maybe clarify -- but round about
16 maybe about 2005 time, certainly a good bit after HMI
17 had reported and there was various items being ticked
18 off, that Mr Bell, along with Mr Innes, the head of the
19 Scottish Fingerprint Service, Mr Dunbar and myself met
20 one afternoon. Mr Bell basically said he wanted us to
21 find a method whereby we could bring in what has now
22 been termed an anonymity process. So, in other words,
23 keep it as blind as possible between one expert and the
24 next. We actually put that in place.

25 It was somewhat bureaucratic but any kind of change

1 to the system we had there was an element of that could
2 come in. What I mean by that was we used clerical
3 officers to actually hold on to the case paperwork and
4 the experts from the start were given the blank
5 fingerprints and the fingerprint form for comparison and
6 then, when they had concluded their findings, they would
7 go back to the clerical officer and record that I think
8 it was on paperwork and I think it actually also went on
9 to an electronic system. Then when it came if it had to
10 go to a second person, then again the photograph and the
11 fingerprint form would be given to the second person.

12 The only difference at that stage would be -- and I
13 think it's come out already -- that there would be a
14 label put on where there were fingers identified
15 indicating the finger number. Now, that is the only
16 pre-information, if you like.

17 To take that to the extremes -- and, again, I don't
18 know whether it came out with Mr Geddes's evidence but I
19 do know that Mr Geddes had experience of dealing with
20 major fraud work and it was, like, company fraud where
21 it was A4 documents. If you could imagine the thickness
22 of a telephone book of A4 documents, each of them
23 covered with fingerprints, particularly round the edges,
24 superimposed prints, et cetera, et cetera, the amount of
25 time it would take Mr Geddes or an individual to go

1 through 500 sheets and examine all these prints thereon
2 (negative, positive, insufficient, et cetera), to start
3 from scratch and not have put labels on it for a second
4 expert coming along is just absolutely not practical.
5 So that was, if you like, the only key to someone
6 knowing that something had happened before, there was a
7 label on it.

8 But my understanding is and the reason for raising
9 it is I have been told that since I retired that
10 virtually overnight when SPSA came in or not long after,
11 then the anonymity process was dropped. So it's maybe a
12 question you might want to ask SPSA because I don't
13 know.

14 THE CHAIRMAN: I think there is a witness who will deal with
15 this but, I mean, I had rather gathered from reading the
16 statements that another problem is in the very small
17 bureau with a very few people --

18 A. I also had that on I know that other witnesses --

19 THE CHAIRMAN: It's an artificial exercise?

20 A. -- and basically they've said it was unworkable but it
21 did work for the Glasgow Bureau be it ...

22 THE CHAIRMAN: Time consuming?

23 A. Time consuming and, you know, made use of another
24 person, a clerical officer, but it did work and that's
25 really in the spirit of how progressive SCRO, the

1 Glasgow Bureau and the Scottish Fingerprint Service
2 were, they were willing to move on, try these things and
3 introduce these things. And I just found that, I just
4 heard second-hand, it was a bit of information that
5 came, that apparently that has now been dropped. So it
6 was really a bit surprising because it was such a major
7 change but fair enough.

8 THE CHAIRMAN: I think we are going to hear about that soon.

9 Thank you very much again for giving up so much time
10 to the Inquiry.

11 **(The witness withdrew)**

12 **FIONA MCBRIDE**

13 **Examined by MISS CARMICHAEL (continued)**

14 Q. Good afternoon Ms McBride.

15 A. Good afternoon.

16 Q. I know it must seem like a long time ago now but when we
17 broke on Friday you were telling us about a time around
18 about the trial of Shirley McKie and about when you
19 became aware that there were defence experts who would
20 be saying that you and your colleagues had
21 mis-identified Y7.

22 Do you remember the point we had got to?

23 A. I thought we'd got to the point where I said that we had
24 meetings with Sean Murphy, was my exact recollection. I
25 don't know if that's any help.

1 Q. I think what you had started to tell us, and you no
2 doubt will put me right if I am wrong, is that the first
3 that you learned of an allegation of mis-identification
4 was when you were sitting in court listening to
5 Mr Wertheim's evidence and I think you quite graphically
6 put it you just about fell off your chair.

7 A. Yes, that's true.

8 Q. I would like to just explore some of that a little bit
9 further with you, Ms McBride. Had you heard anything in
10 the office about what the line of the defence evidence
11 would be in the trial?

12 A. No. Other than I'd heard about planting. There was a
13 possibility that they were going to say it had been
14 planted and I think the IB were involved in some way to
15 do with that obviously but, no, it didn't occur to me
16 that someone was going to say that it was a
17 mis-identification -- not at all.

18 Q. Were you surprised to be cross-examined?

19 A. No, not really. I was surprised in this case that I was
20 called in the first place but not surprised to be
21 cross-examined, no.

22 Q. Had you been cross-examined before?

23 A. Yes.

24 Q. It is perhaps fair to say to you that the
25 cross-examination in this case didn't last very long

1 because you and Mr Findlay came not to have a meeting of
2 minds perhaps?

3 A. That's true.

4 Q. You said when you were cross-examined by Mr Findlay, I
5 think, that you had not seen the production that he was
6 putting to you before when he showed it to you in the
7 trial.

8 A. The Wertheim production: no I hadn't.

9 Q. Did you have any idea when you saw it what it might be
10 meant to be denoting?

11 A. Not at all -- not at all. In fact, that's something --
12 in fact, it's okay I'll come back to this point later
13 on -- but talking about having items handed to you when
14 you are in a court situation and it's the first time
15 you've been able to see it or comment on it, I wouldn't
16 do that anyway but I had never seen it before and there
17 really was no way I could take all that information in
18 in that short time in that forum. So there was no clue.
19 I just saw overlays, et cetera, and I really would have
20 had to have taken it away and looked at it properly to
21 know what exactly it was supposed to mean.

22 Q. Just to be quite clear about it, is it your position
23 that nobody, whether someone in your own office or
24 someone from the Fiscal Service, took you aside and
25 said, "You should know, Ms McBride, that there's going

1 to be some kind of challenge to the identification

2 here"?

3 A. Challenge to the identification, there had been

4 challenges to identifications before but they had been

5 in the form of they are insufficient or they didn't

6 agree with particular characteristics, but it never got

7 as far as someone saying it was actually not that

8 person.

9 Q. I am sorry, my question was unclear. I meant in

10 relation to the Shirley McKie trial?

11 A. Oh, I see.

12 Q. Nobody took you aside at all?

13 A. No, not at all.

14 Q. Or gave you any indication?

15 A. No.

16 Q. I think you have given us perhaps more than a hint of

17 what your reaction was when you heard Mr Wertheim's

18 evidence but perhaps you could explain a little bit more

19 about your reaction to the Chairman.

20 A. I don't know exactly what you mean. What sort of --

21 just because I was in shock; I was in total shock.

22 Q. You said you just about fell off your chair.

23 A. I did. I really didn't expect that and I looked

24 immediately to Charlie who just shrugged -- as Charlie

25 would he would shrug regardless of whatever happens

1 so ... I was in shock. I looked at him to go "wow" and
2 he ... **(Shrugged)** That was it.

3 Q. So we should understand that Mr Stewart had given
4 evidence before you in court?

5 A. Yes.

6 Q. There had perhaps been a couple more minor witnesses in
7 between the two of you and at some point the two of you
8 come to be listening to Mr Wertheim's evidence in court
9 together?

10 A. Yes, that's true.

11 Q. After you had given your evidence, by which time of
12 course Mr Stewart had already given his, there hadn't
13 been any discussion between you, even after the event of
14 your evidence, about what the defence line was?

15 A. No, because Sean Murphy had said that he wanted us in
16 court to listen to the evidence of the other experts,
17 the defence witnesses, and I wasn't entirely sure how
18 helpful we could be but we were there and Charlie and I
19 did listen to the evidence but Sean Murphy didn't say
20 that Wertheim was going to say it was a
21 mis-identification --

22 Q. Should I have --

23 A. -- although I'd spoken to him briefly prior obviously
24 when we had turned up at court Charlie had met him
25 before. We were introduced. He said that he would like

1 us to sit in the court and listen to the other evidence
2 and give him our opinion, so that's what we did but he
3 didn't intimate at that point or at any point that
4 Wertheim was going to say it was a mis-identification --
5 not to me, anyway.

6 Q. So should we understand that you had spoken, albeit only
7 in those very brief terms, to Mr Murphy before you gave
8 evidence or was that a conversation that only happened
9 after you had given your evidence?

10 A. I think he just said hello when I first arrived in
11 court, maybe prior to giving evidence. After that he
12 had a very brief chat. He was very busy and always on
13 the run, so a very brief chat, he'd be quite happy for
14 us, if we didn't mind, to sit in the court and listen to
15 the defence.

16 Q. When you say when you first arrived in court, maybe
17 prior to giving evidence, do you know whether that
18 happened before you gave evidence or not. Again, if you
19 can't remember at this distance in time --

20 A. I have a recollection which might be wrong and that is
21 that, basically, we were hastened along a corridor to
22 the witness room and Mr Murphy said hello at that point
23 and then rushed off. He didn't actually say anything
24 other than hello, although that might, even in itself,
25 not be accurate but I think that's what happened.

1 Q. I would like to ask you at what stage you became aware
2 of a Mr Swann having been involved in the case at an
3 earlier stage?

4 A. I didn't know his name. I had heard that -- there was a
5 rumour, while we were at court, I think, because of
6 course we were up and down to the office, you know, in
7 between days and I had heard that there were two other
8 independents who had verified it. Having said that,
9 that wasn't even definite. It was just that we thought
10 there might be another two independents that might have
11 verified it, because when I was giving -- that was prior
12 to evidence.

13 Q. This is at a stage before you were giving evidence?

14 A. Yes.

15 Q. And there's conversation in the office about Mr --

16 A. Not in the office. I think it might have been ... this
17 is just my memory and it might be wrong but it might, I
18 believe it was probably Charlie Stewart that said or it
19 could have been -- in fact, it would probably have to be
20 Charlie and the reason I'm thinking that I had a vague
21 idea that there might be someone is because in my
22 evidence I named the people who had identified mark Y7,
23 the ones in the case and Robert Mackenzie and Alan
24 Dunbar, I think, from memory. I can't remember. I
25 can't remember from reading the transcript, if that's

1 what it says.

2 But at that point I was wondering whether to add on
3 the fact that I thought there were another two people
4 that had identified it. I wasn't sure whether I was
5 allowed to or not because of legalities and I didn't
6 know their name or I had a vague ... I think I might
7 have known Malcolm Graham's name but I certainly didn't
8 know Peter Swann's name. I didn't know about him at
9 all. So that's what stopped me because I didn't know if
10 I was allowed to say because I'm not a lawyer so I
11 didn't know about hearsay or whatever else.

12 So when I was asked are you sure or whatever it
13 was -- I can't remember the exact question -- and I
14 listed the people that had identified the mark, I did
15 wonder whether I should stick the other two on the end
16 but I was sufficiently unsure not to do so.

17 Q. Who is it that's asking you at this stage to stick names
18 on the end?

19 A. Nobody's asking me to stick names on the end. I think
20 it was in response to a question. It would be either
21 Mr Findlay or Mr Murphy and my answer was that I was
22 sure it was Shirley McKie's print -- obviously, I don't
23 know the exact words -- and I listed the people who had
24 seen it and I didn't list ... is that not in the
25 transcript? I know that that happened because I did

1 wonder about saying it, so ...

2 Q. I am struggling myself to identify a part in the
3 transcript where Mr Findlay or Mr Murphy asked you a
4 question that gave rise to any answer about Mr Mackenzie
5 or Mr Dunbar?

6 A. Did I not put in that the training officer had viewed
7 it?

8 Q. We can perhaps just check that, Ms McBride.

9 A. I could be wrong. This is from recollection.

10 THE CHAIRMAN: It is a long time ago.

11 MISS CARMICHAEL: You think that possibly when you were
12 asked a question in court, either by Mr Murphy or
13 Mr Findlay, it occurred to you that you might have
14 mentioned Mr Swann or Mr Graham at that point but you
15 did not do so because you weren't sure whether you were
16 allowed to do so.

17 A. I didn't know whether I was allowed to do so, I didn't
18 have any definite information in any case. I just
19 thought that another two had seen it. I just found out
20 while I was at court. I wasn't sure even -- I'm pretty
21 sure that Charlie -- he didn't know; I didn't know; we
22 heard that there might be someone else that
23 independently verified it. I possibly knew Malcolm
24 Graham's name because he had verified it for David
25 Asbury, I think, but I certainly didn't know Peter

1 Swann's name, so I don't know -- I didn't have
2 sufficient definite information to pass that on in that
3 forum, I thought.

4 Q. Did a time come when you did become aware that Mr Swann
5 had examined Y7?

6 A. A very long time later.

7 Q. Can you tell us when that was?

8 A. **(Shook head)**

9 Q. Was it during the trial?

10 A. No, absolutely not, no.

11 Q. I perhaps do not need to pursue that aspect of it
12 further with you.

13 I think just on the theme of the time round about
14 the trial and who knew what when, I think you heard
15 Mr McKenna giving evidence about a meeting with Mr Hogg.
16 Is that something you remember happening?

17 A. I didn't remember it before it being pointed out to me
18 just the other day that perhaps our evidence was
19 slightly different in that Tony remembered a meeting
20 with Mr Hogg and I spoke to him and said, "I don't
21 remember a meeting", and he said it wasn't really a
22 meeting, it was a brief, a very brief, I think
23 information exercise or something and when he described
24 it to me, I had a vague recollection, very vague
25 recollection. I couldn't have said it was in the Chief

1 Inspector's office.

2 Having said that, it would have been normal to have
3 been taken into the Chief Inspector's office because
4 it's a very open office so if you were going to discuss
5 anything you would just want to be there for peace and
6 quiet, if nothing else.

7 I do remember Ian Hogg in the vicinity and I do
8 vaguely remember him saying something but I couldn't
9 have told you what the meeting was about. I didn't
10 recognise it because I didn't recognise it as a meeting
11 until Tony said that and then I thought, "Gosh, I think
12 I recollect that". But, again, it's very vague. I
13 couldn't give you any details on it.

14 Q. You said that it had been pointed out to you that
15 perhaps your evidence was slightly different from
16 Mr McKenna's.

17 Who pointed that out to you?

18 A. My lawyers.

19 Q. But in any event, if this happened you can't help us
20 with what Mr Hogg may have said?

21 A. No. When Tony said it, it sounded familiar but that's
22 not to say that it just sounds familiar and it's
23 something else.

24 Q. I won't trouble you further with that either. I do
25 appreciate we are asking you to remember events from a

1 long time ago, Ms McBride.

2 I would like to ask you about paragraph 138 of your
3 statement. The fingerprint Inquiry reference is
4 FI0039-02 and the page number is page 32. If we look at
5 paragraph 138, I have been asked to clarify with you
6 here what it is you are referring to. You say that
7 after your evidence at the trial Mr Murphy said to you
8 that a witness had been lying and that Mr Wertheim was
9 brought in at the last minute and whilst he, Mr Murphy,
10 could have asked for more time he didn't want to hold
11 the trial up.

12 When is it you say Mr Murphy, as he was, said that
13 to you?

14 A. I'm not sure about the term, maybe I should have changed
15 it, the term "lying", I couldn't say exactly precisely
16 so the chances of him actually using the word "lying"
17 are pretty -- I don't know if they are pretty low or
18 whatever, however it is true that between witnesses --
19 he said he couldn't -- he knew -- in fact, he might have
20 used the term "lying" but I can't think of another word
21 for it so I will use that just now, that he knew that
22 one of them was but he couldn't separate them in
23 evidence. It was between two. He had an idea of who it
24 was but he couldn't separate them in evidence and that
25 was said at one of the meetings. In fact, when I say

1 one of the meetings, Mr Murphy was often in a hurry so
2 we would be running along a corridor with him as he
3 headed off to another meeting chatting, "What do you
4 know", and that sort of thing and we did have a meeting
5 with him after, on a particular day, where we waited for
6 him for about half-an-hour because he was caught up in
7 something else and then we spoke to him. So it would
8 have been in one of those times.

9 Q. What I would like to clarify with you, Ms McBride, is
10 whether it is possible that what you are recollecting is
11 what Mr Murphy said to you at the debriefing meeting
12 after the trial where Mr Crowe and other representatives
13 of Crown Office and SCRO were all present?

14 A. No, I don't think so.

15 Q. If I could take you to CO0034 and if we perhaps move to
16 the -- in fact, on the first page here we can see a
17 summary of case by the Advocate Depute who is Mr Murphy
18 and if we go to the paragraph starting, "He noted", what
19 is recorded here from the meeting of 20th May 1999 is
20 that:

21 "... comments had already been made regarding future
22 challenges to fingerprint cases. His opinion was that
23 it was unlikely this case would cause serious damage to
24 the fingerprint evidence and the case was a one-off,
25 containing circumstances which were unlikely to be

1 repeated."

2 If we take that paragraph down the next paragraph
3 starts:

4 "In respect of this case, difficulties existed prior
5 to the presentation of fingerprint evidence relating to
6 surrounding matters, access to a secure **locus** and the
7 need to prove that two people were lying."

8 Seeing that recorded in that way might suggest your
9 recollection is actually coming from this meeting?

10 A. No, that's not true. I do -- again, the caveat being it
11 was a long time ago but as far as I recollect it would
12 have been ... it was after the log keepers gave
13 evidence. We were at the trial. We were there
14 throughout the trial until it was time for summing-up,
15 which I thought was the exciting bit but Charlie said we
16 had to go back to the office, so we didn't get to hear
17 that part.

18 But I'll concede that I could be wrong, of course,
19 because it was such a long time ago but my recollection
20 is that it was something that was said while we were at
21 court because I thought that it was the log keepers that
22 he was referring to and, in fact, I think -- and, again,
23 I could be wrong -- but I thought that he said that it
24 was the log keepers and he doesn't say there that it's
25 the log keepers that he's referring to.

1 Q. I will leave that topic, Ms McBride. There is just one
2 more thing I want to ask you about and that is how you
3 came to be in contact with Mr ... it has just been
4 pointed out to me that, in fairness to you, Ms McBride,
5 there was a passage in your evidence where you refer to
6 a Quality Assurance Officer in the course of your
7 evidence at trial. So that may be what you are
8 referring to.

9 A. Thank you.

10 Q. I can perhaps take you to that passage before I move on.
11 I'm sorry. If we go to SG0528 at page 32 and if we look
12 to line 13, you have just been making a reference to the
13 system rather than your judgment being infallible:

14 "Have I got that right? Is it infallible"", and you
15 say:

16 "So far, yes. I would say the system is infallible.
17 One person can make a mistake but four people and the
18 Quality Assurance Officer -- it is not possible."

19 So it looks as if you are making a reference there
20 possibly to the involvement of the Quality Assurance
21 Officer, Mr Dunbar, at that stage.

22 A. Yes, that's true.

23 Q. That may be what you were thinking of when answering the
24 question earlier.

25 A. That's exactly -- that's when I thought of the other two

1 and I thought I don't know enough, so ...

2 Q. I will leave that, Ms McBride, and turn to the topic of
3 Mr Brown.

4 How is it you came to be in contact with him?

5 A. I telephoned him and at the time -- I'm trying to
6 remember why, what the catalyst was. Basically I had an
7 e-mail saying I should contact, telephone this number so
8 I did and it was Les Brown and he explained, very
9 briefly, who he was and he said -- at the time there was
10 something in the media or something going on that was
11 hugely negative as usual and I telephoned him and he
12 explained that he would try and help and I asked him --
13 I told him what had been going on with us. Then he
14 invited me to visit him, so I went with Alister Geddes.

15 Alister Geddes had no idea. I phoned him at the
16 last minute and said, "Will you please come with me",
17 rather than go alone, and Alister came with me and I
18 just explained the position that we were being accused
19 of all sorts, criminality, et cetera, and it wasn't the
20 case. I think Les Brown -- in fact, it is the case that
21 Les Brown just wanted to speak to me to find out if I
22 was actually being truthful and he was satisfied that I
23 was.

24 I think the catalyst may have been the Newsnight
25 programme, I think, when I was on Newsnight and it was

1 the first time anyone had appeared for our side -- well
2 not for our side but for us. So that might have been
3 the time and that would have been the catalyst, I think.

4 Q. You said that somebody had e-mailed you a telephone
5 number.

6 A. Yes.

7 Q. Who had e-mailed you the telephone number?

8 A. David Russell. Having said that, there was no
9 instruction and it was my choice and he just -- I just
10 thought I'd be clear.

11 THE CHAIRMAN: Just giving you the number if you wanted to
12 use it.

13 A. Yes, that's precisely it.

14 MISS CARMICHAEL: Thank you, I think you have answered all
15 the other questions I was going to ask you about that in
16 the course of your last answer, Ms McBride. I don't
17 have any further questions for you.

18 THE CHAIRMAN: Do we begin again?

19 MR SMITH: Thank you, sir, I had intended to ask a number of
20 questions but most of the matters have already been
21 covered by witnesses and, indeed, by the
22 examination-in-chief.

23 There are only two matters I would like to ask
24 about. They both relate to Ms McBride's position
25 concerning a single answer that was given in the course

1 of the trial of Shirley McKie concerning, first of all,
2 the quality of the mark Y7 and also the purpose of the
3 cross-examination, if I can deal with that narrow
4 territory.

5 THE CHAIRMAN: Yes, if you'd like to ask those.

6 **Cross-examined by MR SMITH**

7 Q. Can I have an image up, please, which is SG0528 and
8 digital pages 36 and 37 together, please.

9 Ms McBride, if you take it from me, please, that
10 this is a transcript of the evidence and in particular
11 the cross-examination by Mr Findlay. I am interested in
12 the left-hand page, which is page 34, from line number
13 16. You see the line numbers at the left. Mr Findlay
14 is asking a question:

15 "Just looking at it from what might be the top of
16 the mark" -- and then he obviously is trying to count
17 down ridges -- "on either side of that you may see just
18 below kind of halfway, a third of the way up ridge,
19 ridge [et cetera] why can't you look at them? What is
20 wrong with them?"

21 The answer is:

22 "Because with 14 years of experience I know that
23 that cannot really be properly interpreted. There is
24 too much wrong with it and I will avoid it and only
25 someone who was not an expert would attempt to interpret

1 those ridges."

2 Can I ask if you still maintain the position that

3 the top part of the print would only be looked at by

4 someone who is not an expert?

5 A. Well, perhaps I should have answered in more detail and

6 that is to say that I wouldn't expect someone who was an

7 expert to expect to get it to the 16-point standard in

8 that part. So that's a more qualified answer, I would

9 say.

10 Q. I am simply reading what is said here --

11 A. I know --

12 Q. Hang on a moment, please.

13 "There's too much wrong with it and I will avoid it

14 and only someone who was not an expert would attempt to

15 interpret those ridges."

16 That is not anywhere near suggesting they might not

17 get to the 16-point standard, it is saying it would be

18 dismissed out of hand as being of any use. Can you not

19 agree with that?

20 A. As I made clear the other day, I did not dismiss

21 anything out of hand. I know what an SCRO does; so

22 clearly that's not what was meant there. In fact, I

23 would say I would not attempt to interpret those ridges

24 to the evidential standard, to the 16-point standard. I

25 would say that would fit in the end there quite well.

1 Q. The words at the bottom the last line on the left-hand
2 side page:

3 "I will avoid it ... "

4 What did you mean by that?

5 A. Clearly, I had done a full analysis, as I explained the
6 other day, because we do that on every mark. I avoided
7 looking for Shirley McKie's palm-print against mark
8 Z7(sic). Having already analysed it as insufficient for
9 court purposes, I didn't bother to take it any further.
10 I could have spent a long time on it and I didn't. I
11 avoided that and that's what I did with the top of the
12 mark.

13 Q. I am still trying to work out are you clarifying that or
14 changing any of it, withdrawing it as far as --

15 A. I'm clarifying it.

16 Q. Let me finish the question, please -- as far as it can
17 be, it would be avoided "I will avoid it" and the second
18 part is:

19 "... only someone who is not an expert would attempt
20 to interpret those ridges" can you explain if any of
21 these just require explanation or if you are prepared to
22 withdraw either of these parts of the answer?

23 A. As I said, I'm clarifying it.

24 Q. The other matter I wanted to ask you about was this: the
25 response by Mr Findlay to your answer at the top of the

1 next page, page 35, he says from line 3:

2 "Well, the defence will produce evidence from the
3 two people who have been doing this job for an awful lot
4 longer than 14 years who take a very different opinion
5 about this?"

6 You can read the answer if you wish:

7 "Well, I cannot comment on the standard of other
8 fingerprint experts."

9 What I am interested in, Ms McBride, is this: when
10 you were standing in the witness box and Mr Findlay
11 asked you that or made that comment to you, and indeed
12 all the other comments that he made, what did you think
13 he was trying to achieve in his cross-examination?

14 A. I've no idea. I answered the questions that were put to
15 me. I don't try to figure out what the strategy is of
16 the defence counsel.

17 Q. The reason I am asking you is because of your evidence
18 to this Inquiry that you say it was after you left the
19 witness box that you nearly fell off your seat when you
20 realised what the defence was. Was it not perfectly
21 clear from what Mr Findlay was doing was, first of all,
22 challenging your evidence? That much was clear, wasn't
23 it?

24 A. Every time that a QC questions us, the questions are
25 very similar. There was nothing to indicate that there

1 was anything about this case that was different from any
2 case that had gone before.

3 Q. I am interested in what Mr Findlay says about line 6,
4 the words "very different opinion about it". I take it
5 you picked up at that point there were other people who
6 had at least a very different opinion than your opinion.
7 You understood that much?

8 A. Well, their opinion may have been on a couple of
9 characteristics for all I knew; so I didn't comment, and
10 I still can't comment, on the standard of other
11 fingerprint experts because during the comparative
12 exercise I checked Mr MacLeod's work and was very
13 shocked at what he produced and couldn't understand it.
14 Then later on it transpired that he had taken the
15 instructions another way and produced something entirely
16 different.

17 So I can't judge -- without actually having spoken
18 to the person or understanding how they came to their
19 conclusion, I can't be sure what another expert's been
20 doing, so ...

21 When I checked the comparative exercise, I was
22 surprised. I couldn't understand how he came to that
23 conclusion. I wondered about his ability. Then I heard
24 him give evidence and he sounded pretty good, I thought,
25 and it turned out that the comparative exercise had just

1 been completed in another way and that then made sense.
2 So I can't possibly comment on the standard of other
3 fingerprint experts, certainly not people I don't know
4 anything about.

5 Q. I am not asking you about your comment regarding the
6 standard of other fingerprint experts, I am simply
7 asking you to explain whether you had any inkling at all
8 that there was going to be a challenge to your
9 identification. I think your answer is no, you didn't.

10 A. That's true.

11 Q. No doubt we can all look at the entire cross-examination
12 in due course, but as someone who had received training
13 in appearing in court, training in knowing what the
14 rules were in court, challenges by defence counsel,
15 you're telling us here before this Inquiry you had no
16 idea what the nature of the challenge was that was
17 presented by Mr Findlay?

18 A. Absolutely.

19 Q. When you were shown the acetate sheet, the document, did
20 you actually take it from Mr Findlay and look at it?

21 A. What do you mean, did I take it? I think it was handed
22 to me by a court clerk and it was put in front of me,
23 although that could be wrong.

24 Q. Very well. I am hardly going to pick you up and say it
25 was a court clerk rather than Mr Findlay.

1 A. It may have been a court clerk.

2 Q. Did you have it available to you actually in your hand
3 at some stage, did you?

4 A. In my hand? It would have been on the lectern or
5 whatever you call it in front of me.

6 THE CHAIRMAN: Well, available to you?

7 A. Yes. It would have been available to me, yes.

8 MR SMITH: Did you see the handwritten entry that's been
9 before this Inquiry when Mr Wertheim has written in his
10 own hand in green writing an indication that there were
11 parts at the top of the print that do not exist in the
12 mark of Shirley McKie in the fingerprint. Did you see
13 that writing?

14 A. Could you show me the production, please?

15 Q. Of course. Give me one moment and we will get the
16 number.

17 Sir, I see the time.

18 THE CHAIRMAN: Yes, I was just wondering if it is convenient
19 we will take the short break now and sit again at 3.05.

20 **(2.55 pm)**

21 **(A short break)**

22 **(3.05 pm)**

23 MR SMITH: I think the reference number for the purpose of
24 the screen is DB0172 if we can have that, please. I
25 think if we go through this and keep flicking through

1 and stop there. Thank you.

2 Ms McBride, I think you have the original or maybe
3 not the actual one but a similar version of the acetate
4 sheets before you just now. Can you perhaps confirm to
5 us that you had available to you a document like that
6 when you were giving your evidence?

7 A. I can't remember and, specifically since you're saying
8 it might not be the actual one, I'd rather not comment
9 on it at all.

10 Q. Come over with me on this one for the moment. Let us
11 presume that what you have is a document that contains
12 the same written information as appeared in the one that
13 was available at trial. Just take that as a given for
14 the moment. Do you agree that it is clear from this
15 document, particularly the electronic page that we're
16 looking at, where it says "target group and" written in
17 black and then for purposes of clarity:

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

20 Would you agree with me that it makes it abundantly
21 clear from that document that what is being suggested is
22 there are bits of Y7 that do not appear in the inked
23 mark of Shirley McKie?

24 A. I'd like to say that I can't take it as a given that
25 this is the case and I'll tell you why. I noticed you

1 made several errors during this Judicial Inquiry. One
2 of them was when you said that a document had been
3 redated by Hugh MacPherson and in fact it hadn't
4 happened. So while of course the Inquiry team will have
5 sorted all that out, I can't possibly take anything that
6 you say as a given.

7 Q. Ms McBride, I know you want to make a speech but I would
8 like an answer to the question which --

9 A. You have an answer to the question.

10 Q. Please let me finish. Please let me finish.

11 The question that I put to you is whether is it not
12 abundantly clear from this document you are looking at
13 that it is being said that there are points in Y7 that
14 do not exist in the left thumb of Shirley McKie?

15 A. In court I think I asked to see this at the office. I
16 wouldn't have gone as far as even reading all that. To
17 be handed that in a High Court case to -- how would I
18 say -- decipher is not something that I would do. I
19 would take it away and look at it. So I wouldn't have
20 read it and, in fact, I think I mentioned something
21 about the overlays. Of course, I could be wrong so you
22 would have to check the transcript but I think they
23 said, "Well, just push the overlays back and look at
24 that then" because I didn't recognise it. I didn't know
25 what it was that they were giving me.

1 So, in fact, the chances of me even attempting to
2 read that are practically nil.

3 Q. Let us just look at another bit in the evidence to see
4 if the light wasn't coming on about the purpose of the
5 challenge. Could we have SG0528. Can you go to page 31
6 electronically -- I am sorry, it is the electronic
7 page 31, page 29 -- and the next page for completeness
8 as well. Just reading what Mr Findlay said, reading
9 from the bottom of the left-hand page, line number 22.
10 He says this:

11 "You see, because when we go into the evidence in
12 this case -- and I have no doubt you have been told or
13 heard -- there is evidence that says out of the 16
14 illustrated in, for example, 152 at least ten of them
15 don't exist or are faulty."

16 You say:

17 "I cannot comment on someone else's opinion and I
18 have no idea what their qualifications are and I don't
19 know how long they've been looking at fingerprints but
20 I'm happy that the author of these prints has had the
21 fingerprints taken on that form."

22 Ms McBride, is it abundantly clear from that
23 question, isn't it, that it was being said that the
24 examination you carried out was faulty and that at least
25 ten points either didn't exist or were incorrectly

1 identified. That's what he said to you, isn't it?

2 A. No, the only way I could have commented on that would
3 have been if I'd been given time to take it away and
4 verify or otherwise what the claims were.

5 Q. Ms McBride --

6 THE CHAIRMAN: That is not quite the point. The point is
7 whether you were being put on notice, to say the least,
8 that somebody else didn't agree with your conclusion.

9 A. Yes. I'm wondering whether this is after there are
10 differences, alleged differences, pointed out at the top
11 of the mark and whether I would have thought that at
12 least ten of them -- you're saying the "16 illustrated
13 don't exist or are faulty", so ...

14 It didn't occur to me. It didn't occur to me. It
15 just sounded like some, an argument being led by a QC
16 and they do have a tendency to go off on a tangent and
17 not exactly represent what's in front of you, so ...

18 MR SMITH: Just finally, in fairness to you, Ms McBride, as
19 I understand your position, that despite us seeing this
20 question, the other question and answer that I directed
21 you to a few moments ago and the acetate, you are saying
22 you did not know that a challenge was being placed to
23 the identification by SCRO and that is your evidence
24 before this Inquiry, is it not?

25 A. I did not know that anyone was going to say it was a

1 mis-identification.

2 MR SMITH: Thank you. I have no further questions.

3 THE CHAIRMAN: Perhaps I should ask Miss Grahame next. Have
4 you any questions?

5 MISS GRAHAME: I have no questions.

6 THE CHAIRMAN: Mr Holmes?

7 MR HOLMES: No thank you, sir.

8 MISS CARMICHAEL: There is one further item from the trial
9 transcript that, in fairness to Ms McBride, I would like
10 to draw to the attention of the Inquiry.

11 THE CHAIRMAN: Yes.

12 MISS CARMICHAEL: I think we are still on SG0528 and it is
13 page 40 on to 41 that I would like to look at, please.
14 That is in terms of electronic numbering.

15 We see on the left-hand of the screen here we have a
16 part where Mr Findlay is asking you about defence
17 production number 2, which I think is the item you're
18 looking at today. You are asked to look at it and to
19 move the acetate sheets and, at the end of the question,
20 we see at line 15 the answer:

21 "I really couldn't express an opinion. I have not
22 seen this before and I haven't studied it and I can't
23 say in Court here."

24 Mr Findlay says:

25 "You must have seen it before with respect because

1 it is the mark that you looked at?

2 "Well, it appears to have had -- I have not seen it
3 in this format and I would like to check."

4 What then seems to happen is that there is an
5 exchange of some sort between the Advocate Depute and
6 Mr Findlay.

7 A. Yes.

8 Q. Do you recall what happened there? Were you able to
9 tell?

10 A. I thought at the time -- well, not at the time, it must
11 have been after that -- Mr Findlay seemed to believe
12 that I had seen the production before and I think
13 Mr Murphy was telling him that I hadn't. So I'm
14 imagining that Mr Findlay thought I was with Hugh
15 MacPherson and Charlie Stewart at the earlier meeting.

16 Q. We go on to see the next question from Mr Findlay gives
17 you a little bit more explanation about what it is he's
18 showing you, which might tend to indicate that something
19 of that sort had been explained by Mr Murphy to
20 Mr Findlay.

21 A. Yes.

22 MISS CARMICHAEL: Thank you. I don't have any further
23 questions for you, Ms McBride.

24 A. Thank you.

25 I don't know whether it's worthwhile, I was just

1 thinking about the discussion earlier on about
2 differences if you're interested. It won't take very
3 long. It's with regard to the differences between Hugh
4 MacPherson and Robert Mackenzie, but I won't go into the
5 characteristics.

6 THE CHAIRMAN: This is really you commenting on somebody
7 else's evidence.

8 A. No, no, it's on the format. It's on this forum and
9 whether it's a good idea to have someone commenting on a
10 diagram against a diagram and the fact that the lines
11 that were drawn at the time they said they weren't
12 particularly good with the mouse and that there were
13 photographs of slightly different contrasts on the
14 screen. I think at one point there was a bifurcation
15 which was said to be a difference and when I looked at
16 it, to me it looked as though they were marked in
17 precisely the same place and it would have just been the
18 way they were using the mouse.

19 What I'm thinking about is, while it might be useful
20 of course to the Inquiry to go into these things
21 in-depth in that way, it's not what an expert would do.
22 They would take it away and do it. We could have drawn
23 these diagrams far more accurately, of course, away from
24 this forum -- and that's for all the experts that
25 appeared here. I'm thinking particularly of

1 Mr Wertheim. He gave evidence on the Rosetta
2 characteristic and he got a bit mixed up.

3 All I'm saying is in an office or in the right
4 environment with an opportunity to speak to the other
5 expert, he would have looked at that and thought there
6 was something wrong with it, gone to the other person or
7 someone else and they could have put him right and he
8 wouldn't have had to make the mistake he did in this
9 forum.

10 So all I'm saying is that while it might be useful
11 to you, it's not a reliable representation of what a
12 Fingerprint Expert sees. The type of questions, which
13 are fine but they were directed in a particular way to
14 suggest differences, that's the sort of thing that would
15 be ironed out in debate between experts. That's also
16 why I can't comment on other experts' work because,
17 without actually speaking to them, we don't know
18 precisely what they meant.

19 So, while I notice that while Robert Mackenzie was
20 giving evidence, Hugh MacPherson's away for the week so
21 you didn't have the opportunity to ask Hugh "Is that
22 really what you meant or was that drawn in the right
23 place or is that sufficient for your purposes and is
24 that really a difference" and that's all I wanted to
25 point out.

1 THE CHAIRMAN: Among other things, I can well understand
2 trying to draw in a witness box live is a totally
3 different exercise to in a laboratory under quiet
4 conditions --

5 A. Thank you.

6 THE CHAIRMAN: -- and it must be very difficult but it's
7 more or less so that I can try and follow the transcript
8 of people have been doing it and I certainly will pay
9 attention to the warning that you have given about
10 accurate it is.

11 A. Thank you.

12 THE CHAIRMAN: Had you any other questions?

13 MISS CARMICHAEL: No thank you, sir.

14 THE CHAIRMAN: The one matter that I was going to ask you,
15 and it is just so that I can be more familiar with the
16 practice from your point of view as an expert giving
17 evidence in a trial, when there is an opposing expert,
18 if I can call it that, the defence is calling an
19 expert -- and you have had experience of that from what
20 I gather -- would you normally get advance information
21 as to what the other expert was going to say?

22 A. No. I can't remember ever having advance notice of what
23 the other expert -- perhaps for other people, but I've
24 never had advance notice of what the other expert ... I
25 think it's expected that we go to court and we give our

1 evidence; it's straightforward, we have nothing to hide
2 and therefore there ought not to be anything too
3 difficult.

4 THE CHAIRMAN: It's really attached to the point that you
5 were just making. It's very difficult when you haven't
6 an opportunity to look at something calmly and in the
7 right environment to check what the evidence would be.
8 We have heard a bit about disclosure and I am just
9 wondering whether the defence disclose their expert
10 evidence so that you would see it and have an
11 opportunity to consider it before you actually have to
12 come and give evidence.

13 A. I think back in the days when I was allowed to give
14 evidence in court, I don't think that was an issue but I
15 could be wrong. I don't think they had to disclose
16 anything.

17 THE CHAIRMAN: It wasn't your experience anyhow?

18 A. No, it certainly wasn't.

19 THE CHAIRMAN: Of being the evidence to go away and look at
20 before the day you came to the trial?

21 A. That was the first time it had happened. I think in the
22 office we've received a phone call, I've received a
23 phone call and they have said they are going to -- there
24 is a defence expert looking at this and I've gone over
25 what I've done to make sure that I'm happy with it

1 before I go in, but I don't recall. I may be wrong but
2 I don't recall ever being given any productions and I
3 think that the information that the defence had a
4 defence expert didn't come from the defence, it came
5 from the prosecution services who had had the
6 productions requested of them.

7 THE CHAIRMAN: I just was trying to inform myself about what
8 the practice was, certainly from your experience as an
9 expert.

10 Thank you very much and I apologise for the
11 disruption.

12 A. Not at all.

13 THE CHAIRMAN: Well, it's not agreeable giving evidence, I
14 am sure, and having it disrupted makes it worse but you
15 have been very accommodating. Thank you very much.

16 A. Thank you.

17 **(The witness withdrew)**

18 MISS CARMICHAEL: Sir, the next witness is to be Miss Joanne
19 Tierney of SPSA. Because of a pessimistic estimate of
20 where we would get to today arrangements were not made
21 for Miss Tierney to come this afternoon. However, we
22 can make some progress because there is a DVD or CD-Rom
23 which I would otherwise have played in the course of her
24 evidence. I don't think it is essential she is here
25 while it is played.

1 THE CHAIRMAN: No, she knows what it is; she provided it,
2 did she?

3 MISS CARMICHAEL: In fact, it came from Crown Office. It's
4 an item that was prepared by an SPSA predecessor, SFS,
5 it is referred to in Mr Scott Patterson's statement, the
6 witness from Crown Office, and it occurred to me this
7 might be an opportune time to play it before the SPSA
8 evidence and before Mr Patterson's evidence.

9 THE CHAIRMAN: I think there is no harm if we spend the time
10 looking at it now, but if she wants to see it played
11 presumably arrangements can be made for that?

12 MISS CARMICHAEL: Yes, indeed. In fact, I suspect a file
13 can be prepared in electronic form as well to be passed
14 on if necessary. I think this was distributed yesterday
15 to representatives.

16 **(Electronic presentation played)**

17 ELECTRONIC PRESENTATION: The introduction of the
18 non-numeric standard of presenting fingerprint evidence
19 has been brought in following agreement with the Crown
20 Office and Procurator Fiscal Service, the Scottish
21 Executive and the Association of Chief Police Officers
22 in Scotland.

23 Chapter 1: why is the Scottish Fingerprint Service
24 moving to the non-numeric standard of presenting
25 fingerprint evidence in court? There are many benefits

1 of operating the non-numeric standard. The main benefit
2 is that it allows fingerprint evidence to be presented
3 on every occasion where identity is established. It
4 allows the expert to offer a fuller explanation of how
5 they arrived at their conclusion. They discuss all the
6 features revealed rather than simply focussing only on
7 the number of points. So this will be more easily
8 understood by the court and in particular the jury. All
9 fingerprint evidence will be presented across Scotland
10 in a clear and consistent style of reporting agreed with
11 the Crown Office and Procurator Fiscal Service. The
12 expert will also be able to provide more information
13 within the report about their experience, detailing
14 their training, relevant qualifications and registration
15 with professional bodies. The court can then assess all
16 the information presented to them and make an informed
17 decision on the fingerprint identification.

18 In 1953 The Home Office standardised the
19 presentation of fingerprint evidence across England and
20 Wales it was agreed that fingerprint experts should
21 demonstrate a minimum of 16 points in agreement between
22 any two prints. Scotland also adopted this standard.
23 The number of points was only a consideration for
24 presenting the identification as evidence in court not
25 in making the identification. It has long been a

1 recognised fact that there is no scientific or logical
2 requirement why a certain number of points need to be
3 demonstrated to present evidence in court. Indeed, many
4 countries from America to certain states in Australia
5 have operated the non-numeric standard for a number of
6 years. England and Wales introduced the non-numeric
7 standard in 2001.

8 Chapter 2: what does this mean for the reliability
9 of fingerprint evidence? Fingerprint experts come to
10 conclusions based on the quality of prints under
11 examination. The way a fingerprint expert makes an
12 identification is no different when operating the
13 non-numeric standard. Remember, the number of points
14 was only a consideration if the identification was to be
15 presented in court. The reliability of the
16 identification is demonstrated by a strict verification
17 process. The conclusions are proven to be valid through
18 consistent results from different examiners. A minimum
19 of three experts must each carry out their own objective
20 and independent analysis, comparison and evaluation of
21 the print. This verification process, along with
22 stringent quality procedures means that fingerprint
23 evidence will continue to be a robust and reliable means
24 of establishing identity.

25 "Chapter 3: does this change how the fingerprint

1 expert makes their identification? The way the
2 fingerprint expert makes an identification remains the
3 same. Fingerprints have been used as a means of
4 identification for over 100 years and are unique to
5 every individual. Fingerprints are unique because of
6 the nature of their formation in the womb prior to birth
7 and the unique cycles of growth which determine foetal
8 development. It is a scientific fact that not even
9 identical twins will have the same fingerprints. A
10 person's fingerprints will remain the same throughout
11 their life. If superficial damage occurs the skin will
12 grow back in exactly the same arrangement as at birth.
13 This is why fingerprints are a reliable means of
14 identification at all stages of a person's life and even
15 for some time after death.

16 Fingerprints are made up of an intricate system of
17 ridges which creates an uneven surface on the palms of
18 the hand and the soles of the feet. It's the
19 arrangement of the ridges and their certain unique
20 property which a fingerprint expert will use to make the
21 identification. The ridges of a fingerprint will flow
22 into discernible shapes or patterns. There are three
23 main pattern types named after the general shape they
24 resemble: arch, whorl and loop. All fingerprints will
25 fall into one of these types with each type

1 having consistent elements. Fingerprint experts will
2 use the patterns to narrow down their examination. For
3 example, if they are looking at a loop pattern they will
4 be able to exclude arch patterns from their examination.
5 The ridges are subject to certain breaks or
6 interruptions which are called ridge features or
7 characteristics. There are two main types of
8 characteristics. A ridge end is when the ridge stops
9 suddenly and a bifurcation is when a single ridge flows
10 along, forks in two and then continues into two separate
11 ridges. Every fingerprint will contain these ridge
12 characteristics. However, it's the sequence in which
13 these appear in a fingerprint which makes that
14 fingerprint unique. The shape of the ridges and pores
15 are also unique and may play a part in the examination
16 process.

17 All fingerprint experts undertake the same
18 methodology when carrying out a fingerprint examination,
19 generally referred to as ACE-V: analyse, compare,
20 evaluate and verify. Fingerprint experts have always
21 followed this fundamental process when carrying out a
22 fingerprint examination. This process will not change
23 with the non-numeric standard. Indeed fingerprint
24 experts look forward to offering the court more
25 information by discussing fully the identification

1 process as opposed to the previous requirement to
2 demonstrate a proscriptive number of points in
3 agreement.

4 The first step, analysis, is an
5 intelligence-gathering process. The fingerprint expert
6 will study the fingerprint impression retrieved from a
7 crime scene to establish the quality and clarity of
8 detail and the suitability of the impression for further
9 examination. They will look at all of the available
10 information on the photograph or fingerprint lift taking
11 into account the surface on which the fingerprint was
12 left. The surface may affect the appearance of the
13 fingerprint. The substance that the unknown mark was
14 left in, for example, sweat, blood, oil, et cetera. A
15 fingerprint impression left in sweat may not be visible
16 to the naked eye and will require the use of fingerprint
17 powders or suitable chemicals in order to make it
18 visible. The development medium used may have an effect
19 on the appearance of the ridges and the quality of the
20 print. If there was any pressure placed on the
21 fingerprint when it was deposited or movement this can
22 affect the appearance of the ridges. The fingerprint
23 expert will then analyse the print in more detail
24 looking at the actual flow of the ridges to determine if
25 there is any discernible pattern type. They will

1 consider any clues in the print that may indicate which
2 finger, thumb or area of palm could have left the
3 impression. Pattern and digit determination allow the
4 expert to prioritise those fingerprints to be compared.
5 The expert will also look at the quality and clarity of
6 the unique features and characteristics that are
7 revealed in the print. At the conclusion of the
8 analysis stage, the fingerprint expert will have made a
9 decision as to the suitability of the print for further
10 examination.

11 The second stage of the process is comparison.
12 Having analysed the unidentified print recovered from
13 crime scene, referred to as a mark, a fingerprint expert
14 will compare this unidentified mark with fingerprint
15 impressions taken from persons whose identities are
16 known. They will look at the unknown print or mark and
17 having already accounted for the ridge flow and pattern
18 will seek to highlight an initial sequence of
19 characteristics. In this instance, the sequence would
20 be one ridge ending, a bifurcation with three
21 intervening ridges. The expert will then refer to the
22 known fingerprint and look for this initial sequence to
23 be duplicated, always looking for any element of
24 disagreement between the two. If any unaccountable
25 disagreement is found, the identity cannot be

1 established and the known print will be discounted from
2 the comparison process. However, if the initial
3 sequences agree in both impressions the expert will
4 proceed to compare the relative position and location of
5 further characteristics in both prints, all the time
6 looking for any disagreement in the sequence of
7 characteristics. The expert will also be taking into
8 account the unique features of the ridges themselves,
9 looking for agreement between any visible distinctive
10 ridge edge shapes and minute detail. This process will
11 continue until the expert is satisfied that the
12 comparison process is complete.

13 After comparing the unknown and known marks, the
14 fingerprint expert will make their evaluation. They
15 will weigh up all the information available as a result
16 of the comparison process and come to a conclusion. The
17 fingerprint expert can only come to one of three
18 possible conclusions: they can conclude that there is
19 complete agreement in the sequencing of the unique
20 features visible in both impressions with no areas of
21 disagreement. In that case, identity is established and
22 both impressions have been made by the same person. If
23 the sequence of features visible in both impressions
24 disagrees, then identity is not established and the
25 fingerprint expert can be confident that both

1 impressions could not have been made by the same person.
2 Or they will have decided that the clarity and quality
3 of information available in either impression is such
4 that it's not possible to come to a conclusion.

5 The most crucial aspect of the identification
6 process is the verification element. This is an
7 independent and complete analysis, comparison and
8 evaluation of both prints, which is carried out by a
9 minimum of a further two fingerprint experts. The
10 verification process is the key to the reliability of
11 fingerprint evidence. It demonstrates that the original
12 conclusions are valid through consistent results
13 achieved from the different experts who have analysed,
14 compared and evaluated the information available in both
15 impressions.

16 We've just demonstrated how a fingerprint expert
17 makes an identification. Under the numeric standard, if
18 this identification was to be presented as evidence in
19 court the expert would then demonstrate 16 points in
20 sequence and agreement. Under the non-numeric standard
21 the expert will have the opportunity to explain fully
22 how they established identity and allow the court to
23 decide on the identification considering the evidence
24 submitted.

25 Chapter 4: why the Scottish Fingerprint Service is

1 confident in the introduction of the non-numeric
2 standard. For many years the Scottish Fingerprint
3 Service has been undergoing a period of continuous
4 improvement focussing on processes and procedures,
5 training and quality management systems. Since 2001 all
6 four bureaux in the Scottish Fingerprint Service have
7 achieved ISO accreditation. This ensures our
8 standards are internationally recognised and respected
9 and maintained through regular six monthly external
10 audits. Our training programmes and peer review
11 processes have received UK-wide recognition as examples
12 of best practice within the fingerprint profession. All
13 individual officers are subject to annual external
14 competency testing and continuous professional
15 development. This includes court skills training
16 sessions facilitated by external specialists. All
17 experts are encouraged and supported to obtain
18 membership with the Council for Registration for
19 Forensic Practitioners, the profession's independent
20 regulatory body.

21 With such quality management systems in place and a
22 commitment to continuous improvement now is the time for
23 the Scottish Fingerprint Service to introduce the
24 non-numeric standard. The introduction of the
25 non-numeric standard brings the process in Scotland in

1 line with England and Wales and follows agreement by the
2 Scottish Executive, the Crown Office and Procurator
3 Fiscal Service and the Association of Chief Police
4 Officers in Scotland.

5 To summarise, the non-numeric standard is a proven
6 system operated internationally for many years. The key
7 benefits are: it allows fingerprint evidence to be
8 presented on every occasion where identity is
9 established. The fingerprint expert can offer a much
10 fuller explanation of how they arrived at their
11 conclusion establishing identity. This will be more
12 easily understood by the court and the jury. The court
13 can then assess all the information presented to them
14 and make an informed decision on the fingerprint
15 identification. All fingerprint evidence will be
16 presented across Scotland in a clear and consistent
17 style of reporting agreed with the Crown Office and
18 Procurator Fiscal Service.

19 If you would like to find out more about the
20 non-numeric standard and how a fingerprint expert makes
21 an identification you can to the Scottish Fingerprint
22 Service at www.sfs.police.uk.

23 **(Electronic presentation ended)**

24 THE CHAIRMAN: I needn't invite anyone to cross-examine the
25 CD. We can leave it at that.

1 MISS CARMICHAEL: I am afraid we've a slightly early finish,
2 sir, but we should be ready to resume at 9.30 tomorrow.

3 THE CHAIRMAN: So we will sit again at 9.30 tomorrow
4 morning. Thank you.

5 **(3.40 pm)**

6 **(Adjourned until 9.30 am the following morning)**

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