

1

Friday, 13th November 2009

2 (9.30 am)

3 **THOMAS ARTHUR NELSON, sworn**

4 **Examined by MISS CARMICHAEL**

5 THE CHAIRMAN: Your full names, please.

6 A. Thomas Arthur Nelson.

7 MISS CARMICHAEL: Good morning, Mr Nelson.

8 A. Good morning.

9 Q. You have provided a signed statement already to the  
10 Inquiry. I think you want to correct a typographical  
11 error about the date when the non-numeric standard came  
12 in. I think you said November at one point. I think it  
13 should be 4th September 2006?

14 A. That's correct. I apologise for that.

15 Q. Otherwise are you happy to adopt your statement?

16 A. Yes.

17 Q. Mr Nelson, you are currently the Director of Forensic  
18 Services at the Scottish Police Services Authority.  
19 Your own background, I think, is as a scientist?

20 A. That's correct, yes.

21 Q. Would you tell the Chairman a little bit more about your  
22 scientific background?

23 A. I've been a forensic scientist for almost 30 years  
24 working in Northern Ireland from 1980 until 1995, at  
25 which point I came over to Scotland to take over the

1 management of the Chemistry Unit within Lothian  
2 & Borders Police Forensic Science Laboratory. I was  
3 there for a number of years and became the Director of  
4 the laboratory at Lothian & Borders. At that stage it  
5 was underneath the control of the local police force,  
6 Lothian & Borders.

7 I then became implementation manager of the forensic  
8 science project which was to bring together the forensic  
9 science laboratories across Scotland into a new  
10 organisation.

11 THE CHAIRMAN: About what year was that?

12 A. It all came together under the SPSA (the Scottish Police  
13 Services Authority) in April 2007. I'll maybe explain a  
14 bit more about that later on but that brought together  
15 the different component parts of forensic, fingerprints,  
16 scene examination and the four laboratories that we have  
17 in Scotland.

18 In 2007 in January 2007 I then became Director of  
19 the organisation, SPSA Forensic Services.

20 MISS CARMICHAEL: We heard a little yesterday about a  
21 Forensic Science Gateway. That's something you mention  
22 in your own statement. Could you explain for us what  
23 that is and how it works.

24 A. Sure. Within Scotland, if I may be just go back a wee  
25 to talk about the structure we have in Scotland, for the

1 first time that we know of in the world we have brought  
2 together the different component parts of the  
3 investigation. We have brought together fingerprints,  
4 scene examination and laboratories.

5 In Scotland we have four laboratories. We have  
6 eight Scenes of Crime departments and we have four  
7 finger print departments or we had those. They were all  
8 managed differently. In April 2007, we brought them  
9 together into one organisation called SPSA Forensic  
10 Services.

11 That allows me to have overall control and  
12 opportunity to manage from the crime scene through to  
13 the court and, therefore, it means that we can begin to  
14 put standards in place at the crime scene and follow  
15 that right through to the court. It's certainly a model  
16 that many other countries are looking to and aspiring to  
17 and in Scotland we had that opportunity in 2007 to bring  
18 that organisation into being.

19 Obviously, we generate productions at the crime  
20 scene and those productions will then come into a  
21 laboratory environment for examination. Up to 2007, we  
22 had very little control on the cases coming in or the  
23 demand of those cases coming in and it was all really  
24 down to the local forces and how much work they asked  
25 their Scenes of Crime departments to carry out.

1                   The Forensic Gateways that you referred to was our  
2                   way of beginning to manage and to make sure that we were  
3                   getting the appropriate cases coming into the  
4                   laboratory. We found, whenever I did a comparison of  
5                   work coming into the Edinburgh laboratory prior to 2007,  
6                   that a significant number of biology cases had already  
7                   been dealt with, the person had pled guilty, it had been  
8                   gone through the court or there was no case to answer  
9                   and yet that was sitting in our backlog effectively.

10                  The Gateway brings together the police officer to  
11                  begin to look at what they are asking for in terms of an  
12                  examination, to bring some clarity on the answer that  
13                  they want us to begin to look at in terms of the  
14                  investigation and the Gateway then begins to manage the  
15                  number of cases coming into SPSA Forensic Services. So,  
16                  effectively, it acts as a filter and hopefully a lot  
17                  of -- the cases that were going nowhere would be taken  
18                  out quickly so it doesn't create a backlog for us in our  
19                  laboratory.

20                  What we are then doing is we're adding value to the  
21                  cases where we can add value to, there might enough  
22                  evidence without it coming into the laboratory for any  
23                  additional examination. So we're trying to, through the  
24                  Gateways, begin to provide a filter to allow us to work  
25                  on the most appropriate case at the most appropriate

1 time.

2 Our vision for the future is to see that Gateway not  
3 only having police officers there but having some form  
4 of fiscal representation there and that, again, will  
5 begin to allow us to begin to prioritise our casework  
6 and begin to work on the cases where we can add some  
7 significant value.

8 THE CHAIRMAN: The Crime Scene Examiners, are those members  
9 of the police force or are they members of your staff?

10 A. The Crime Scene Examiners are actually members of our  
11 staff. So I manage the eight Scenes of Crime  
12 departments around Scotland and the fingerprint units  
13 and the laboratories. So that's now under the one  
14 organisation.

15 The police will determine what crime scenes they  
16 want our Scenes of Crime Officers to attend and then we  
17 will make sure that they are operating to the right  
18 standards, following the right procedures, at the crime  
19 scene collecting the right evidence to then allow it to  
20 go into the Gateway where they then begin to filter and  
21 identify what cases are priority for that force and what  
22 cases need to come into the forensic service environment  
23 to then be examined further.

24 MISS CARMICHAEL: Thank you, sir.

25 I would like to lead into your evidence really by

1 looking at some points that have arisen in previous  
2 investigations.

3 One of the things that we have seen from the HMIC  
4 investigation back in 2000 is that there was a  
5 recommendation for guidance manuals on fingerprint  
6 standards and procedures. We have heard from other  
7 witnesses that there are manuals which prescribe in some  
8 detail some of the procedures that Fingerprint Examiners  
9 should be following in your organisation.

10 I am not so interested in the procedural aspect of  
11 it, Mr Nelson, but in the standards aspect of it. We  
12 have heard in the past there was a numeric standard with  
13 16 points and one can readily understand checking that  
14 something's been done against a numerical standard of  
15 that sort.

16 I would like to ask you what your view is about what  
17 has been described as the non-numeric standard. In the  
18 first place is it really, from the scientific  
19 perspective, a standard?

20 A. I think comparing the non-numeric back to, obviously,  
21 the numeric I think it's taken us to a different arena.  
22 I think one of the problems with having 16 points is  
23 that whenever someone finds 16 points they think they  
24 can actually stand up and say that is it, that's  
25 finished and, therefore, whenever they go to court it

1 can almost create that impression that it is the gold  
2 standard and, therefore, we can't be challenged and I  
3 think that's one of the problems with having a numeric  
4 standard in there.

5 To me, when we went to the non-numeric -- and I must  
6 admit it's before my time, obviously -- but when we went  
7 to the non-numeric I think that allowed us to get to the  
8 position where, you know, we are not infallible and at  
9 the end of the day our evidence can be challenged. I  
10 welcome forensic evidence being challenged because, at  
11 the end of the day, the reason why the scientist is in  
12 court to give evidence is to provide the best evidence  
13 to the court for the court to make the decision and I  
14 think it's good that science is challenged because, at  
15 the end of the day, we never want to see the wrong  
16 person in court or getting charged. So I actually  
17 believe that moving to the non-numeric is a very  
18 positive way forward and I think we need to make more of  
19 that and obviously encourage more challenge in court so  
20 that we can actually present our evidence better in  
21 court and, at the end of the day, I think that's a far  
22 better standard to have than a numeric standard which,  
23 once you achieve that number, you feel you can almost  
24 stop and that it is infallible and that is not the  
25 position.

1 Q. I'm going to ask you, if you can, to bring the  
2 microphone nearer because I think others may be having  
3 difficulty hearing, Mr Nelson.

4 A. Sorry.

5 Q. As a scientist, would you ever be happy with the idea of  
6 somebody coming along and giving evidence on the basis  
7 that it's infallible?

8 A. I certainly would not want to be in a position in  
9 court to say that my evidence is infallible. In  
10 forensic science the only evidence I would say you can  
11 be 100 per cent certain on is physical fit evidence,  
12 where you can actually physically fit, say, two bits of  
13 wood together or you can physically fit two bits of  
14 paper together. That's conclusive but to me the other  
15 evidence we give is opinion evidence and, therefore, you  
16 cannot be 100 per cent certain.

17 Q. We have heard witnesses say that, regardless of the  
18 16 points, and in fact whether they were working under  
19 16 points or under the new system that there is a point  
20 when they reach personal certainty.

21 I'm wondering where that fits with the idea of  
22 coming into court and even before court perhaps being  
23 open to challenge?

24 A. I think this is something we have to address, not only  
25 in fingerprints but in other areas. You know, at the

1 end of the day, I think it's good to be in a position  
2 where you can be challenged because you do not have all  
3 the answers. You are giving opinion based on what you  
4 have seen and what you have observed. You may be  
5 confident in the result but I do not think you can ever  
6 be 100 per cent certain of the result and, therefore, I  
7 would encourage and I would want my experts to be  
8 encouraging challenge in that because we want to get to  
9 the truth at all times.

10 Q. What are you doing within SPSA to encourage that sort of  
11 attitude, particularly in the context of your  
12 fingerprint departments?

13 A. I believe SPSA, in the short time it has been in  
14 existence, has done a lot in trying to look at the  
15 culture of the organisation. I believe in setting up  
16 the organisation to be the only single crime scene to  
17 court service began to allow Fingerprint Experts,  
18 scientists, Scenes of Crime Officers, to begin to meet  
19 together, to work together and encourage a closer  
20 working relationship.

21 I believe whenever we brought in, at the unit  
22 manager level, whenever we replaced business managers  
23 with Fingerprint Experts, again, that begins to change  
24 the culture because the science, the evidence, is  
25 actually at the forefront of the organisation.

1 I also believe in terms of the management structure  
2 the unit managers now meet on a monthly basis with the  
3 Head of Operations who manages that local business area,  
4 with the unit manager in chemistry, in biology, the  
5 Quality Manager and also the scene examination managers  
6 and, again, to me that begins to bring people into a  
7 different culture where the norm is challenge, where the  
8 norm is that you can actually challenge one another and  
9 you can question one another.

10 We've also established scientific advisory groups  
11 across our organisation and there's one in chemistry,  
12 one in biology, one in DNA and one in fingerprints. In  
13 these groups we have the experts in that particular area  
14 and they meet on a regular basis discussing the issues  
15 and trying to move forward with their particular  
16 discipline. So I think what we have tried to do is  
17 create that culture within the organisation.

18 We have also encouraged research. One of the things  
19 I'm very keen on, and I don't think there's enough done,  
20 is in research, particularly in fingerprints. We have  
21 actually encouraged and are supporting a member of  
22 staff, Isabel Hamilton, to do a master of philosophy in  
23 fingerprint examination and she is doing a lot of work  
24 on bias, in looking at contextual bias, in looking at  
25 probabilistics and I think we need to move on from where

1 we are now to what I see is a better environment, a  
2 better world, in which we can begin to explain our  
3 evidence better in court. So through research, through  
4 even people attending conferences, there was a European  
5 meeting in Glasgow in September and I went along to  
6 chair one of the sessions. I was pleased to see  
7 Fingerprint Experts, Scenes of Crime Officers and  
8 chemistry and biology staff meeting together and being  
9 in that type of scientific environment where challenge  
10 is the norm and where challenge is accepted.

11 So I believe we're doing an awful lot in SPSA to try  
12 and change that culture to be more of an open and  
13 transparent culture so we can actually identify research  
14 projects. You know, we have a number of research  
15 projects where we are actually working with  
16 universities. I work very closely with the Strathclyde  
17 University and, in fact, I've just recently set up a  
18 meeting, a working group meeting, involving skills for  
19 justice. Charles Welch leads that organisation for  
20 forensics, Keith Fryer from Centrex, Professor Jim  
21 Fraser from Strathclyde University and we're going to be  
22 having a one day seminar where we invite a number of  
23 invited guests particularly to look at the area of  
24 fingerprints and to see where the challenge is and where  
25 the opportunities are to actually allow us to move on to

1 where I believe we now need to be.

2 Q. What I think you have described is, in part, exposing  
3 people in the fingerprint discipline to the way that  
4 scientists work and working along with scientists,  
5 perhaps meeting with scientists more often than they  
6 would have done under the previous business structures.  
7 That perhaps takes me to a more fundamental question,  
8 which is whether Fingerprint Examiners should in any way  
9 currently be regarded as scientists?

10 A. That's a very interesting question and universities have  
11 spent tens of thousands of pounds with many research  
12 students actually trying to answer that question: what  
13 is science? One of the definitions of science is  
14 knowledge gained through study and experiment. That's  
15 one of the reasons I think what we need to do is to do  
16 more experimental work and more research into  
17 fingerprinting.

18 There seems to be a lot of work that has been done  
19 in the past on how we develop a mark, how we chemically  
20 enhance a mark from the crime scene or how we then  
21 transmit that from a crime scene to a laboratory. I  
22 believe we need to do more research now to begin to look  
23 at, you know, I've been even just listening to some of  
24 the things coming out from the Inquiry, you know, double  
25 touch or movement, do we understand that enough? Is

1           there any project we could be doing to actually allow us  
2           to understand that even more than we do currently?

3                     We have that opportunity because in Scotland we have  
4           established the Scottish Institute of Policing Research.  
5           That was developed by ACPOS and 13 universities in  
6           Scotland. I am on the board for that and involved in  
7           the evidence and evaluation part of that organisation  
8           and we run regular meetings and conferences to look at  
9           these specific issues and to me we also fund projects  
10          and that's where we need to begin to encourage the staff  
11          to come up with project ideas, make sure we have the  
12          funding obviously, secure the funding, and then begin to  
13          do that research. That's certainly something that we  
14          need to do more of.

15    Q.    Coming back to your definition of study and experiment  
16          as the means to knowledge, what we have heard from  
17          Fingerprint Examiners is that the way that they have  
18          gained their knowledge is essentially handed down from  
19          teacher to pupil through the generations and even in  
20          relation to the matters like movement, that the way of  
21          learning about that is somebody else saying, "Well,  
22          here's a mark and a print I found match each other and  
23          my explanation for that is movement", and things like  
24          that tend to become accepted, perhaps without the  
25          experimental background that you are hinting at here.

1 A. Sure. I think certainly the training has changed over  
2 the years and I think more emphasis is now being placed  
3 on understanding more of that but I still think we're a  
4 long way off and we need to do an awful lot more in  
5 trying to understand some of these phenomenas like touch  
6 and movement and pressure. I think there's an awful lot  
7 more work we could do and that's one of the reasons why  
8 SPSA, I believe, Forensic Services was set to encourage  
9 that type of thought process to come out and then for us  
10 to allow our staff to get engaged in that and that's  
11 where we need to be.

12 Q. Again coming back to the theme of standards rather than  
13 procedures what there doesn't seem to be is, for  
14 example, any standard or any scientific guidance that  
15 the Fingerprint Examiner can go to in assessing the  
16 quality of a crime scene mark that comes to them or the  
17 quality and clarity of characteristics that maybe come  
18 to them in a crime scene mark.

19 A. Yes. Probably where they get that learning from is from  
20 the training that they receive, for instance, at Centrex  
21 where they are trained in fingerprint identification.  
22 So they do get some training and some learning from  
23 learned people in that environment but then a lot of the  
24 additional CPD at the moment is maybe primarily through  
25 mentoring and coaching or staff to pupil type of

1 relationship and I think that's where we need to now  
2 take fingerprints within the safe environment of  
3 Forensic Services to allow them to begin to challenge  
4 and move forward and to ask those questions and to go  
5 out and look for answers.

6 You know, we're also engaged with, for instance, the  
7 Metropolitan Fingerprint Unit under the auspices of Gary  
8 Pugh. I do a lot of work with Gary. I know Gary has  
9 been able to do some research within his organisation  
10 and we do share that information and do try and learn  
11 from each other.

12 Q. Would it be correct to say that if there are going to be  
13 standards developed, for example, on a scientific basis  
14 to show what is and is not acceptably explained by  
15 movement or distortion, there simply will have to be  
16 more scientific research on that topic?

17 A. I would certainly welcome scientific research. I think  
18 one of the challenges we all have is in an environment  
19 where our budgets are being stretched and reduced. You  
20 know, we have to look for external funding for some of  
21 these projects and, you know, for projects you have to  
22 go to the ERSPC, for instance, which is a funding  
23 council.

24 Q. Perhaps you can explain the acronym for us?

25 A. I can't give you the total acronym but it's an

1 organisation which actually allows -- looks at projects  
2 and then will fund these projects and give them money to  
3 allow the projects to go on to the next stage and you  
4 have to go through a funding process to get the funding  
5 to obviously allow you to do that. To do that we need  
6 to engage with a university and where's where we'd  
7 partnership a university in a research project. So we  
8 actually have to apply for grants to allow us to do that  
9 and it is against an environment where there's a very,  
10 very tight budget anyway. But I would certainly  
11 welcome -- the more research we can do in these areas  
12 the better.

13 Q. I am interested that you are saying there has to be  
14 external funding for this. You are a publicly funded  
15 body and, if I understand you rightly, you do see it as  
16 part of your function to help drive ahead the research  
17 that might found more scientific standards for  
18 Fingerprint Examiners.

19 A. Yes.

20 Q. How is it that you are having to look to external  
21 funding?

22 A. Within our normal budget we would not have the funding  
23 resources to allow us to develop all these research  
24 projects. So what you would want to do, I think the  
25 important thing is we don't just do it by ourselves but

1 we engage learned people from universities because that  
2 then brings more knowledge into the pot here. We engage  
3 with universities to then put forward research  
4 proposals. There's some limited research you could do  
5 internally but then there's other research that would  
6 benefit from a wider audience and a wider participation  
7 and that's where you would need to go for funding.

8 Q. Would I be right in thinking that, effectively, to  
9 provide real standards for people operating the  
10 non-numeric standard or perhaps more properly  
11 non-numeric approach to assessing, for example, quality  
12 of characteristics, that's simply not something that can  
13 be done without proper scientific research to back up  
14 those standards?

15 A. That'd be correct, yes.

16 Q. So at the moment would it be fair to say there is  
17 perhaps a gap, if one is saying that there's a  
18 qualitative and quantitative approach being taken  
19 together, where the qualitative judgments are being made  
20 to some extent in a vacuum of scientific information?

21 A. I think the subjective view has been taken based on what  
22 is before them and what staff have been trained in. I  
23 think we can always improve on that and to improve on  
24 that, yes, I think we can actually get more universities  
25 and knowledgeable people involved to begin that debate

1 and to begin that discussion and that's certainly one of  
2 the things that I see this group that I've now  
3 established with Skills for Justice, Strathclyde  
4 University and Centrex possibly doing in the future.

5 Q. When you refer to Strathclyde University, that's the  
6 reference back to Professor Fraser?

7 A. That's right.

8 Q. What work has that group done so far?

9 A. What I've done is, sorry, I have just established that  
10 group. We have our first meeting coming up in January  
11 so it's not actually met yet. But that group will be  
12 working together. I've just worked with Jim to develop  
13 a memorandum of understanding between our organisation,  
14 SPSA Forensic Services, and Strathclyde University.

15 Q. I think you referred in the context of encouraging  
16 scientific thought to people going to conferences. Do  
17 you fund people to go to conferences?

18 A. There are a number of ways people can actually go to  
19 conferences. We will fund people to attend conferences.  
20 People will go sometimes along as a speaker and,  
21 therefore, they will be funded by the organisation or  
22 the company who's actually running the conference or we  
23 might even part-fund someone to go to a conference.  
24 But, yes, we do. We have some resources within our  
25 organisation where we encourage staff to go and attend

1 conferences or at least get some of the papers from  
2 those conference, if they can't attend, to obviously  
3 understand and read from the papers what actually  
4 happened.

5 Q. You gave an example of a recent conference in Glasgow.  
6 Can you give other examples of where staff have recently  
7 been sent out into the world to learn more on the  
8 scientific front?

9 A. Yes, the conferences happen, in terms of the European  
10 ones, maybe only once a year and it was great that the  
11 conference was in Glasgow in September because it meant  
12 we were able to send an awful lot more people because we  
13 didn't have the cost of travel to maybe some other  
14 European country or even down to England or Wales. So  
15 that was one that was fairly recent.

16 We have had a couple of Scottish Institute of  
17 Policing Research conferences held at the Police College  
18 and, again, some members of staff went along to that  
19 conference. These happen not every quarter but maybe a  
20 couple of times a year.

21 We also have the Forensic Science Society. The  
22 Forensic Science Society is a body set up with members  
23 from the police, from the laboratories, from different  
24 forensic disciplines. They meet under the umbrella of  
25 the Forensic Science Society and they are actually

1 meeting this month and, again, we have some people down  
2 at that conference. That will look at a range of  
3 topics. It's not just one specific topic but looks at a  
4 range of topics where basically people will come  
5 together and give presentations and then in the evening  
6 have some form of social event as well. So again we do  
7 support staff going to those conferences as well.

8 Q. Coming back to what you said earlier about certainty in  
9 fingerprint evidence, we have heard evidence that the  
10 Crown were, certainly at one stage, interested in  
11 obtaining evidence from Fingerprint Experts not in cases  
12 where the Fingerprint Expert has been able to  
13 individualise to one individual but where there's  
14 fingerprint evidence that's consistent with identity  
15 with a particular individual, albeit that they wouldn't  
16 give evidence of individualisation and we heard that  
17 that was evidence that might be useful to the Crown  
18 sometimes and also potentially very useful to the  
19 defence if, for example, there's evidence consistent  
20 with an incriminee.

21 Is that type of evidence being taken forward or  
22 discussed within your own organisation at the moment?

23 A. I've certainly never been asked by the Crown to consider  
24 that. I do meet regularly with members of the Crown and  
25 that's certainly the first time that I've heard that

1 being asked for.

2 What I would say from a scientific viewpoint is that  
3 we need to be very careful and we need to make sure if  
4 we are giving that evidence across that we put it with  
5 all the caveats so that it isn't used in the wrong way  
6 or doesn't mislead the court in any way. So I think it  
7 is possible. I'd certainly like to sit down with the  
8 Crown to understand more of what they are suggesting but  
9 I think from a professional and a forensic point of view  
10 I would want to make sure we put all the caveats around  
11 it so it wouldn't be used in the wrong way or would be  
12 misinterpreted.

13 Q. When you say misinterpreted, does that mean you are  
14 concerned about it being treated as more conclusive than  
15 it really might be?

16 A. Correct, yes. At the end of the day what you seem to be  
17 suggesting, but I don't have the detail, it's more like  
18 intelligence.

19 Q. If I can give you the example and perhaps the example  
20 that helps the defence is the more useful one, one has a  
21 situation where there's a partial fingerprint mark on a  
22 knife and what can be said is that it is consistent with  
23 somebody that the accused person wants to incriminate,  
24 somebody other than the accused. That is evidence that  
25 might assist the defence. The Crown have to know about

1 that, perhaps, because of their obligations of  
2 disclosure to the defence. So that is part of the sort  
3 of evidence I am talking about, if that assists you.

4 A. Again, what I would say, yes, we could do that. We  
5 would need to sit down with the Crown to understand that  
6 and to make sure it was scientifically correct to say  
7 what we have been asked to say.

8 Q. You touch in your statement on the question of  
9 accreditation of experts as distinct from accreditation  
10 of laboratories. We have heard a previous mechanism for  
11 that, the Council for the Regulation of Forensic  
12 Practitioners is something that is no longer available.

13 I wonder if you could tell us how you are taking  
14 that forward?

15 A. Yes, it is unfortunate that we no longer have the  
16 Council for the Registration of Forensic Practitioners.  
17 I am actually on the Forensic Science Advisory Council,  
18 along with Andrew Rennison who is the forensic regulator  
19 for England and Wales and I am also a member of  
20 the Association of Forensic Science Providers, which is  
21 all the laboratory directors in the United Kingdom and  
22 Ireland and we certainly spoke to Mr Rennison and we're  
23 concerned that CRFP was actually going to be no longer  
24 in existence and we were asking him in terms of  
25 regulation what he felt was a way forward and how could

1 we actually fill the vacuum or the gap that,  
2 effectively, we have at the moment.

3 I think the way Andrew Rennison would like to see  
4 things move forward is if you have UKAS accreditation  
5 (which is United Kingdom Accreditation Services), if you  
6 have UKAS accreditation, they will expect you as an  
7 organisation to speak to the quality and standard of the  
8 people that you employ and, therefore, you will have to  
9 have complete and thorough training records kept for  
10 every member of your staff and understand what areas of  
11 expertise they can actually work within.

12 That has certainly been taken forward but at the  
13 moment all we have in Scotland, in fact, we've got more  
14 than what they have in England and Wales because they  
15 have nothing there at the moment, what we have in  
16 Scotland is obviously authorisation but we don't have  
17 anything at the moment in England and Wales to take the  
18 place of CRFP and certainly if we do move to the  
19 position where we can set up a register of experts with  
20 UKAS accreditation, to me, that is one way forward.

21 Q. You mentioned there authorisation and if we can take  
22 this bit by bit, I think what you are saying there is  
23 that the proposal -- and I think we have heard something  
24 similar from Mr Rennison -- is that while there's no  
25 mechanism for accrediting individual experts nationally

1 at the moment, the gap might be filled by accreditation  
2 of the laboratory and the duties that become incumbent  
3 on the laboratory in relation to their own staff in that  
4 context?

5 A. That's correct, yes.

6 Q. You mentioned there also authorisation in Scotland. I  
7 think we have heard that authorisation is a matter for  
8 the Scottish Government, certainly technically in terms  
9 of the legislation. We have also heard that the  
10 criteria for authorisation changed from a purely  
11 time-based one to people essentially passing the  
12 advanced tests at Durham.

13 A. In fingerprints, yes.

14 Q. In fingerprints.

15 Do you have any view as to whether authorisation and  
16 some form of accreditation for the expert should be  
17 linked together because there certainly was at one  
18 stage, I think, a proposal that authorisation might go  
19 hand-in-hand with registration with a professional body  
20 such as the CRFP?

21 A. I certainly proposed that a number of years ago, that  
22 you would actually link authorisation to CRFP membership  
23 because to me what the CRFP membership gave you was  
24 external validation of the individuals and, therefore,  
25 to me, it actually would support authorisation. So I

1 would have no problems if that was indeed the way  
2 forward.

3 Q. When we have, essentially, the gap being filled by  
4 laboratory accreditation, how do we square the circle  
5 there in terms of forming any link with authorisation  
6 under the statutory procedures?

7 A. At this moment in time it is up to myself and the  
8 managers within the different units to identify if an  
9 individual has come up to a certain level of competence  
10 to allow them to attend court and give expert testimony  
11 in court and that will all be obviously documented and  
12 if someone does come up to that standard and we  
13 obviously take them through training as well, then we  
14 would actually allow them to become authorised. But at  
15 the moment there is no register of forensic  
16 practitioners. There is a register, sorry, of  
17 Fingerprint Experts and that's obviously held through  
18 the training in Centrex.

19 Q. That leads me into another theme of questions for you  
20 here arising both from recommendations of other  
21 inquiries and also concerns that have been expressed, I  
22 think, particularly by the Crown in the context of this  
23 Inquiry.

24 We have heard about competency testing. One of the  
25 recommendations of both HMIC and a review that was

1 carried out for you in March 2007 was that there should  
2 be a common procedure to deal with failure in competency  
3 testing. This has become an area of discussion in the  
4 Inquiry because there have been questions about whether  
5 failure in competency testing would be something that  
6 would be disclosed to the Crown.

7 Taking those two strands one by one, if I may, we  
8 understand the position to be that there isn't a common  
9 procedure at this stage to deal with failure in  
10 competency testing and I wonder if you could tell us  
11 about why that is.

12 A. Okay. We are revising all our standard operating  
13 procedures. At the moment we are all registered to  
14 ISO9001 which is a management standard. I am very keen  
15 to move the whole organisation, in fact, fingerprints  
16 from that 9001 to the UKAS 17025 standard and scene  
17 examination to the 17020 standard.

18 To me that is a journey that our organisation has  
19 embarked on and we are looking at all our standard  
20 operating procedures and making sure that where there  
21 are gaps or where they are deficient, because the UKAS  
22 standard is a slightly higher standard and certainly you  
23 do undergo a lot more scrutiny, I think that's where we  
24 need to take fingerprints and that's why we've been  
25 going through our standard operating procedures to

1 review them and to make sure we have got a consistent  
2 approach across Scotland to those standards.

3 Q. I am asking particularly about this recommendation  
4 because it's one that has been live since 2000 and I  
5 appreciate SPSA itself is quite a new organisation and,  
6 essentially, you are where you are, but we do have a  
7 recommendation here that comes from back in 2000. It  
8 appears to have been reinforced by review in 2007. It  
9 is an area where the Crown would be quite interested to  
10 know, potentially, the results of competency testing,  
11 but there still isn't a clear position. I appreciate  
12 you're on a journey there but I wonder if you could  
13 answer specifically in relation to the absence of a  
14 policy on that matter.

15 A. We will obviously need to complete that policy but I  
16 would want to sit with the Crown and understand a bit  
17 more about the policy because, at the end of the day, in  
18 forensic science we carry out internal tests to make  
19 sure that people are working to a certain standard.  
20 Now, if you look to the CTS test, it looks to the  
21 standard of an individual at one moment in time carrying  
22 out that examination. It doesn't actually reflect  
23 casework, in that in casework that work will always be  
24 checked and, as far as I'm concerned, my priority is to  
25 make sure that organisation doesn't send a wrong result

1 out at the end of the day.

2 So I think there's something around in terms of the  
3 internal workings of a laboratory, using the results of  
4 those trials to actually look at performance, maybe  
5 identify training or maybe there's just been a small  
6 typographical error made which isn't, you know, as  
7 important. Therefore, I think before we go and agree to  
8 say on every occasion this is what has happened we need  
9 to understand is it a smaller error which can be  
10 explained or is there an issue with that particular  
11 individual and if there was an issue with that  
12 particular individual, then all their work should be  
13 reviewed and, obviously, the Crown would be certainly  
14 made aware if that was the case.

15 Q. So there might be room for a more sophisticated policy,  
16 one that distinguishes between different types of error  
17 or occasional error and consistent error?

18 A. I think that's certainly something we need to put in  
19 place, definitely.

20 Q. The fact that people undergo competency testing is  
21 something, I think it's fair to say, that is relied on  
22 to reinforce their expertise in the criminal courts?

23 A. That's correct, yes.

24 Q. So it's perhaps only fair that if there is some real  
25 difficulty with that that that's something that Crown

1           should be made aware of?

2       A.    If I had any concerns about anyone working in our  
3           organisation and was made aware of that from obviously  
4           unit managers we would certainly make the Crown aware of  
5           that.

6       Q.    On the theme of matters raised in previous reports, one  
7           of the things we have seen, again from the HMIC report  
8           back in 2000, was recommendations about more  
9           documentation, particularly in the context of the  
10          non-numeric method of working being brought in.

11                 While we've heard that there are diary pages that  
12           perhaps record process in the sense of who saw what when  
13           in a better way than had previously been the practice,  
14           we don't really seem to have seen the recommendations  
15           for note-taking, recording of reasoning, that sort of  
16           thing, being taken up and I wonder if we could have your  
17           comment on that?

18      A.    We certainly did review the diary page and the  
19           examination sheet to actually make them better and  
20           improved on what they previously were.

21                 We haven't gone down the road yet of detailed notes  
22           or the detailed thought process. One of the things we  
23           are looking at with the new group that is established  
24           is, as an organisation, how can we bring in a system  
25           which allows us to better record. One of the things we

1           need to do is to record our thought processes.

2                     Now, certainly in fingerprints I think this is an  
3           area we need to look at. In other forensic  
4           environments, the note-taking is mainly all around the  
5           production and what you are observing and what you are  
6           seeing and we don't always record the thought process  
7           but I can understand, because of the peculiarities of  
8           fingerprints, I think that would be very useful and one  
9           of the things I'm actually looking at is could it be  
10          done say, for instance, by speech-to-text, so as a  
11          person is actually looking at a mark that they are  
12          actually recording their thoughts at that moment in time  
13          and, again, as I say, this is one of the things we're  
14          looking at with this group involving Jim Fraser, Keith  
15          Fryer and our own selves and Skills for Justice.

16    Q.    However, while I appreciate you are where you are in the  
17          processes we do look back to a report in 2000 which  
18          doesn't appear to have been taken up in this respect and  
19          I would like to explore just how that has come about.

20    A.    As I say, as an organisation we believe we have done  
21          some work in that area. I'm not saying we're finished  
22          there. We need to move on, we need to address where we  
23          haven't completed some work. We need to do that. What  
24          I will say is we've done an awful lot of work and we  
25          have improved some of those areas, maybe not to the

1 level or detail that you know you're expecting in  
2 reading that document. That is something we will take  
3 on and we will address as an organisation.

4 Q. In this next question I suppose I am looking for your  
5 response as a scientist to a suggestion in a much later  
6 report, not connected with the McKie case in any way,  
7 the Brandon Mayfield Report from the United States. We  
8 saw a suggestion that recording work as the person went  
9 along might have made them more aware of what they were  
10 doing at the time and of the fact that they were making,  
11 essentially, too many value judgments to justify, which  
12 might in retrospect or indeed if looked at more  
13 carefully at the time, have been seen to be explaining  
14 away differences that shouldn't have been explained  
15 away.

16 Can you see that as a useful function for  
17 note-taking contemporaneously?

18 A. Very much so. I think what we just need to understand  
19 is in what cases would you do that because obviously if  
20 we're being asked to do that on every case, we have a  
21 significant workload and it might have a major impact on  
22 the productivity and efficiency of the organisation but  
23 I can understand in certain cases where you maybe don't  
24 have the same level of detail or you don't have as good  
25 a quality mark I think there certainly is opportunity to

1            have more detailed note-taking and, therefore, more  
2            detailed thought process recorded.

3        Q.    I appreciate that you may be to some extent reacting to  
4            things that have come out in this Inquiry or been  
5            discussed in evidence in the Inquiry so you may not have  
6            an answer for this question but has any consideration  
7            been given to what the actual resource implications in  
8            the SPSA would be for some increased form of note-taking  
9            of the type that we are discussing?

10       A.    We could only really assess that whenever we knew what  
11            type of cases would fall into the category that we would  
12            have to do this additional work in. Certainly we can  
13            look at that and see if there's information out there  
14            within our own organisation that'd allow us to put an  
15            idea of the scope and complexity of that but that's  
16            something we haven't done at the moment but certainly we  
17            could look at.

18       Q.    Just since we have mentioned the Mayfield Report in that  
19            discussion, our understanding from Mrs Tierney yesterday  
20            was that there hadn't been specific discussion of the  
21            Mayfield Report in the context of the Scientific  
22            Advisory Group on fingerprints.

23                    Is the matter of the recommendations from that  
24            investigation something that your organisation is  
25            considering or looking to take forward in any way?

1 A. Obviously, the Mayfield Report has been out since 2006,  
2 I believe.

3 Q. 2006.

4 A. So I believe a lot of the work into the action plan for  
5 excellence would have been influenced by that report.

6 We as an organisation, I certainly have not asked, at  
7 this moment in time, for my staff to go through each of  
8 the recommendations, but it is certainly something that  
9 we are aware of and we will take on board and we will  
10 look at the recommendations and see if there's anything  
11 and any other way that as we begin to write these new  
12 and developed SOPs that we acknowledge what has happened  
13 and learn from elsewhere.

14 Q. Do you have any personal knowledge that would suggest to  
15 you that the Mayfield Report had been taken into account  
16 in the action plan for excellence?

17 A. I actually wasn't involved at that moment in time so I  
18 couldn't speak to that, but I know obviously the report  
19 was out.

20 Q. Because, again, it makes quite detailed recommendations,  
21 particularly around the areas of standards in standard  
22 operating procedures and also around the areas of  
23 documentation of analysis particularly -- well, and in  
24 fact distinguishes the stage at which it might be done  
25 to enable practicability rather than doing it in every

1 case. Is that something that you are personally aware  
2 of at all?

3 A. As I say, I am aware of the report but I haven't gone  
4 through it in the detail that would allow me to answer  
5 that question.

6 Q. Another matter that was raised I think by HMIC, perhaps  
7 not as a formal recommendation but something they  
8 suggested might be of use, was the question of  
9 undisclosed competency testing. I apprehend from your  
10 statement and we understand from others that there have  
11 been some difficulties with implementing that in SPSA.  
12 I wonder if you could help us with that?

13 A. Sorry, could you maybe explain ...?

14 Q. This is a suggestion that, essentially, a case record  
15 would be created containing material that didn't match  
16 to test whether examiners and I think particularly in  
17 Mayfield verifiers were looking at the material properly  
18 and this would not be disclosed on the way past. People  
19 wouldn't know that it was not real case material?

20 A. Yes, what they are actually talking about there is a  
21 blind collaborative exercise where we would try to put  
22 into the forensic environment a case which was a made-up  
23 case where we obviously knew the results or had made the  
24 case up ourselves and then passed that into the  
25 laboratory or into the examination area through their

1 case management system to allow them to complete the  
2 analysis and then report on the case itself. That  
3 report would then would be sent to a central group and  
4 they would obviously review the findings.

5 I was actually Chair of the United Kingdom  
6 Collaborative Exercise Group which reports to the  
7 Association of Forensic Science Providers and we found  
8 it to the point of almost impossible to actually put  
9 cases into the laboratory, to the point that once the  
10 cases were in, obviously, staff phone up and ask  
11 questions about that case. You have to have police  
12 officers engaged in that process. They don't always  
13 have all the answers and we were finding that in the  
14 majority of cases staff knew that it was, in fact, a  
15 dummy case. So, therefore, you lose that opportunity of  
16 trying to test the system and people would go into  
17 almost like a different mode for that examination.

18 What I feel we have done is introduced a process  
19 called dip sampling which allows us to go back and to  
20 look at 5 per cent of our cases, those are cases that  
21 went into the laboratory and then we can actually track  
22 that case and go through all the notes and all the  
23 examination procedures to make sure that the result that  
24 went out at the end of the day was indeed the correct  
25 result. That's one way, one process that we have

1 introduced to allow this to overcome that difficulty.

2 What we can do is obviously send in declared trials.

3 That's where you declare to the individual this is a

4 trial and I suppose CTS is an example of that where

5 people know that they are carrying out a test on a print

6 that they have been given.

7 Q. Another theme that had come up in previous reports, and

8 it is something you comment on in your own statement, is

9 the question of staffing levels. Earlier reports

10 obviously were about predecessor organisations rather

11 than your own but you provided us, I think, helpfully,

12 with some tables comparing current staffing levels as

13 far as possible with what had been recommended in a 2004

14 report by Graham Jones. It might be helpful if we just

15 look at that briefly.

16 Your statement is FI0153 and the table is at

17 page 26. What we see in the upper of the two tables is

18 the comparison in the three bureaux in Aberdeen, Dundee

19 and Edinburgh of recommendations in the 2004 report with

20 the 2009 position. Would that be right?

21 A. That's correct.

22 Q. What we see, if I can look first at the principals or

23 team leaders, is that we appear to have recommendations

24 of 2 against the figures of 0 and I wonder -- that on

25 the face of it suggests some kind of deficiency and I

1 wonder if you could explain the position?

2 A. Sure. In the 2004 report that was obviously looking at  
3 what was an aspirational figure of the number of people  
4 that that individual believed that the organisation  
5 needed to carry out the work. I obviously don't know on  
6 what basis they came to those figures but what I can say  
7 is that, as an organisation, we continually review the  
8 workload that comes into our organisation and our  
9 staffing complements and what I can say is that although  
10 we haven't and are not reaching the targets that were  
11 set by 2004, the number of cases coming into the  
12 laboratories has significantly dropped. We used to get  
13 nearly 13,000 cases in. It's now just over 10,000. We  
14 have changed process. We have also changed the  
15 management structure and what I can say is that the --  
16 what's a good record of how we are doing in terms of  
17 performance is the number of cases that are sitting  
18 unstarted has fallen significantly in the last, sort of,  
19 2/3 years.

20 So I believe as the Director of this organisation  
21 that we have the right people, in terms of numbers,  
22 doing the work because we're beginning to eat in  
23 significantly to the backlog and our turnround of cases  
24 has actually improved significantly as well. So I  
25 believe we have got the right number of people but we

1 don't stop there. We do continually review that and we  
2 do continually assess that.

3 We've just engaged on, in the last four months, a  
4 modernisation programme which is looking at four  
5 specific areas of our business within forensic science:  
6 it's looking at capability and capacity; it's looking at  
7 quality assurance; it's looking at human resource  
8 issues; and, under capability and capacity, we are  
9 actually looking at the number of staff that we have  
10 across our organisation and the output of work and if  
11 there is a deficiency, that will be brought up in the  
12 capability and capacity report.

13 We're also engaged with our customers, both ACPOS  
14 and the Crown Office, and have held workshops in all the  
15 forces in Scotland and within, obviously, Crown Office  
16 as well to try and understand what the customer wants in  
17 terms of throughput of casework. Those two reports will  
18 come together along with the human resource report and  
19 the quality report to allow me to put a document to the  
20 Scottish Government identifying, in terms of  
21 modernisation, how we are going to deliver a truly  
22 national Forensic Science Service to Scottish policing  
23 in January.

24 THE CHAIRMAN: Is there any explanation for the fall-off in  
25 requirement for fingerprint identification?

1 A. I think we're actually going out to fewer crime scenes,  
2 which might be part of the reason and, to be honest, I  
3 think DNA has also helped in terms of detection rates as  
4 well. But maybe the culprits are becoming smarter and  
5 maybe not leaving their prints as often, I'm not sure,  
6 but there are obviously a number of reasons, certainly  
7 we have seen a significant fall in the number of cases  
8 coming in.

9 It might even be the Gateways are having an impact  
10 as well and police are maybe dealing with crimes in a  
11 different way.

12 MISS CARMICHAEL: You tell us in your statement that  
13 although the overall case load has fallen there is  
14 actually an increase in the average number of marks  
15 being processed per case. I am wondering to what extent  
16 that maybe offsets what you are telling us about the  
17 reduction of case load.

18 A. The number of cases has fallen but the number of  
19 identifications has gone up as a percentage of that and  
20 that probably shows you we are actually getting better  
21 at recovering prints and actually getting  
22 identifications. So although the number of cases has  
23 fallen we're actually getting more identifications out  
24 of that smaller number of cases submitted.

25 Q. But there is an implication of more work, I suppose,

1 with the increased number of marks?

2 A. There's more work with an increased number of marks but  
3 there's also less waste in that we're not examining the  
4 13,000 cases but we're actually focussing on the 10,000,  
5 we are able to add more value. But I can certainly say  
6 that in terms of the amount of profile and the number of  
7 cases we're getting in our backlog is falling month on  
8 month.

9 Q. I would like to ask you particularly a bit more about  
10 the staffing arrangements for quality assurance and  
11 training because what seems to have been envisaged in  
12 2004 was that there would be one member of staff in each  
13 bureau dealing with training, well training specifically  
14 in Glasgow, training and quality assurance in other  
15 bureaux, and also perhaps important to this question is  
16 that HMIC back in 2000 were keen to emphasise that  
17 quality assurance and training were both important and  
18 perhaps should be separated out in terms of personnel to  
19 allow sufficient concentration on each of those.

20 I wonder if you could tell us just what the current  
21 situation is, because on the face of it, again from the  
22 bare figures on the table here, it looks as if what was  
23 envisaged, at least in 2004, isn't being met.

24 A. Sure. Within SPSA Forensic Services we have established  
25 a training department and that training team look after

1 the training of all the fingerprint trainees at this  
2 moment in time.

3 In terms of the quality -- and obviously the number  
4 of trainees has fallen as well and we don't have as many  
5 as we had then. I think we've now only got 6 whereas  
6 then we had ... in the high 20s. So there has been a  
7 fall-off in the number of trainees that we're needing  
8 trained but also in terms of the quality, we already  
9 have quality managers at each of our four business units  
10 in Glasgow, Edinburgh, Dundee and Aberdeen and we're  
11 very, very keen -- I don't want quality seen as  
12 something that someone in a small unit does. I want  
13 quality to be seen as something that everyone has a  
14 responsibility to do. So by putting the fingerprint  
15 managers into those posts at unit manager level we want  
16 them to take on some of that ownership and  
17 responsibility and the staff to take on that ownership  
18 and responsibility for quality. I don't want quality  
19 just in a small team of people, therefore, that's why we  
20 haven't got four fingerprint quality managers because I  
21 don't think they are needed. We are dealing with it in  
22 a slightly different way and they are also being  
23 supported by the four quality managers we have currently  
24 in our forensic laboratories who are obviously very  
25 skilled in the 17025 nomenclature for UKAS. So we've

1            maybe dealt with it in a slightly different way to the  
2            way this report seen us going forward.

3        Q.    How much day-to-day involvement do the quality managers  
4            have with the fingerprint side of the business?

5        A.    The quality managers are now engaged in the fingerprint  
6            side, helping us develop and write these standard  
7            operating procedures. The quality managers have a  
8            Scientific Advisory Group and they meet to discuss  
9            obviously quality issues and within that we have one  
10          representative who is taking forward the quality  
11          documents, Joanne Tierney is leading on that with the  
12          Scientific Advisory Group under fingerprints.

13      Q.    The training arrangements, should we understand that  
14          those are made at SPSA level rather than within the  
15          fingerprint bureaux particularly, other than perhaps  
16          from what we see here in Aberdeen? Can you explain how  
17          that works?

18      A.    We have, obviously, most of our trainees are based in  
19          Glasgow and that's where we've had our training unit,  
20          but in Aberdeen we've always had this role where one of  
21          the members of staff up there was a training manager but  
22          that person doesn't spend all of their time training.  
23          They are obviously doing other things as well and doing  
24          other casework as well. So their job isn't full-time,  
25          as I understand it, on casework.

1 Q. Can you explain perhaps a little more fully just what  
2 the arrangements for the training team are within SPSA  
3 and how much of their time is devoted to fingerprint  
4 training as opposed to other disciplines within SPSA?

5 A. At the moment they are fingerprint trainees. I want to  
6 move that and change that to develop a bigger team to  
7 take on training within the whole forensic environment,  
8 not that they would necessarily deliver the training but  
9 they would actually begin to manage and plan that  
10 training and people have development needs, CPD, then  
11 they can actually take that on and source and identify  
12 the appropriate courses that staff need to go on. So I  
13 would like to see that unit actually expanding and  
14 taking on more of a role across forensic science.

15 We've actually started doing that in one area of  
16 presentation of evidence in court where we've worked  
17 with the Crown Office and the Scottish Police College  
18 and ran a number of training sessions there in training  
19 people how to actually give evidence and present  
20 evidence in court and although it's been primarily for  
21 Fingerprint Experts we have had a number of observers  
22 along from other disciplines and we now hope to extend  
23 that to other areas of forensic science.

24 Q. I would like to change themes here and ask you about --  
25 we have touched on the question of disclosure in a

1 particular context around the competency testing but I  
2 would like to ask you a bit more about that generally  
3 because it has become a theme for discussion in the  
4 course of the Inquiry.

5 A. Sure.

6 Q. I think it's perhaps --

7 MISS GRAHAME: I am sorry to interrupt. Before you proceed  
8 to this matter, unfortunately LiveNote has stopped  
9 completely and I appreciate this is significant.  
10 Everybody here doesn't have it and I understand  
11 Miss Galbraith doesn't have it either.

12 THE CHAIRMAN: We have a note being taken all the time which  
13 should be appearing on people's screens and there has  
14 been a breakdown in that. We will interrupt just for a  
15 moment. **(Pause)**

16 MISS CARMICHAEL: I was about to move on to the theme of  
17 disclosure because I think it's fair to say that in the  
18 course of the Inquiry it's become clear that there  
19 hasn't in the past been entirely a meeting of minds  
20 between SPSA (and its predecessors) and the Crown in  
21 terms of expectations of disclosure. I will perhaps  
22 explain a little bit more about that for your comment.

23 The Crown position -- and I will be told if I am  
24 misrepresenting this -- is that they were perhaps  
25 surprised not to have been told that there were

1 differences of view between experts in the historical  
2 context as to the number of points when they are being  
3 identified when the non-numeric standard was in force, a  
4 situation where one expert had only seen ten points, but  
5 also in the present context questions have been asked  
6 about what would happen if there had been an internal  
7 discussion where people weren't sure, maybe a  
8 facilitated discussion, something of that sort, and  
9 agreement had ultimately been reached.

10 The Crown are interested, it appears, in hearing  
11 about that information because it is information that  
12 might tend to cast some doubt ultimately on the  
13 identification or give some inroads towards doubt and  
14 that is something that has not been thought, if I've  
15 understood the evidence correctly, to be an area where  
16 people would have anticipated making a disclosure to the  
17 Crown. So in that sense there hasn't been a meeting of  
18 minds and a meeting of expectations.

19 Is that something of which you have been aware at  
20 all?

21 A. To be totally honest, I meet on a regular basis with  
22 members of the Crown John Dunn, Liam Murphy, Mike Bayle  
23 and other members of the Crown and they have never, ever  
24 brought this to my attention. This is the first time  
25 I've actually heard of this potentially being an issue.

1                   Certainly as far as I'm concerned, we offer and we  
2                   do precognitions, we do precognitions to the defence, we  
3                   do precognitions for the Crown and on occasions we've  
4                   actually approached the Crown and asked them to  
5                   precognosce us because there was something in a case  
6                   that we felt they should be aware of. So there were  
7                   certainly vehicles there where people can be made aware  
8                   of issues. Whether they have been used fully maybe we  
9                   need to look at that but certainly I don't have any  
10                  problems.

11                  As far as I'm concerned, on a number of occasions  
12                  also our case file has been used in court and made a  
13                  production. Forensic scientists have nothing to hide in  
14                  their case file. We don't have a problem. If that  
15                  should be disclosed in its entirety, we will disclose  
16                  that in its entirety. But I would certainly like to sit  
17                  down with the Crown and just understand how we could  
18                  better meet their expectations.

19        Q.    In fairness to the gentlemen that you may have been  
20              meeting with on a regular basis, I think some of these  
21              issues are ones that have become live in the course of  
22              this Inquiry rather than being something that had been  
23              apprehended at an earlier stage.

24        A.    I am happy to take that away. I have actually got a  
25              telephone conference with John Dunn on Monday so I can

1 take that up with John and make sure that we are talking  
2 to one another and sorting it out.

3 Q. We have also started to hear that there are discussions  
4 going on between the Crown and your organisation about  
5 guidance to Crown precognoscers perhaps directing them  
6 more to questions that might be relevant to ask of  
7 Fingerprint Examiners. Is that something that you are  
8 aware of?

9 A. Yes. As I say, we do have regular meetings with the  
10 Crown Office and we do, where we can, offer training to  
11 the Crown to make them just more aware of the evidence,  
12 how we're presenting it and what it means. I know there  
13 have been a number, at least three, in the last few  
14 months where we've had members of staff going along and  
15 presenting evidence. I would encourage more of that  
16 because the more knowledge that people have, then to me  
17 the better we will serve the courts at the end of the  
18 day.

19 We're also working on a DVD with Scott Pattison to  
20 look at -- one of my concerns in the past has been we  
21 expect a jury to completely understand the evidence that  
22 is brought before them and I feel that forensic science  
23 can play a better role in informing them. So we're  
24 looking at developing a DVD for fingerprints, we're  
25 looking at developing a DVD for DNA and we will

1            hopefully have this generic DVD that we can play, if the  
2            court wants, to bring everyone up to at least a  
3            knowledge, an equal knowledge, before the evidence is  
4            presented in court. We're actively working on that at  
5            the moment.

6                       I managed to secure funding from the Scottish  
7            Government. We have in Glasgow a Scene of Crime  
8            Department. We have photographic experts who have  
9            developed a crime scene animation and what they do is  
10          they actually take photographic evidence from the crime  
11          scene and put it into an animation that is quite often  
12          shown to the court. One of the beauties of that is that  
13          you can have hot spots on and during this animation. So  
14          say, for instance, I had a blood stain on this bottle,  
15          you could home into the bottle and what we want it to do  
16          is to allow you to click on a hot spot that might then  
17          identify where the DNA was found or where the  
18          fingerprint was found.

19                     So we do that at the moment. We've done that for a  
20          number of significant High Court murder cases in  
21          Edinburgh and in Glasgow. We've now got the money to  
22          run this as a pilot for the year and to understand if  
23          this is something that the Crown Office would like us to  
24          develop further and to offer that service further to the  
25          courts.

1 Q. Just taking you back a wee bit when you were talking  
2 about precognition there you said that on occasion  
3 people had asked to be precognosced. Is that within the  
4 fingerprint context or some other forensic science  
5 context?

6 A. I'm speaking with that from knowledge from my days  
7 whenever I was director of the Edinburgh board.

8 Q. Was that in relation to fingerprints?

9 A. No, sorry, it wasn't. I wasn't in charge of  
10 fingerprints at that moment.

11 Q. I see. So this was a forensic scientist asking to be  
12 precognosced about something?

13 A. It was, yes.

14 Q. When you're referring to the case file being used in  
15 court, again is that in a fingerprint context or in  
16 another forensic science context?

17 A. I certainly wouldn't have any problem with any of our  
18 case files appearing in court.

19 Q. I am sorry --

20 A. I did give an example where a case file was taken into  
21 court. That was actually a case file in a chemistry  
22 case.

23 Q. But as a matter of principle, if there was something  
24 there in a fingerprint case that was going to assist,  
25 you wouldn't have any difficulty with that?

1 A. To me, if it's going to assist the court we would have  
2 no problems at all.

3 Q. Thinking to the relationship between the Crown and the  
4 SPSA more generally, what do you see as being the role  
5 of the Crown Office and Procurator Fiscal Service, if  
6 any, in the development of fingerprint identification  
7 evidence in Scotland?

8 A. I think they have to be fully involved. We have always  
9 involved them in the past and talked to them as we  
10 developed things. We have different working groups  
11 where we meet with members of the Crown and I've  
12 obviously mentioned Scott Pattison and how we're looking  
13 to develop some of the animation and the DVD. So, yes,  
14 I would welcome -- and we have a very good and a very  
15 positive relationship with the Crown.

16 Q. Has there been at any time in your experience discussion  
17 with the Crown, I suppose, around the reliability and  
18 the standards involved in fingerprint evidence?

19 A. I'm not aware of a specific meeting in fingerprints but  
20 I know we've had certainly meetings and I've chaired  
21 meetings in other areas of evidence, for instance, in  
22 drug analysis where we've met and had a workshop with  
23 the Crown to identify how we take forward a certain  
24 approach to random sampling, for instance.

25 Q. In terms of taking your organisation forward, one of the

1 things that you have mentioned in your evidence was the  
2 business of accreditation under ISO 17025. Where is  
3 SPSA at the moment in that process as regards its  
4 fingerprint department?

5 A. As I say, we're looking at the standard operating  
6 procedures that we currently have. We're developing  
7 them and improving them where we can. We are making  
8 sure they are in the different format of obviously UKAS,  
9 which is slightly different, and we're wanting that to  
10 move forward. Hopefully in the first quarter definitely  
11 of next year, we will invite UKAS up for a  
12 pre-assessment and they will go through the standard  
13 operating procedures that we have and give us an idea of  
14 how far we are away from the standard they are looking  
15 for.

16 Q. Can you give us any idea of the process involved and how  
17 far along the line pre-assessment is in terms of when  
18 you might become accredited?

19 A. As I say, I would like to have -- UKAS are coming up for  
20 another matter, to assist us with the migration of our  
21 Dundee staff from the current facilities into the new  
22 laboratory and I'm hoping that we will be in a position  
23 then to give them the documentation to have a look at  
24 and see how far we are away from accreditation.

25 Q. At this point are you able to give any timescale for

1 when accreditation might be achieved?

2 A. If that visit goes well, then I don't see why we  
3 couldn't aim for -- and obviously it's all down to time  
4 and timetabling here because unfortunately in  
5 fingerprints UKAS do not have a lot of assessors and  
6 UKAS are expanding scope with, as I mentioned, 17025 in  
7 other areas of forensic sciences in England and Wales so  
8 it's all down to their timescale, but I don't see why it  
9 couldn't be achievable by summer of 2010.

10 Q. Can you tell us at what point SPSA became clear in its  
11 corporate mind, if I can put it that way, that 17025 was  
12 the appropriate standard to be pursuing for its  
13 Fingerprint Service?

14 A. Yes, I actually went down to UKAS and met with the UKAS  
15 assessor, Katherine Monnery and she indicated to me that  
16 17025 was the standard that they would be happy with us  
17 trying to, obviously, achieve. It's interesting the  
18 question you ask because there are some areas in, for  
19 instance, the laboratory, blood pattern analysis, which  
20 probably sits better under the 17020 standard but  
21 currently sits under the 17025 standard. I think it  
22 doesn't really matter what standard it fits under  
23 providing UKAS feel they can come in and properly assess  
24 you and accredit you against that standard but certainly  
25 Catherine was very clear that she wanted it to go under

1 the 17025 standard and that's what we have been working  
2 to.

3 Q. You say it became clear when you had met with this lady.  
4 Can you tell us when that was?

5 A. It's over a year ago. Yes, it's definitely over a year  
6 ago.

7 Q. The reason I ask is because we saw yesterday minutes  
8 from a Scientific Advisory Group meeting from May of  
9 this year which seemed to be expressing some doubt as to  
10 whether 17020 or 17025 was the appropriate standard for  
11 fingerprints and I'm wondering how wires have become  
12 crossed in that way, if you were clear yourself over a  
13 year ago.

14 A. Obviously staff have a view on that and potentially that  
15 was their view coming through that they felt maybe sat  
16 better under 17020 but I have a clear steer from  
17 Catherine Monery that it fits better under 17025.

18 Q. We should be in no doubt that that is being pursued?

19 A. Yes.

20 Q. We also saw from minutes that we looked at yesterday  
21 that there had been some anticipation in the summer of  
22 2008 that the pre-assessment might be in the autumn or  
23 winter of that year. I wonder if you could clarify why  
24 that didn't come to pass and we're looking at  
25 pre-assessment now into next year?

1 A. Sure. I have obviously a large organisation I need to  
2 take forward and what we have at the moment is four  
3 laboratories working to UKAS 17025 and they are  
4 accredited separately. We've got eight Scenes of Crime  
5 departments who have no accreditation they are working  
6 to and that is the same around the UK. We've obviously  
7 got fingerprint staff working to the ISO9001.

8 What we were trying to do is to move fingerprints  
9 and the laboratory staff to the 17025 standard together  
10 and I was in discussions with UKAS how we actually could  
11 achieve this because one thing I don't want to do is  
12 risk losing accreditation because if you risk losing  
13 accreditation, you risk then putting DNA samples on to  
14 the national DNA database and I could not allow that to  
15 happen. So I needed to make sure that the journey we  
16 are on was indeed the right one and, yes, it has taken  
17 longer than probably initially thought. But I believe  
18 now we're on the right road. Mr Rennison, the forensic  
19 regulator, was also at that time putting clarity on  
20 regulation across the UK. I know he only has  
21 responsibility for England and Wales but the Scottish  
22 Government have said that they would support and expect  
23 the SPSA to work to any standards that Mr Rennison  
24 developed, providing it didn't have an impact on our  
25 legal system.

1                   So I've been obviously engaged in those talks and  
2                   Andrew has just produced in the summer there his  
3                   consultation document providing the way forward for the  
4                   United Kingdom.

5                   We want to make sure -- I actually held a conference  
6                   up here in Glasgow where we invited members of the  
7                   quality SAG, members of staff, the regulator. We  
8                   invited Dr Bob Bramley who put the standard together.  
9                   We invited ACPOS. We invited the Fire Service, just to  
10                  talk about how we might actually take this whole  
11                  accreditation process forward.

12                  I believe now we've got a road map to begin to put  
13                  that together and as part of the modernisation programme  
14                  which I've mentioned I did say there was four strands.  
15                  The HR strand and the quality strand and, at the moment,  
16                  we have an organisation called OCP who --

17        Q.    Can you, again, explain the acronym, please?

18        A.    It's Organisational Consultancy Partnership. They are  
19                  working with us to allow us to understand the migration  
20                  for our organisation from where we are at the moment to  
21                  the regulatory standard under Mr Rennison and they have  
22                  actually met with Mr Rennison in the last week.

23        THE CHAIRMAN:   You said a moment ago and I just want to get  
24                  it clear, if you lose accreditation what is the effect  
25                  on the DNA side?

1 A. Sure. To put DNA samples on to the national DNA  
2 database you must be an accredited laboratory and if you  
3 lose that accreditation you, therefore, can't put  
4 samples on to the national DNA database.

5 In terms of Scotland that would cost us (a) millions  
6 of pounds but also potentially mean that we wouldn't be  
7 getting hits against the DNA on the database.

8 MISS CARMICHAEL: Just so that we can be clear, how is it  
9 that the process of seeking accreditation for your  
10 fingerprints would give rise to a risk of losing  
11 accreditation on the other side of things, the  
12 laboratory side?

13 A. What I'm trying to create here is an environment where  
14 actually fingerprints are part of the greater and the  
15 bigger organisation, that they are not seen as a  
16 separate identity. They are actually part of the whole  
17 SPSA Forensic Services and I think in terms of culture  
18 what I want to say to them is you are actually part of  
19 the bigger SPSA forensic family here and we want to move  
20 forward on this together and, therefore, if we risked  
21 accreditation it could actually mean for instance DNA  
22 would be taken off us or would be reviewed.

23 Q. So should I understand then that you wouldn't be seeking  
24 the accreditation for fingerprints as a separate entity,  
25 you're bringing them into some other accreditation which

1           you might lose by bringing them in?

2       A.    They would actually come under the umbrella of SPSA  
3           Forensic Services and they would, obviously, be reviewed  
4           separately by UKAS but we want them to move forward with  
5           the same top level management documents as other parts  
6           of Forensic Services. So it's important that that is  
7           all in place before we actually move across.

8       Q.    It may be my fault but I am still not altogether  
9           understanding why, if they are reviewed separately,  
10          there is a risk to a laboratory accreditation in seeking  
11          accreditation for fingerprints?

12      A.    What we're trying to do is develop top level documents  
13          that are consistent across fingerprints, laboratories,  
14          chemistry, biology and DNA. Those top level documents  
15          need to be in place in our existing quality management  
16          systems so I need to make sure that if we bring them in  
17          for fingerprints they are not going to have a conflict  
18          with what is there at the moment and put that in  
19          jeopardy because UKAS will come up in January and assess  
20          our laboratories and if I do too much tweaking to what  
21          they currently have, we could put at risk their  
22          accreditation. Sorry --

23      Q.    So it's about achieving consistency between the two?

24      A.    It's about making sure that they are all working to the  
25          same top level management documents, yes. That doesn't

1 stop UKAS coming up and obviously assessing where we are  
2 and looking at our SOPs to make sure those SOPs are in  
3 fact correct and in place.

4 THE CHAIRMAN: Does this mean you want the whole  
5 organisation to be accredited as one --

6 A. Exactly.

7 THE CHAIRMAN: -- or each part of it must achieve its own  
8 accreditation so that the whole organisation can be  
9 taken as being accredited?

10 A. Yes. What we have at the moment, as I said, is four  
11 separate laboratory accreditations. What I want to do  
12 is move to one single accreditation. One of the  
13 problems with working under four separate accreditations  
14 is it is very, very difficult to move work between the  
15 service centres because it's actually seen as  
16 outsourcing, even though you are part of the same  
17 organisation. So what I want to move to is a group  
18 accreditation where the whole group of SPSA Forensic  
19 Services are accredited under UKAS. That will  
20 then allow me to continually move work across Scotland,  
21 whereas at the moment for me to move say any casework  
22 from Glasgow to Dundee there's a whole process that you  
23 have to go through in negotiating with your customer  
24 that those cases can actually transfer. So you are  
25 better going for group accreditation to allow that to



1 that your procedures are currently in the process of  
2 development towards that. I wanted to ask you about the  
3 question of publication of procedures because, again,  
4 that was something that HMIC had been keen on and to  
5 date there have been some of your procedures, albeit  
6 perhaps not the absolutely current and up-to-date ones,  
7 published on your website.

8 You indicate in your statement you don't personally  
9 see the need for publication procedures and I'd like you  
10 to clarify why that is?

11 A. Sure. I'm not saying that if it is a recommendation  
12 that we wouldn't do it. All I'm saying is we do have  
13 some concerns about putting what are standard operating  
14 procedures on to a web page or Internet page because  
15 these documents are live documents, they do change and,  
16 therefore, we need to make sure that at all times we  
17 have the right documents on the Internet.

18 I'm certainly not aware of any other forensic  
19 organisation that does put their standard operating  
20 procedures on to the Internet because, obviously, within  
21 it there might be some information which is very much  
22 specific to your organisation and, therefore, might give  
23 other organisations an opportunity to maybe get an  
24 advantage on you commercially. I know that's one of the  
25 issues south of the border. So certainly we have

1 difficulties -- I've certainly asked other organisations  
2 to share their SOPs with us and they will not do that.

3 What we have done in the past is where defence have  
4 asked to look at SOPs we have obviously allowed them to  
5 look at those SOPs but we have had the situation where  
6 one of my members of staff was in court and was handed  
7 an SOP which didn't have a date on it and was challenged  
8 why that person wasn't working to that SOP that that SOP  
9 was way out of date and had been given to the defence  
10 expert to be destroyed and it wasn't destroyed.

11 So I've just some concerns about how we manage that  
12 whole process about putting SOPs on the web or on the  
13 Internet. It's not that we want to hide anything. It's  
14 just I have significant concerns about the documents not  
15 being used in the appropriate way.

16 Q. At the moment the position is that there are procedural  
17 and quality documents available on your website?

18 A. That's right, that's right.

19 Q. Is the proposal to change from that once your procedures  
20 are finalised from the point of view of the quality  
21 accreditation?

22 A. I would certainly welcome, maybe from the Inquiry, an  
23 idea as to what the Inquiry thinks is reasonable. We  
24 will obviously speak with Crown Office and ACPOS as well  
25 to see if they want us to put those documents on to the

1 website and we as an organisation will obviously need to  
2 consider that but I just have some concerns.

3 Q. Around potential disclosure issues, could we take it  
4 there wouldn't be any difficulty with the Crown having  
5 access to the full range of your standard operating  
6 procedures?

7 A. At the end of the day, that's not a problem at all.

8 Q. Finally, Mr Nelson, I have some questions for you about  
9 SPSA's position in relation to the marks Y7 and QI2.  
10 Again, this is an area where there has been some  
11 discussion in the course of the Inquiry.

12 We understand that SPSA as a body itself came into  
13 existence by means of legislation in April 2007?

14 A. That's correct.

15 Q. So I suppose ten years after the start of all of this  
16 affair at the time of the investigation into the murder  
17 of Marion Ross.

18 What is your position as to whether SPSA requires to  
19 have a position as to whether Y7 and/or QI2 were  
20 correctly identified?

21 A. Sorry, could you repeat the ... what is my ...?

22 Q. Do you think the SPSA needs to have a position as to  
23 whether Y7 and QI2 were correctly identified?

24 A. I think whenever the organisation, or prior to the  
25 organisation coming into being, Mr Mulhern, the Chief

1 Executive, gave a position for the organisation at that  
2 time.

3 With the announcement of the Inquiry and, obviously,  
4 the Terms of Reference towards the early part of this  
5 year and also with the departure of our Chief Executive,  
6 I thought it was right that SPSA review that position.

7 In the setting up of the Inquiry here we also  
8 established an oversight group within SPSA comprising  
9 members of our Board, our interim Chief Executive,  
10 members of SPSA executive and myself and I put a  
11 discussion to that group suggesting that we should  
12 consider our position, given the Inquiry has been set  
13 up, given there's an expectation that the Inquiry will  
14 come up with an independent and authoritative view on  
15 the mark, I felt it was right that we consider our  
16 position and I feel because SPSA has never re-examined  
17 the mark, I felt the right position for us to take was  
18 it was indeed unsafe.

19 Obviously, we as an organisation would wait for the  
20 Inquiry to come out with a definitive answer to the mark  
21 itself and I took that to the oversight group and got,  
22 obviously, the authority from that and our Chief  
23 Executive to put that position to yourselves.

24 Q. Just thinking about that position a little further, it  
25 may be suggested to you that unsafe is an unsatisfactory

1 conclusion for one reason or another but, leaving that  
2 aside, let's stay with idea of it being unsafe which is  
3 the position that you have given.

4 If the identification of one or both of these marks  
5 is unsafe, without an assessment of what may have made  
6 those unsafe, how it may have come about that unsafe  
7 identifications came to be issued, how can SPSA be in a  
8 position to present that the reasons for that happening  
9 are being avoided in current practice?

10 A. Okay. Our position in saying that it is unsafe is based  
11 on the fact that no member of SPSA has re-examined the  
12 mark and, therefore, I as a scientist could not give an  
13 opinion on something we have never actually seen or  
14 looked at. So, to me, because there's so much confusion  
15 and so many different views on the mark, I felt the  
16 position we should take is that it is indeed unsafe and,  
17 obviously, the Inquiry, I expect, will have the  
18 opportunity to come out with an independent and  
19 authoritative view on the mark and hopefully, along with  
20 that, some reasons why they've come to that conclusion.  
21 We will then take those reasons and make sure that, if  
22 there are issues within SPSA, that we address those.

23 Q. Does it follow from what you say then that there isn't a  
24 definitive view within SPSA as to how it is that unsafe  
25 identifications may have come to be made?

1 A. I've certainly made it clear to our unit managers that I  
2 was taking this position -- our fingerprint unit  
3 managers, sorry.

4 Q. So essentially your position come back to being that you  
5 are waiting to hear what the Chairman of this Inquiry  
6 will say as to whether there has been a  
7 mis-identification in either case and, if so, as to what  
8 the causes of that might be?

9 A. That would be correct, yes.

10 MISS CARMICHAEL: I don't have any further questions for you  
11 at the moment, thank you, Mr Nelson.

12 THE CHAIRMAN: Perhaps I should ask Miss Grahame, first of  
13 all. Have you any application?

14 MISS GRAHAME: Yes, there are two matters I would like to  
15 raise, one relating to the Forensic Gateway and the  
16 other relating to the example where a print is found on  
17 a murder weapon -- just a very short point.

18 THE CHAIRMAN: Yes. Very good.

19 **Cross-examined by MISS GRAHAME**

20 Q. Mr Nelson, you mentioned the Forensic Gateway earlier in  
21 your evidence and I just want to ask you are you aware  
22 that a member of the Procurator Fiscal Service was  
23 seconded to the Forensic Gateway for a while? And was  
24 that Mr Morrison?

25 A. That's correct. In discussions with Liam Murphy and

1 Mike Bayle we looked at the opportunity that we could  
2 maybe have a Procurator Fiscal seconded to the Gateway  
3 and we actually had that individual, Mr Morrison,  
4 attached to the Gateway in Glasgow for I think it was a  
5 three-month period.

6 Q. Was he involved in doing some of the instructions from  
7 Fiscals to assess the quality of those?

8 A. He was, yes. He was fully involved in assessing the  
9 quality of the submissions coming in and assisting us in  
10 prioritisation of those marks. Certainly from the  
11 feedback I've had, it was extremely positive and it is  
12 something we'd maybe look to do elsewhere.

13 Q. Is that issue being reviewed now that Mr Morrison has  
14 completed his secondment?

15 A. Yes. I've a meeting set up with Scott Pattison and  
16 we'll be looking at that issue in the next couple of  
17 weeks.

18 Q. The second matter I would like to ask you about is an  
19 example has been put here regarding where a print or a  
20 partial print is found on a murder weapon and if we  
21 assume that has not been positively identified as the  
22 accused, can I take it from that that it would not be in  
23 the joint report?

24 A. That would be correct, yes.

25 Q. But would that, the fact that a print had been found on

1 the weapon, be something that would be contained in the  
2 annex attached to the report?

3 A. To be honest, I'm not totally sure, sir. I can  
4 certainly check that up and come back to you but I'm not  
5 totally sure given I don't work on a daily basis on  
6 those cases but I can certainly look into that for you.

7 MISS GRAHAME: It is perhaps something we can deal with with  
8 a later witness, Mr Nelson. I will not trouble you  
9 further in relation to that. Thank you very much.

10 I have no further questions.

11 THE CHAIRMAN: Mr Holmes?

12 MR HOLMES: Yes, sir, there are two matters that I'd like to  
13 cover. The first is the SPSA position on Y7 and Q12,  
14 which has already been briefly raised by my learned  
15 friend, Miss Carmichael, and the second thing is what  
16 would occur now should a dispute arise in the same way.

17 THE CHAIRMAN: Yes.

18 **Cross-examined by MR HOLMES**

19 Q. Mr Nelson, the question of the SPSA's position on Y7 has  
20 already been raised with you. Is the SPSA's position on  
21 Q12 the same?

22 A. I have actually dealt with those both in the same  
23 manner, yes.

24 Q. Why not have someone re-examined the marks?

25 A. I think, at the end of the day, with SPSA coming into

1 being in April 2007, very shortly after that we  
2 obviously were aware that there was a new Government in  
3 position and as part of their manifesto pledge they said  
4 they would actually have an Inquiry into the mark  
5 itself, sorry into the case. Then very quickly after  
6 that, obviously, there was announcement made that there  
7 would be the full Inquiry. During that period SPSA did  
8 not reopen the mark. A decision was taken at that time  
9 and certainly we would not have had the resources to  
10 allow us to put on I think what I see today as the right  
11 method of actually coming to the answer in this  
12 particular issue. So that was one of the reasons why we  
13 didn't, I understand, ever open the mark.

14 Q. I am not quite sure I understand what you mean by the  
15 right resources. You employ quite a large number of  
16 Fingerprint Examiners, do you not?

17 A. We do but I think to be honest one thing we would have  
18 to have done is to do not just a small inquiry but a  
19 major inquiry pulling in people from many different  
20 organisations and I think that is the right way to do it  
21 and I think this Inquiry has taken the right steps to  
22 allow us to come to that independent and authoritative  
23 view because even if SPSA had have come up with a  
24 conclusion, it would have maybe not been seen as  
25 independent. So I think this is certainly the way to

1 deal with it.

2 Q. I asked a question of the former Lord Advocate,  
3 Lord Boyd, and I am going to ask you the same thing.  
4 Lord Boyd identified three factors in the decision no  
5 longer to accept evidence from the six experts whose  
6 employment came to an end as a result of this case. The  
7 first factor that he identified was the public campaign  
8 against these officers, that is to say, what Lord Boyd  
9 described as their "notoriety" in the press and in  
10 television programmes, questions being raised by MSPs  
11 and Mr McKie and others demanding disciplinary  
12 proceedings and criminal investigations against them.

13 The second factor that Lord Boyd identified in the  
14 decision not to accept the evidence from these officers  
15 was the decision of the Scottish Executive to settle  
16 Ms McKie's civil claim.

17 The third factor that he identified was the leaking  
18 of the Mackay report.

19 Firstly, do you accept that the three factors that  
20 he has identified are all external factors. They are  
21 not related to these particular officers?

22 A. Sorry, I don't understand your question.

23 Q. Well, the public campaign against these officers, the  
24 decision of the Scottish Executive to settle Ms McKie's  
25 civil claim and the leaking of the Mackay report are not

1 matters which these officers had any say in, are they?

2 A. I think certainly people have an opportunity to either  
3 participate or not and, therefore, maybe there can be  
4 some participation that you could avoid. So, you know,  
5 I understand what you're saying. I think I'd probably  
6 say yes to that but with a caveat.

7 Q. What I am saying is that none of these officers were  
8 responsible for the public campaign against them  
9 clearly, were they?

10 A. No.

11 Q. And none of these officers participated in the decision  
12 by the Scottish Executive to settle Ms McKie's civil  
13 claim?

14 A. That's correct.

15 Q. None of these officers participated in the leaking of  
16 the Mackay report, did they?

17 A. That is correct. As I say, this was all before my time  
18 but I understand why you're asking that.

19 Q. Well, these are the three factors that are identified by  
20 Lord Boyd as bearing on the decision not to accept  
21 evidence from these officers and that, again, directly  
22 led to the termination of their employment.

23 My question is what is to stop anyone accused of an  
24 offence in future challenging fingerprint evidence,  
25 mounting a public campaign against the officers involved

1 in their case and hounding them out of their employment?

2 A. In terms of the suitability or not of a member of staff  
3 to be part of SPSA, we would always have to consider  
4 that individual and (a) their competence and ability to  
5 give evidence but also, in the case you're talking  
6 about, there was significant notoriety associated with  
7 the individuals and, therefore, it was that that became  
8 an issue for the organisation, in that we didn't want to  
9 put that individual or the organisation into a position  
10 where they had that notoriety and therefore they would  
11 become potentially the focus of a trial. So if that  
12 position ever arose again, obviously, SPSA would have  
13 to, as a Board, consider that position.

14 Q. What I am asking is, is there anything necessarily now  
15 that would stop the same thing happening all over again?

16 A. I don't believe we have any evidence that it is going to  
17 happen again.

18 Q. No but what I am asking is is there anything different  
19 about the organisation that would mean the situation  
20 could not arise again?

21 A. If someone puts themselves in a position of notoriety,  
22 the organisation would have to consider that.

23 Q. Or, indeed, if they are put in a position of notoriety?

24 A. That would need to be a decision of the Board, yes.

25 Q. So what happens when you are left with an empty bureau

1           because this has happened to more experts?

2       A.    Sorry, I don't understand what you're saying.

3       Q.    What happens if this does happen to more of your experts  
4           and you are left without Fingerprint Officers?

5       A.    I believe that the staff that we have are very competent  
6           and, therefore, I don't see that position arising or why  
7           it should arise.

8       Q.    When this Inquiry eventually makes a decision on these  
9           marks, whether it comes down in favour of those who  
10          agree the identifications or those who disagree, there  
11          will be others in the employ of SPSA who hold the  
12          opposite view. What's to happen to them?

13      A.    That will be a matter for SPSA when that position  
14          arises, if indeed it does.

15      Q.    Who makes that decision?

16      A.    That would be the SPSA Board.

17      Q.    Are you on the SPSA Board?

18      A.    No, but I advise, through my Chief Executive, the SPSA  
19          Board.

20      Q.    Have discussions been had as to what is to happen to  
21          those officers who hold the opposite view to whichever  
22          one this Inquiry ultimately takes?

23      A.    No.

24      Q.    Why not?

25      A.    Because, at the end of the day, we will wait for the

1 outcome of the Inquiry and then we will take action, if  
2 any action is needed.

3 Q. You must be aware that whatever the result of this  
4 Inquiry there will be a decision to be made?

5 A. At the end of the day, we will face that decision  
6 whenever we have to make it.

7 Q. What are the options?

8 A. To be honest, I haven't even considered the options.

9 Q. Is there amongst officers employed by SPSA a reluctance  
10 to make difficult identifications since the McKie case?

11 A. I am certainly not aware of that happening, no.

12 Q. Is there an unwillingness to meet any potential  
13 challenge that a defence expert might raise?

14 A. I'm not aware of any.

15 Q. We heard evidence yesterday from Mrs Tierney who was  
16 describing the procedures for identifying marks and she  
17 made a comment that officers would err on the side of  
18 caution in order to protect the innocent.

19 As an institution, SPSA is not there to protect the  
20 innocent, is it, nor is it there to ensure a conviction  
21 every time an identification goes out of the bureau. It  
22 is there to supply evidence to the Crown who will make  
23 of it what they can, is it not?

24 A. As a scientist I think I'd want to make sure that the  
25 evidence I put before the court was of the highest

1 standard and you would always give the benefit of the  
2 doubt to the accused but that would need to be made  
3 available and the court would be aware of that.

4 Q. The court will always give the benefit of the doubt to  
5 the accused but surely when a Fingerprint Officer is  
6 carrying out an examination, all they have to do is  
7 carry out that examination to the best of their ability,  
8 do they not?

9 A. To the point that they are satisfied that they have an  
10 ident or not.

11 Q. On that basis what is the reason for the statement that  
12 Fingerprint Examiners ought to err on the side of  
13 caution in order to protect the innocent?

14 A. That statement is a principle that I have known my whole  
15 life as a forensic scientist, that you always want to  
16 make sure that you err on the side of the innocent and  
17 the evidence that you are giving to the court is of the  
18 highest standard to allow the court to make the  
19 decision. You don't take risks whenever you are in the  
20 witness box. This can be a very lonely place to be and,  
21 therefore, I think you have to make sure and be  
22 confident on what you are presenting before the court.

23 Q. Identifications have always been verified by a number of  
24 checkers, have they not?

25 A. That's correct, yes.

1 Q. They have always been carried out to an accepted  
2 standard, whatever that standard might be at the time,  
3 have they not?

4 A. That's correct, yes.

5 Q. So have they not always been carried out with the level  
6 of care that you are describing?

7 A. I'm not suggesting this is a change. I was just asked  
8 for my opinion and, you know, I would hope that has  
9 always been there.

10 Q. What I am asking is why is it now being articulated that  
11 examiners must err on the side of caution?

12 A. I don't know the answer to that but certainly it's  
13 something that I am very passionate about and maybe  
14 that's the reason but I don't know.

15 Q. Is there a procedure in place for recording missed  
16 identifications? Firstly, are you aware what I mean by  
17 a missed identification?

18 A. I take it you mean where we don't identify someone  
19 whenever someone could have been identified.

20 Q. That's correct, yes. Is there a procedure in place for  
21 recording those?

22 A. I honestly am not sure of that. That would be something  
23 the manager unit manager would obviously look after.

24 Q. So you don't know if there are statistics available for  
25 the number of missed identifications that have taken

1 place in recent years?

2 A. I certainly don't have that information but, again, you  
3 know, I could look for that.

4 Q. What is the procedure for disputed identifications?

5 A. The questioned identification (the QID) is where  
6 officers don't agree on a conclusion.

7 Q. That would be where, for example, the first officer to  
8 compare a mark would identify and then the first officer  
9 to whom that identification is passed on would not agree  
10 to identify.

11 Is that the situation you are describing?

12 A. If they had a discussion around that and couldn't agree,  
13 then it would go to a disputed identification.

14 Q. So how does the discussion come about?

15 A. Well, that would be through this facilitated discussion.

16 Q. Am I to understand that there is a formal procedure in  
17 place for dealing with a disputed identification of the  
18 kind that you have just described?

19 A. Yes, yes.

20 Q. What happens?

21 A. Afterwards, if we can't come to an agreement and  
22 therefore it's disputed ... is that ...?

23 Q. No, what happens at the time? What happens when the  
24 second officer, the one who is tasked with verifying the  
25 mark, comes to the view that they cannot identify?

1 A. I feel by going into too much detail here I am  
2 actually -- I'm so far away from that process I can't  
3 really answer that but I can certainly get you the  
4 answer for that.

5 Q. Do you know if the process is any different from what it  
6 was previously?

7 A. I'm not sure.

8 Q. Is it not the case that anyone with a defence expert  
9 willing to give an opposing opinion to SPSA officers who  
10 identify a mark and enough media coverage can now make  
11 this situation happen all over again?

12 A. No, I don't believe that would be the case.

13 Q. Why not?

14 A. Because the SPSA staff, by that point, will have  
15 actually completed a statement and that statement would  
16 then go to court and if there was a dispute from a  
17 defence agent, that would be dealt with in the court  
18 environment.

19 Q. In the present case, four officers signed the joint  
20 report, four officers who were competency tested. Is  
21 that any different in your view to four officers being  
22 willing to sign statements?

23 A. I am aware that four officers did sign a statement but,  
24 as I say, this is before I -- so I'm not totally aware  
25 of the situation then but I believe that was the case.

1 Q. The McKie case went to trial and there was defence  
2 evidence led. Are you aware of that?

3 A. I was, yes.

4 Q. How is it that that situation could not arise again?

5 A. If a person puts himself into a position of notoriety,  
6 then that position would need to be looked at.

7 Q. So is what you are saying that this case could, in fact,  
8 arise all over again, given the circumstances that I've  
9 described?

10 A. If someone puts themselves in a position of notoriety  
11 and the organisation feels that they can no longer  
12 attend court as an expert, yes.

13 Q. What did the officers in this case do to put themselves  
14 in a position of notoriety other than speaking to their  
15 findings in court?

16 A. Whenever the Lord Advocate said he did not wish to see  
17 them appear in court I believe that put them in a  
18 position of notoriety.

19 Q. They did not then put themselves in a position of  
20 notoriety, did they?

21 A. They were in a position of notoriety.

22 Q. They were in a position of notoriety as a result of the  
23 media campaign that was conducted against them, were  
24 they not?

25 A. I'm not explaining how we got to that situation. I'm

1 just saying that was the decision, because of notoriety,  
2 that made the organisation take the steps that it took.

3 Q. What I am asking you is if an SPSA expert goes to court  
4 and there is a dispute as to an identification that they  
5 have made and if a campaign is conducted against that  
6 expert thereafter, can this situation not arise in the  
7 same way all over again?

8 A. I would hope that if an SPSA member of staff went to  
9 court and there was a dispute over the identification  
10 that individual would obviously put their position  
11 forward and, obviously, if the defence had a different  
12 view put that decision forward and, ultimately, we have  
13 to accept the position of the court, whatever that would  
14 be. That person would not, therefore, then be pushed  
15 out because they are accepting potentially that maybe  
16 something went wrong or maybe they made a mistake. If  
17 someone accepts that we can actually look at why that  
18 happened and address it through training and other  
19 means. But if someone puts themselves in that position  
20 of notoriety I think that's where it does become an  
21 issue.

22 MR HOLMES: Thank you, Mr Nelson.

23 THE CHAIRMAN: Mr Smith?

24 MR SMITH: Yes, sir, I have a number of matters I would like  
25 to ask about. These relate, as follows, to the question

1 of the culture and morale within SPSA; the definition,  
2 the unsafe definition that has been applied to Y7/Q12;  
3 the current status of Y7, whether it's something that's  
4 available for analysis in unknown or unsolved crimes;  
5 the question of authorisation of experts; and the  
6 question of whether this witness thinks it appropriate  
7 that Mr Geddes has carried out an analysis for the  
8 purposes of the Inquiry on the Q12 (Asbury).

9 THE CHAIRMAN: Yes. I think they are general topics but, as  
10 I keep saying, as long as we don't cover something the  
11 witness has already dealt with.

12 MR SMITH: Of course.

13 **Cross-examined by MR SMITH**

14 Q. I wonder if I can begin really with the last point that  
15 was being made by Mr Holmes. As I understand it, what  
16 you are saying is that the problem that arose was  
17 notoriety with the individuals concerned which led to  
18 the Lord Advocate taking the view that they could not  
19 give evidence in other cases. It would be a pretty  
20 untenable position, of course, for a fingerprint expert  
21 to be in if they couldn't give evidence ultimately.

22 How much do you understand about the process that  
23 took place during the trial of Shirley McKie? Is it  
24 something you are familiar with?

25 A. It is not, no.

1 Q. If I tell you certainly what I understand broadly the  
2 position to be, that when asked in court to justify the  
3 opinion, to actually say how they reached their opinion,  
4 to demonstrate to the jury, there was -- whether an  
5 unwillingness or inability by an expert to actually  
6 explain how it is that they arrived at their conclusion  
7 other than just saying, "Well, I'm an expert. I found  
8 16 points". Is that something that you would approve of  
9 as an approach nowadays, the expert just saying, "I'm an  
10 expert. I've been doing it for 25 years or whatever and  
11 I'm telling you its a match"? Is that the way that they  
12 give evidence now?

13 A. I would hope not. At the end of the day, we train our  
14 scientists or experts to go to court and, obviously,  
15 answer questions but to be open and transparent in  
16 answering those questions and, therefore, if someone has  
17 an identification I would expect that they can actually  
18 go through the thought process in an open manner that  
19 allows them to demonstrate their position.

20 Q. Just so that you understand the background to this  
21 because I don't want you to go away with a feeling that  
22 it was just because there was a difference of view  
23 between the SCRO and the American experts that the what  
24 has been described as a campaign by Mr McKie took place.  
25 There were a number of factors in this and one was the

1 question of transparency.

2 We build into that, again, as you probably know  
3 there was an Inquiry that took place, the Mackay  
4 Robertson Inquiry, and my recollection is when they  
5 asked for co-operation from the Fingerprint Officers  
6 involved they -- i think the phrase is, took the fifth,  
7 they decided they did not wish to co-operate on the  
8 detail.

9 Again, is that something that you consider is  
10 appropriate for a Fingerprint Expert to say to an  
11 Inquiry, no, I don't see that I should be co-operating?

12 A. I certainly wasn't aware of that and that's not the way  
13 I would expect my staff to behave, no.

14 Q. We have also heard a good deal of evidence -- and I will  
15 come back to the question of disclosure in due course --  
16 but we also understand within the office of the SCRO at  
17 the material time there were certain individuals who  
18 were unable to achieve this then required 16-point  
19 standard and that was not disclosed to the Crown or  
20 indeed, of course, the defence or anyone else.

21 Again, is that something that you have any comment  
22 on as to whether a failure to achieve the appropriate  
23 quality of identification is something that, in your  
24 view, is acceptable these days?

25 A. I think, at the end of the day, we're moving into a

1 different world here where we need to be open and  
2 transparent and, therefore, we need to make people aware  
3 of it.

4 Q. Absolutely.

5 Just tying in with that, I suppose, in some  
6 respects, I'm not sure if you were in the Inquiry  
7 room yesterday. Were you in when Mrs Tierney was giving  
8 evidence?

9 A. I was only in for a part of yesterday.

10 Q. I would like you to look at a document, please, which  
11 you may have seen yesterday. It is DB0768. This is a  
12 document, in case you were in yesterday, that is one  
13 that was provided by Mr Zeelenberg, which is a  
14 translation of a document that they use in their office.

15 Is this something that you were in the Inquiry room  
16 when questions were asked about this?

17 A. It is actually, yes, I was, yes.

18 Q. Very well, I can deal with it fairly quickly. Did you  
19 hear the explanation or attempt at the explanation  
20 possibly by me as to what the various boxes are and what  
21 the purpose of this is? Did you hear that?

22 A. I did, yes.

23 Q. As far as this document is concerned, really this  
24 permits absolute transparency, if something like this  
25 was being operated and a defence lawyer would be able to

1 ask to see this from the three different Fingerprint  
2 Officers who would then see how long they spent looking  
3 at it, what their assessment was at every stage and so  
4 on and so forth. It is a very clear tracking device, if  
5 I put it at that way.

6 A. Yes.

7 Q. Do you agree that this is a useful document?

8 A. I think it's a very useful document and certainly it's  
9 one document that I would like to take forward to this  
10 group, when we are meeting involving Skills for Justice,  
11 Centrex, Strathclyde University and the SPSA to see if  
12 this could maybe a model to take us forward, yes.

13 Q. At the risk of giving evidence, if I try and help you  
14 out a little bit, I certainly understand that  
15 Mr Zeelenberg and his department have just this week  
16 moved to an entirely new floor in their offices with new  
17 equipment, new procedures, everything down to specialist  
18 equipment for analysing and developing fingerprints on  
19 different media such as plastic bags, new methods of  
20 fingerprints, all within the same office.

21 I take it that is something that, generally  
22 speaking, you would be very interested to see, what a  
23 new system that's looked at it from the ground up has to  
24 offer?

25 A. Certainly, and as we look forward to two new buildings,

1 both in Dundee and Gartcosh in Glasgow, I think it gives  
2 us an opportunity to maybe learn from what is happening  
3 elsewhere, yes.

4 Q. I'm really just wondering if an invitation was to be put  
5 to you to go and visit these premises to see how they  
6 are operating in a new environment, if that is something  
7 you feel might be worthwhile just to see what they were  
8 doing. Is that something you would --

9 A. We would certainly welcome that, yes.

10 Q. I would like to ask if I can now about the question of  
11 culture and morale within the SPSA. Again, some  
12 questions were asked yesterday and I think the general  
13 line has already been touched on by others, but the SPSA  
14 of course is comprised of a number of different former  
15 individual bureaux and the impression one might have  
16 taken from the evidence we have heard quite recently is  
17 that prior to this superstructure, if I put it that way,  
18 there was a degree of, at least, rivalry between some of  
19 the Bureaux and perhaps SCRO.

20 Is that something that you are aware, historically,  
21 probably existed?

22 A. I am aware of that, yes.

23 Q. Indeed, of course, the entire debate over Y7 is one  
24 which I think Lothian & Borders had adopted a position  
25 that a good number of individuals there, I think 13 of

1           them, had ascribed to an opinion that Y7 was wrongly  
2           identified and, similarly, three individuals from the  
3           Aberdeen Bureau had prepared a report similarly saying  
4           that Y7 was incorrectly identified and I think even the  
5           Dundee branch had indicated, whether officially or  
6           unofficially, but there was certainly a very clear  
7           statement they felt Y7 was wrongly identified.

8           I am trying to work out, there must be individuals  
9           within these various bureaux who are still there who  
10          still hold that opinion; whereas there are certain  
11          individuals within the former SCRO, the Glasgow Bureau,  
12          who hold the opposite view. That must happen. You must  
13          be aware that is bound to be the position?

14        A.    Sure, yes.

15        Q.    Is that not something that causes a fairly fundamental  
16              difficulty in, frankly, a degree of perhaps animosity  
17              because of the very public disagreement between various  
18              branches, the SCRO, if I can call it that, on one hand  
19              as compared to the other bureaux I've mentioned on the  
20              other? This has not been an easy debate, has it?

21        A.    It certainly has not been an easy time for anyone and  
22              what I have been so encouraged by is the professionalism  
23              and dedication of the staff that we have and what I am  
24              getting back in terms of feedback is that people want to  
25              move on. People want to work together. People see a

1 better future out there and an opportunity, now that  
2 SPSA Forensic Services is in place, to move forward and  
3 certainly I know from speaking to my unit managers  
4 that's the feeling I get. I've also visited the centres  
5 on a number of occasions and spoke to staff. I also  
6 hold breakfast meetings at the service centres and,  
7 again, what I hear from the staff is that they want to  
8 move on. They want to put the past behind them and they  
9 see this as a real opportunity to move on to a brighter  
10 future.

11 Q. I understand that is undoubtedly a desire and one that  
12 no-one would quarrel with but do you not understand,  
13 though, that one of the practical difficulties is by the  
14 organisation not taking a clear and official stance on  
15 the question of Y7 in particular and indeed QI2 to an  
16 extent as well?

17 A. What I have said is that whenever the Inquiry come up  
18 with the independent and authoritative view on the mark,  
19 SPSA will accept that decision --

20 Q. What happens -- I am sorry to interrupt.

21 A. -- and will expect the staff to respect that decision.

22 Q. What happens, though, if the Inquiry in particular, the  
23 Chairman, and I am sure he has not come to any  
24 conclusion yet, but if he was to, for example, say, "I'm  
25 faced with contradictory evidence on this. I cannot

1           come to a conclusion on whether Y7 was correctly or  
2           incorrectly identified", what does the SPSA do then?

3    A.    The SPSA would have to sit back and look at that and  
4           then reassess our position and what we do next.

5    Q.    Would the SPSA feel it was obliged then to have an  
6           official position on Y7?

7    A.    Again, I would want to wait to the outcome of the  
8           Inquiry to be in that position to have to make that  
9           decision.

10   Q.    You see, Mr Nelson, the Mayfield case I am sure you know  
11           something about. It was mentioned in passing. It was a  
12           case in which it was recognised early on that because of  
13           the error and it was accepted as being an error in that  
14           case, I recognise that of course, but because of the  
15           error there was a material risk of public confidence in  
16           fingerprinting being seriously damaged. However much  
17           you know about it, if you just take from me there was a  
18           very, very quick reaction by the FBI and the Department  
19           of Justice to investigate, to acknowledge the error and  
20           to publish virtually the entire report online so that  
21           anyone who wished to look at it could look at it.

22           You agree with me, I take it, that that is a very  
23           proactive way of trying to get public confidence back?

24   A.    It is and I think SPSA need to look at that as a way  
25           forward.

1 Q. I realise your position with SPSA is in the relatively  
2 recent past. I recognise that but here we are ten years  
3 down the line and there has been in the various guises  
4 the Fingerprint Service in Scotland has been formed  
5 under what, frankly, appears to be a varying position.  
6 What I am referring to is Mr Mulhern originally  
7 accepting there had been a mis-identification and then  
8 what appears to be, to some extent, a qualification of  
9 that.

10 Do you understand that this is something that can  
11 actually cause public doubt, lack of public confidence  
12 in the position? Do you understand that?

13 A. Mr Mulhern obviously made a decision based on the  
14 information that he had with no knowledge, obviously, of  
15 the opportunity of re-examining the mark independently  
16 and he made that decision. I can't speak to  
17 Mr Mulhern's decision on that. What I can say is that  
18 SPSA will accept the findings of this Inquiry and will  
19 move forward from that position.

20 Q. I am assuming, of course, that that goes without saying  
21 rather than the SPSA saying, "Well, we reject the  
22 findings of the Inquiry". That's inconceivable, isn't  
23 it?

24 A. Well, I think SPSA has certainly supported the Inquiry  
25 and will continue to support the Inquiry and we don't

1 want our position to in any way affect that and,  
2 therefore, we decided that the best opportunity for us  
3 as an organisation was to say that was unsafe.

4 Q. I understand that but would you not agree that a  
5 confident, robust way of almost clearing the air would  
6 be for SPSA to adopt a position one way or t'other,  
7 either saying, "We consider Y7 was originally correctly  
8 identified and we will support our officers, those who  
9 worked for us and those who continue to work for us", or  
10 alternatively saying, "Our position is it was  
11 incorrect -- full stop. Now we're going to look at how  
12 it happened and how we can stop it happening. We are  
13 going to do it. We are not going to leave this to an  
14 Inquiry. We are doing it"? Do you not understand there  
15 is maybe a confidence in a service that is prepared to  
16 take that responsibility and take that action itself  
17 rather than waiting on the Inquiry saying so?

18 A. I think the only way SPSA could have come up with a  
19 definitive, as you are suggesting, is if we had opened  
20 the mark ourselves and examined it ourselves. We didn't  
21 do that.

22 Q. Why not?

23 A. I have already answered that question in that with --  
24 the Chief Executive at that time didn't open the mark or  
25 allow the mark to be re-examined. With the time lines

1 involved we knew that there was going to be a public  
2 Inquiry and the organisation felt it was right that the  
3 public Inquiry would give that independent view on the  
4 mark.

5 Q. Can I ask if there is any difference in the quality of  
6 the description from a mis-identification to an unsafe  
7 identification and, if so, what is that difference?

8 A. It's like asking a fire expert to give an opinion on a  
9 fire scene without actually allowing that officer to go  
10 to that fire scene. To me, SPSA has never looked at the  
11 marks so, therefore, I would struggle to say it was a  
12 mis-identification because I nor my staff have looked at  
13 it but what I can say is, with the varying views out  
14 there, it is an unsafe identification.

15 Q. Is that not rather suggesting that it's a bit both?  
16 It's an identification, it's right, but it's not safe?

17 A. I'm acknowledging the fact that an identification had  
18 been made ten years ago but I'm saying that is unsafe.

19 Q. You see, the categories, as I understand it, that are  
20 well accepted as being descriptive of a purported  
21 identification or an analysis, if I put it that way, are  
22 either there is insufficient detail for a useful  
23 comparison to be completed, so it's putting the  
24 (inaudible) no comment one way or t'other. Second, it's  
25 identical and third it's not identical. These are the

1           three we are faced with. Do you understand that to be  
2           so?

3       A.   Those are certainly terms that the fingerprint community  
4           would be using. I'm actually using more of a scientific  
5           term that I'm used to within Forensic Services.

6       Q.   Let us proceed from the assumption that I don't  
7           understand anyone within this debate, none of the  
8           experts who have given evidence on both sides of the  
9           debate, and no-one else to suggest that Y7 falls into  
10          the first of these I mentioned: insufficient detail to  
11          carry out a comparison. So we will leave that aside.  
12          We are left, dealing with Y7, with two options: one is  
13          it's correct; the other is it's incorrect.

14                 I think, as Mr Holmes pointed out, at the end of  
15                 this Inquiry, on the assumption the Chairman doesn't go  
16                 for the first, we're left with one of the other two.

17                 What that will inevitably mean is there are certain  
18                 people within SPSA, certain experts, who are, according  
19                 to SPSA and the Chair's position, wrong. They've got it  
20                 wrong. Either they just simply -- they can't all be  
21                 right, if I put it that way.

22                 I think you said you haven't actually taken this on  
23                 board but you must have considered what you will do  
24                 about the people who have got it wrong because it raises  
25                 serious question marks over their ability. It must do

1 so?

2 A. Yes, I have said what we will do is we will look at that  
3 when it arises and SPSA will come up with an action that  
4 we will have to take but we have not done that up to  
5 this moment in time.

6 Q. Have you not even considered what action might be  
7 appropriate, whether it's retraining, whether it's  
8 termination of their employment, whether it's moving  
9 them to other duties?

10 A. We would have to understand what the Inquiry comes up  
11 with and why it came to that decision and then, based on  
12 that, we can then put an action plan together, if that's  
13 what's needed.

14 Q. Can you give some indication of timescale after the  
15 decision comes out because we are a good couple of years  
16 down the line since you came on board and we're ten  
17 years down the line since this happened? How quickly  
18 will the action plan follow the decision, if it gives  
19 positive or negative support for the identification, how  
20 quickly can we imagine this will be there to restore  
21 public confidence?

22 A. I totally agree with your sentiments. I think it's  
23 important we do it quickly. I could not put a time on  
24 that because obviously our Board would need to be  
25 involved but certainly it's something we would need to

1 do quickly.

2 Q. Again on question of restoring public confidence, will  
3 the actions in that regard be made public so that Mr Joe  
4 Public can read, either on your website or elsewhere,  
5 "We have taken on board the decision of the Chairman.  
6 Those, frankly, have been wrong about this, we have  
7 decided to take the following action ..." is that  
8 something that is going to be there for the public to  
9 read and have confidence in.

10 A. That would be something our Communications Unit will  
11 have to look at and decide what is the best way to take  
12 that forward, yes.

13 Q. I am sure you appreciate, Mr Nelson, that again, the  
14 main purpose of this being a public Inquiry, is to try  
15 and give the public confidence not just in the science  
16 of fingerprinting but in the procedures and processes  
17 available to those who work in it and those who are the  
18 employers within it. You understand that to be so?

19 A. I do, indeed, yes.

20 Q. Therefore, to come back to the word "transparency", is  
21 something that is vitally important, even after the  
22 Inquiry has reported and that's something that you agree  
23 with?

24 A. I totally agree, yes.

25 Q. I would like to ask you again, just dealing a little bit

1 more with the question of morale, if we can have another  
2 document up, please, which is DB0755. I think this, we  
3 can see, is a document which is a minute of a meeting,  
4 we can see from the heading ourselves, in December 2007.

5 As far as this is concerned -- do you recall a meeting  
6 taking place --

7 A. I do, yes.

8 Q. -- in December 2007?

9 As far as this is concerned, we can see from the  
10 heading, basically, what it is but we can see a section  
11 on that page under "negative comments". Is this minute  
12 one prepared by yourself?

13 A. No, I don't know. It wasn't prepared by me.

14 Q. I am sorry, I have been corrected. I think it is  
15 members of the lab that actually prepared it but I think  
16 it was actually forwarded to yourself as a record of the  
17 meeting taking place.

18 Under "Negative comments", if you can see this, the  
19 fourth bullet point:

20 "I felt, as before, that a lot of questions/concerns  
21 didn't really get a definitive answer. There's always a  
22 lot of 'hopefully' and 'it's not our intention',  
23 et cetera. Also Eileen Masson's favourite phrase seemed  
24 to be 'best meets the needs of the organisation', which  
25 doesn't really mean anything to us."

1                   Going on:

2                   "A point raised by a colleague that I do agree with  
3                   is that it seemed an awful waste of 2-3 hours travelling  
4                   time for everybody in the lab to go down to Fettes, plus  
5                   costs instead of Tom simply delivering the talk at  
6                   Fettes for SEB staff and then coming to the lab to talk  
7                   to us ..."

8                   The next bullet point:

9                   "I was extremely disappointed and disheartened  
10                  following the meeting last week. I was already a little  
11                  bitter at having to lose half a day from very busy week  
12                  so probably didn't go into the meeting in the best frame  
13                  of mind."

14                  This is clearly the comment of someone who is  
15                  somewhat disheartened within the organisation, you can  
16                  see that?

17        A.    Yes, I do recall the meeting itself and it was a series  
18                  of meetings where I had going round the different  
19                  service centres. I would say that I didn't arrange the  
20                  venue so I didn't ask staff to come to Fettes that was  
21                  left to the local manager to organise for me.

22                  One of the reasons, I understand, why the lab were  
23                  so disappointed was because the meeting happened at the  
24                  same time that SPSA announced the business case that  
25                  went to the Board regarding the Dundee laboratory and

1 certainly staff were concerned about their future. I  
2 went back to the staff a number of weeks after this  
3 meeting and had a staff meeting with them and certainly  
4 at that was able to reassure them on certain things.

5 Q. Can I ask to go to page 4 in the documents. It is  
6 another couple of pages on, please. We can see another  
7 bullet point, the first bullet point at the top:

8 "Overall, I came out of the meeting with less faith  
9 in the SPSA exec than I had before I went in. I got the  
10 impression that the upper echelons of the SPSA are a  
11 shambolic mess."

12 I am not asking for your comments about the truth or  
13 falsity of that, but this is clearly someone who is very  
14 concerned about what is going on. I take it you agree  
15 that this shows a degree of lack of confidence?

16 A. I think this needs to be into perspective. This  
17 meeting -- what happened immediately after that meeting  
18 was that a board paper was released and within that  
19 board paper it mentioned the Aberdeen and the Edinburgh  
20 laboratory and obviously staff were concerned about  
21 their future.

22 Q. They are still concerned about their future too, aren't  
23 they?

24 A. We are undergoing a modernisation programme. That  
25 programme has actually involved staff, involved ACPOS

1 and involved Crown Office and we have had a full  
2 communications plan around this modernisation project.

3 So I'm certainly more confident that the feelings of  
4 staff will not be the same with this modernisation  
5 project.

6 Q. But at the present time there is a low morale, isn't  
7 there, amongst these individuals who feel they may have  
8 to lose their jobs, isn't there?

9 A. I don't believe morale is low. What I do believe is  
10 staff are concerned about the future and what that  
11 future would and it's incumbent on SPSA to obviously  
12 quickly come to a decision on what the forensic model is  
13 for Scotland.

14 Q. How quickly is that decision to be made?

15 A. The paper has been promised to Scottish Government by  
16 January.

17 Q. It will probably be up to the Scottish Government then  
18 as to how quickly any recommendations are implemented.  
19 Is that the way it will operate?

20 A. I'm assuming that will be the case.

21 Q. Can I ask just one more, a short passage from this  
22 document. The next page, please.

23 MISS CARMICHAEL: Sir, I am reluctant to interrupt at this  
24 point but I am not detecting that this is necessarily  
25 directly involved with fingerprints and I do just raise

1 that query at this stage.

2 THE CHAIRMAN: There was really a question of whether it  
3 comes within my Terms of Reference but I think there was  
4 a question, as you said at the outset, of rivalry and  
5 differences arising because of that. Certainly I don't  
6 think we should explore it too far but if you want to  
7 touch on it --

8 MR SMITH: One more passage, sir. On page 5 of 11, the  
9 first bullet point again we can see:

10 "The answers given [it is being suggested] were  
11 evasive and superficial. I thought they were loaded  
12 with corporate jargon, especially the HR answers."

13 Again, I just place that before you for comment.  
14 It's quite clear, isn't it, that this is someone who is  
15 very concerned about the communication structures that  
16 are going on within SPSA. You'd agree with that?

17 A. Certainly obviously this individual, whoever put it  
18 together, does have some significant concerns. What I  
19 have done is I went back to the staff and addressed  
20 those issues with them and they were satisfied that that  
21 meeting went well and came to a satisfactory conclusion.

22 Q. I would like to move on if I can to something a little  
23 different and it is to do with, in particular, Y7. As I  
24 understand it, the system as operated within forensic  
25 bureaux with fingerprints is that prints that are, as it

1           were, unidentified to an individual that may be useful  
2           in a future crime investigation go on a database so when  
3           some person's arrested for a serious crime, the  
4           fingerprints are run through the computer and it may pop  
5           up this is an individual who actually makes a match with  
6           a crime scene mark?

7    A.   That's correct, yes.

8    Q.   As far as Y7 is concerned, as I understand it -- and  
9           this was in fact an answer to Parliamentary question --  
10           an indication was given by the former Justice Minister,  
11           Cathy Jamieson, that the mark Y7 is on the Scottish  
12           Fingerprint Service Latents Database.

13                 She said:

14                 "The database is checked regularly against  
15                 fingerprint taken from arrested persons. Because the  
16                 mark was taken from the scene of a serious crime, it  
17                 will remain in the database until it is identified."

18                 One can see the logic of a fingerprint to that  
19                 effect. Are you able to help with this: does it  
20                 currently remain on a database that is searched  
21                 routinely as an unknown print?

22    A.   Certainly the process you described there is correct but  
23           I honestly do not know whether that mark is on or not.

24    Q.   If I was to just ask for clarification about something,  
25           on 4th December 2006 was the Scottish database migrated

1 across to the National Fingerprint and Palm-print

2 Database that's known as Ident1? Do you know about

3 Ident1?

4 A. I do, yes. That's correct.

5 Q. What that does is it creates, for the first time, a

6 single database of finger and palm prints for the UK

7 mainland. That's the purpose of the Ident1 database,

8 isn't it?

9 A. That's correct.

10 Q. I suppose it might be suggested that there is a question

11 obviously of ownership -- using it very much in inverted

12 commas -- of Y7, that it originates in Scotland, it

13 originated from a database at SCRO and no doubt wider

14 throughout Scotland was available but ends up in the

15 national database. Is there any system in place for a

16 decision on whether that's owned by an individual?

17 A. At the end of the day, both our DNA and our fingerprint

18 databases have access to the national database and how

19 samples stay on and come off that database are governed

20 by certain rules. Obviously you mentioned there

21 obviously if there's a crime and it hasn't been

22 resolved, then the sample would normally stay on, that

23 is correct.

24 Q. I would like to ask some questions about the issue of,

25 as it were, basic expertise of experts. We have heard

1           some considerable evidence in this case of the various  
2           methods by which those throughout the UK can obtain  
3           qualification to act as an expert in a case.

4           I suppose at one end of the spectrum you can have  
5           somebody who is an expert who obtains that expertise  
6           just by length of their experience, on-the-job training,  
7           doing it day in, day out, all over the place. At the  
8           other end, you've can have someone who has got less of  
9           that experience but has attended numerous training  
10          courses, they've been through examinations, they've been  
11          peer reviewed and so on and so forth.

12          Can you tell me as far as the SPSA is concerned,  
13          where is it that they see the necessity for experts to  
14          fit within that spectrum?

15    A.    Our training manual and our training manager make sure  
16          that all experts before they actually become experts  
17          have completed all the appropriate training at Centrex  
18          down in Durham and, therefore, we are confident that our  
19          experts are working to a competent standard. Obviously  
20          as people go and attend conferences and attend meetings,  
21          you do continue to add to that experience and to that  
22          knowledge base, but we expect all our examiners who are  
23          giving evidence in court to at least be working to the  
24          standard from the training college.

25          However, we are looking at seeing if we can develop

1 further and in fact I've had five people who have just  
2 completed a foundation degree in fingerprint examination  
3 and that is certainly something we want to encourage  
4 staff to look at to be part of their CPD.

5 Q. As far as these various training courses are concerned,  
6 I take it it is obvious that the training is not just  
7 fingerprint analysis, but fingerprint development  
8 techniques and so on and so forth, is undoubtedly of  
9 course, because it's a biological feature, it's a  
10 worldwide science?

11 A. It is. It certainly is and certainly we are heavily  
12 engaged with the NPIA on that but also engaged with the  
13 research establishment in the south-east of England to  
14 look at chemical enhancement and chemical development  
15 and, in fact, they use a lot of the techniques that have  
16 been developed in Scotland because in a number of these  
17 areas we are leading the field.

18 Q. But also I'm thinking of the experience and publications  
19 indeed that are produced throughout the world, in  
20 particular in the United States of America. These are  
21 all things I take it that your experts are encouraged to  
22 engage in, to train in and so on and so forth. It's a  
23 worldwide thing and it's a good thing to draw on other's  
24 experience, I take it?

25 A. Certainly in terms of success for me whenever we get

1 involved in more collaborative work with universities  
2 and producing papers, that's where I want this  
3 organisation to be.

4 Q. The question of expertise is there, as it were, a  
5 National Register of those who are experts, in Scotland  
6 of course?

7 A. In terms of fingerprints people are on the Register, the  
8 Fingerprint Register, I understand, but there's nothing  
9 to replace the Council for the Registration of Forensic  
10 Practitioners.

11 Q. Do you see that -- and I use this in no pejorative  
12 sense -- but do you see that as a failure? Something  
13 that perhaps could be rectified to have an indication  
14 who the experts are and, indeed, what the qualifications  
15 are?

16 A. I think that's something certainly that I have  
17 identified to the forensic regulator as something that  
18 needs to be addressed very quickly.

19 Q. Can I ask you this and if you don't know the answer,  
20 please, just say so: do you know what the Daubert  
21 hearings are in the United States?

22 A. Yes, I'm aware of those, yes.

23 Q. The name comes from a case of course and we may get some  
24 guidance on this in due course but the Daubert hearings  
25 are almost having to prove to the court before you get

1           underway that there is a valid science, that the  
2           individuals in question are qualified to speak to it and  
3           looking at the failure rate within that science, that  
4           kind of thing. That is your understanding, is it?

5       A.    Yes, the Daubert hearing sits to look at the science and  
6           it's particularly useful when a new science is being  
7           developed and, obviously, the new science has to be  
8           tested somewhere and, obviously, they have a  
9           Daubert hearing to allow that to actually happen.

10     Q.    I think we heard some mention earlier on, I think from a  
11           Mr Moffat some time ago in the Inquiry, about an ear  
12           print, a print of someone's ear being found and he was  
13           involved in the analysis. Obviously, I take it you  
14           would agree that that is a question mark over whether  
15           there is such a science of identification of ear prints.  
16           You are aware there's a bit of a debate about that?

17     A.    There is a debate about that, yes.

18     Q.    But, as far as expertise is concerned, if I can try and  
19           focus in a little bit, there's obviously been a shift  
20           from numeric to the non-numeric standard. As I  
21           understand it, the decision was more or less taken about  
22           2006 that something should happen with regards to a move  
23           to a non-numeric standard, some time about that period?

24     A.    I believe that was -- it was debated for a long time but  
25           I believe that that was the period that was chosen, yes.

1 Q. Clearly that is a significant shift in the emphasis, if  
2 nothing else, in the presentation to a court. Rather  
3 than being obsessed with 16 points, it's then down to a  
4 qualitative rather than a simple quantitative analysis.  
5 I would be right, would I, that is would be something  
6 that would require considerable discussion with the  
7 experts involved in preparing their work, doing the  
8 reports, communicating to the Crown Office, et cetera,  
9 et cetera, and simple training about court appearances?  
10 It's a major shift in attitude; would you agree?

11 A. That would be correct, yes.

12 Q. I take it that the SPSA would be anxious to ensure that  
13 all of the experts who were working on cases were aware  
14 of the change that's about to happen and given training  
15 as to how to actually carry out their work because they  
16 may be in a court being cross-examined about it. Is  
17 that fair?

18 A. Yes, and I understand that a lot of that happened before  
19 SPSA came into being but, yes, that would have happened.

20 Q. Are you able to tell us how much training did existing  
21 experts actually receive on the non-numeric standard?

22 A. As I say, that was before SPSA came into being so I  
23 don't have that knowledge but if that's something that  
24 you would like to have, I can certainly look into that.

25 Q. Perhaps it may indeed be of some assistance if that

1           could be communicated in due course, largely informally.

2           But it's my understanding that what took place was a  
3           one-day training course in Glenrothes, a one-day  
4           training course on the non-numeric standard. Is that  
5           something that would cause you concern if that's the  
6           limit?

7        A.    If that's all that they got I'd certainly want to know  
8           about the quality of the presentation and if it is in  
9           actual fact sufficient. But I know certainly, you know,  
10          there's a lot more training going into actually court  
11          presentation and presentation of evidence.

12       Q.    If I may say so, in this Inquiry we have heard a good  
13          deal of evidence on a number of occasions about the  
14          non-numeric and it may be that because we are not in the  
15          business ourselves it may be that we require more, but  
16          tutoring, but do you not agree that even if it was one  
17          day, even if it was the best quality you could get for  
18          one day, it does raise a question mark over whether one  
19          day could ever be enough to cover all the topics from  
20          all of the various directions. Would you not agree with  
21          that comment?

22       A.    I would, yes.

23       Q.    I take it you also agree that one of the things that you  
24          are obviously going to have to look at is the question  
25          of establishing what training has been given in the

1 non-numeric and review whether that is appropriate and  
2 if it's not appropriate, then move on and fairly quickly  
3 to have that rectified.

4 A. I certainly will .

5 Q. A question of court training has also been covered and  
6 you very fairly acknowledged, I think, that it is  
7 probably a good thing in many ways that experts are  
8 challenged so they realise what they are actually trying  
9 to convey. Again, is court training something that you  
10 only really work in conjunction with the prosecution  
11 authorities over or has consideration ever been given to  
12 enlighten those on the other side of the fence?

13 A. Certainly when we do our court training, the Crown  
14 Office are involved in that and they do supply us with  
15 an individual who is actually at the police college to  
16 assist in that training.

17 Q. Can I ask you -- and this picks up from something  
18 Mr Holmes was asking -- what procedures would ordinarily  
19 be in place if there was a regular dissatisfaction with  
20 the quality of evidence that an individual was giving?  
21 Say somebody is just not performing, would there be some  
22 procedure by which they would be almost monitored, they  
23 would then be invited in for an interview, retraining if  
24 necessary, et cetera, et cetera? Is that something that  
25 operates on a fairly regular basis?

1 A. Certainly if any of my experts were going to court and  
2 their evidence wasn't to a sufficient standard, the  
3 Crown Office would be making me aware of that at one of  
4 my regular meetings and, if that was the case, then we  
5 would certainly address that through additional  
6 training.

7 Q. As far as the contact with the Crown Office is  
8 concerned, you say regular meetings, is that scheduled  
9 meetings or how can we imagine the frequency of these  
10 meetings with Crown Office?

11 A. I probably meet with them maybe once every two to three  
12 months but I'm in telephone conversation with them more  
13 frequently than that.

14 Q. Of course, the introduction to the non-numeric standard  
15 required that there be a precognition-taking facility by  
16 the Crown, no doubt to ask the questions they wanted to  
17 know the answers to. As far as that is concerned, and  
18 bearing in mind as I understand it we no longer have the  
19 charting enlargement kind of system available to a jury,  
20 it's obviously important that the Crown knows what to  
21 ask as much as the Fingerprint Expert knows what to  
22 tell. The big issue of course here is disclosure, as  
23 you will appreciate.

24 What training is given or what advice is given to  
25 your people, the Fingerprint Experts, as to what the

1 test is, what is required to be handed over to the Crown  
2 Office when a Procurator Fiscal or a precognition  
3 official comes along to take the statement? Do you tell  
4 him what has to be disclosed?

5 A. Whenever a person has come through a precognition, they  
6 obviously have the case in front of them and the report  
7 in front of them and normally the Procurator Fiscal or  
8 whoever is precognosing them would lead them through  
9 their statement and ask them questions about the  
10 statement and if there are any potential issues within  
11 that particular case. So that would be led very much by  
12 the person doing the precognition.

13 Q. You see, the question of disclosure, as I am sure you  
14 understand, is that the obligation principally on the  
15 Crown is to disclose to the defence anything which may  
16 damage the Crown case or assist the defence case. I am  
17 trying to imagine a situation, and I will give you an  
18 example, let's suppose someone in the office, a  
19 Fingerprint Expert, is looking at a fingerprint on a bag  
20 and they are not really satisfied with it. They say,  
21 "Well, it doesn't look like the accused's fingerprint"  
22 or "I am not prepared to go to court over this one" so  
23 they, as it were, put it to the side. They can get  
24 maybe nine or ten points, but they are not great.

25 We then get to a position where, as it were, they

1 consider that is something that is not damaging the  
2 prosecution because it's not going forward. "I am  
3 looking for the accused's print, I'm not too happy about  
4 it". Of course, defence counsel might be very  
5 interested in that because it may cast a reasonable  
6 doubt as to why his client's fingerprints are not on it  
7 or it may be something that tends to -- it may be a  
8 fingerprint that possibly is of an incriminee.

9 I take it you see that there's actually a bit of a  
10 danger that the Fingerprint Expert thinks they are being  
11 fair to the defence when in fact the defence would  
12 actually like to know that they weren't able to get this  
13 particular aeroplane flying on it.

14 Is there any specific training on disclosure that  
15 highlights these subtle differences?

16 A. Can I say that the ACPOS disclosure document, which was  
17 finalised in the last month, and we are working with  
18 ACPOS and the Crown Office. We have a working group to  
19 look at this issue to see how we can ensure that we are  
20 making full disclosure to the Crown and we're seeking  
21 that from Liam Murphy who meets with us to discuss that  
22 particular issue.

23 So there will be training. There's a training  
24 package identified by ACPOS. They will be training all  
25 our staff and, at the end of the day, we will ensure

1           that if we have to disclose anything, we will be  
2           disclosing it.

3       Q.    As far as the training is concerned, I take it that is  
4           given to new trainees as well as those who are in  
5           existing positions?

6       A.    It will be given to every member of staff.

7       Q.    The question of disclosure is one that is clearly still  
8           under active consideration and you mentioned the ACPOS  
9           disclosure questions. I take it you are aware that the  
10          Crown policy on disclosure is available on the Internet  
11          on the Crown Office website?

12      A.    Yes, I am.

13      Q.    Is that something that your employees are encouraged to  
14          be aware of, to look at, to understand what the issues  
15          are?

16      A.    We are working with the Crown Office to put together a  
17          package that we can then take to our staff so they are  
18          fully aware of all their obligations under disclosure.

19      Q.    I am going to make the suggestion to you. You may not  
20          feel capable of agreeing to this but the form I showed  
21          you Mr Zeelenberg provided appears to contain all the  
22          information. So if the defence asked for that it would  
23          disclose something like the example I gave to you. So  
24          you have a hard ready copy to hand over to prosecution  
25          authorities and say it's all in there.

1                    Would you agree that that certainly appears to be a  
2                    comprehensive statement as to the whole analysis from  
3                    start to finish?

4        A.        Certainly from what I have seen yesterday and what I  
5                    have heard of today it looks very comprehensive. I  
6                    think, as I said before, we will need to take that away  
7                    and look at it to make sure it does work for our  
8                    organisation and, yes, that could be a potential method  
9                    for disclosure.

10       Q.       I would like to turn to the question of the general ways  
11                   of presenting evidence if I can. I think you will  
12                   understand that it is simply, broadly speaking, for  
13                   lawyers, not good enough for someone to just turn up and  
14                   say, "I'm an expert. I'm telling you that's the way it  
15                   is". It has to be demonstrable. It has to be something  
16                   that has logic to it, that can be seen and the jury can  
17                   decide for themselves but instructed and assisted by the  
18                   expert.

19                   Against that background have you yourself been in  
20                   any way observing, and I don't necessarily mean sitting  
21                   in the room but looking at the documents and PowerPoint  
22                   presentations available on the Inquiry website to see  
23                   how this had been approached in particular by, on the  
24                   one hand, Mr Wertheim but also Mr Zeelenberg, his  
25                   presentation, trying to explain methods of fingerprint

1 analysis and, obviously, Y7 and Q12? Have you been  
2 looking at how that has been done?

3 A. I have been. I have said we are working with the Crown  
4 Office and in particular Scott Pattison to look at a  
5 generic DVD and that DVD could be shown to the court  
6 prior to evidence being given, whether it be on DNA or  
7 fingerprints, and we are also looking to see if we can  
8 take that further to enhance marks so people can talk  
9 through their identifications, if that is needed, to the  
10 court.

11 Q. Of course. I am not suggesting that every single case  
12 where it's a tiny piece of the overall evidence but in  
13 cases that are highly or solely dependent on fingerprint  
14 evidence I take it you will agree that for your experts  
15 to at least have training and understanding of  
16 PowerPoint presentations or Photoshop, all these kinds  
17 of software facilities, similar to what we have in the  
18 Inquiry, it is something that they should be comfortable  
19 with using in case they have to end up in the High Court  
20 with a difficult case trying to explain and demonstrate?  
21 You agree with that I take it?

22 A. I totally agree and certainly the DVD, we expect to be  
23 ready in late December because that's actually being  
24 worked on at the moment.

25 Q. Do you have any general comments and, again, if you

1 don't, please say so, but just on let's take  
2 Mr Zeelenberg's presentation, is that something that you  
3 as a non-Fingerprint Expert, if I put it that way, is  
4 that something that you were able to understand what he  
5 was trying to achieve? I am not asking whether you  
6 agree with him. I am just asking if, from the  
7 presentation, you see what he was trying to demonstrate?

8 A. I think any method -- and there's probably many methods  
9 out there that actually allow the jury and the members  
10 of the court to understand why you've come up with a  
11 certain conclusion can only benefit the criminal justice  
12 system and I would support it.

13 Q. If I contrast that with -- and I know it was the system.  
14 I am not criticising the SCRO people for what they  
15 presented but the system that existed before with the  
16 charting enlargements, which I am sure you must have  
17 seen, at least the kind of example that's been before  
18 this Inquiry, I take it you will agree that that really  
19 didn't assist very much in explaining what the analysis  
20 was? It was just a simple demonstration of how that  
21 analysis could be carried out. I take it you would  
22 agree the quality is rather inferior to the kind of  
23 dynamic presentations we have seen?

24 A. I think we need to embrace technology and where  
25 technology is at the moment and certainly that's a way

1           our organisation will take this forward, working  
2           alongside the Crown Office.

3       Q.    Do any individuals within the SPSA, have they asked if  
4           they can come along to watch the Inquiry for the  
5           purposes of CPD or just general learning? Is that  
6           something that's been asked for?

7       A.   Whenever the Inquiry was set up I went round and spoke  
8           to all four centres and spoke to the staff there and  
9           spoke to the unit managers. As an organisation we set  
10          up an oversight group and also on a Monday morning I  
11          have a video conference with the heads of operations and  
12          the fingerprint managers. That doesn't happen every  
13          Monday morning but it is in my diary that if there's  
14          something from the Inquiry we can then feed that back to  
15          the unit managers and whenever we were speaking to  
16          staff, staff were very clear, we actually purchased  
17          televisions because we weren't sure if it was going to  
18          be televised and we were encouraging staff to obviously  
19          with the LiveNotes, have the opportunity -- not the  
20          LiveNotes, have it obviously presented in the evening.  
21          They were following it that way as well.

22                 So we left it with the unit managers to allow them  
23                 to manage their own units as to if people want to come  
24                 along to the Inquiry or not. Obviously, staff stress to  
25                 us that they wanted it to be business as usual because,

1 obviously, we still have to be in the business of  
2 examining marks, detecting crime and obviously going to  
3 court to give evidence.

4 Q. It has been a fairly long Inquiry. I am not suggesting  
5 you should be sitting every day as we have but, as far  
6 as a learning experience, I take it from what you have  
7 said there's certainly been no discouragement from them  
8 coming along to attend?

9 A. I'm certainly not aware of anyone who has been told they  
10 can't come along.

11 Q. I take it you would agree that for some parts of it,  
12 from what you have been able to identify, no doubt it  
13 could have been, if people had been able to do so, a  
14 useful exercise to see various presentations on both  
15 sides of the debate?

16 A. Sure, yes.

17 Q. Can I just be clear, as far as the way forward is  
18 concerned, you have described you anticipate a number of  
19 things happening. You have explained, for example,  
20 disclosure, you are in contact with Crown Office,  
21 whatever the result of the Inquiry is to respond to that  
22 in the appropriate way and so on and so forth.

23 Is there any difficulty in the question of  
24 resources, financial resources, that you feel that may  
25 restrict or inhibit any improvement or is it more or

1 less if it's reasonably required for a proper system  
2 within the system of justice to be allowed that the  
3 resources will be found for it? Is that your  
4 understanding?

5 A. Certainly my understanding is our next piece of work  
6 will be the modernisation programme and that programme  
7 will identify our HR issues for the future. It will  
8 identify how we move forward with our quality systems.  
9 It will identify what our capability and capacity  
10 actually is and it will also identify what the customers  
11 require, both ACPOS and Crown Office. I will be in a  
12 better position, whenever I have that document  
13 completed, to be able to answer your question fully but  
14 obviously what we will be doing is presenting a paper to  
15 our Board, to the Scottish Government and obviously to  
16 the public to say this is where we see forensic science  
17 going in the future. There may be a cost associated  
18 with that but that is a matter for the SPSA Board to  
19 actually go out and successfully get that money for us.

20 Q. So they'll put the pitch in but we know that those who  
21 have pay out the money might have a different view as to  
22 what is a reasonable cost. That is what it comes down  
23 to?

24 A. That is one of the chances we probably have. You know,  
25 we do have significant support from the Government. We

1           have been able to move forward with Gartcosh and we have  
2           the Dundee Bill there so we have been able to support  
3           development and we'll look for further support if that's  
4           required in the future.

5        Q.    Finally, just really related to that, the number of  
6           fingerprints that are being analysed seems to be a  
7           pretty high volume. What sort of staff levels are felt  
8           to be appropriate? Do you feel that to carry out the  
9           function they are currently adequately staffed,  
10          inadequately or more than adequate? Where would you fit  
11          it?

12       A.    I think if you look at the backlogs we have and the fact  
13           those backlogs are falling, that would indicate to me on  
14           a month-by-month basis that we have the appropriate  
15           resources out there to meet the customers' needs.  
16           However, I would put a caveat on that and say if the  
17           customer wants the reports quicker or the analysis done  
18           quicker that might have an impact on that and that's why  
19           we are at the moment speaking to Crown Office and to the  
20           police to understand what their business needs are.

21       MR SMITH:   Sir, there was one other matter I wanted to ask  
22           about but I have a somewhat cryptic message from  
23           Mr Moynihan that before I asked it he wished to explain  
24           to me he had a problem with it. I am not sure if  
25           Miss Carmichael is in a position to advise me.

1 MISS CARMICHAEL: Mr Moynihan might be because he is back in  
2 the hall himself. I am happy to deal with it myself  
3 but ...

4 THE CHAIRMAN: Well, we'll give Mr Moynihan to speak to you  
5 but I am keen to finish this witness before lunch.

6 **(Counsel confer)**

7 MR SMITH: Can I have one moment, sir?

8 THE CHAIRMAN: Yes. **(Pause)**

9 MR SMITH: Sir, I am obliged for the few moments to deal  
10 with that matter. I am happy to indicate that I have no  
11 further questions for this witness.

12 THE CHAIRMAN: Thank you very much.

13 Ms Jones?

14 MS JONES: Thank you, sir, just a few questions really  
15 following on from my learned friend, Mr Smith's,  
16 questions about morale within the organisation.

17 THE CHAIRMAN: Yes.

18 **Cross-examined by MS JONES**

19 Q. Mr Nelson, a document was put to you from a meeting  
20 nearly two years ago in the Edinburgh laboratory. I  
21 wonder if you could, first of all, clarify who exactly  
22 was at that meeting?

23 A. It was members of staff from both the laboratory, scene  
24 examination and fingerprints.

25 Q. How many staff, do you know, altogether? Can you

1 remember?

2 A. There was probably in the region of 60.

3 Q. I think you said that there were subsequent meetings, I

4 think you said, that you sought to reassure staff on

5 certain matters.

6 Can you perhaps tell us when subsequent meetings

7 took place?

8 A. I believe that was in March that I arranged a meeting to

9 go back and speak to the staff.

10 Q. What was the tenor of comments subsequent to that

11 meeting?

12 A. Everyone, to my understanding, went away satisfied and

13 certainly there was no further communication regarding

14 anyone's unhappiness.

15 Q. It may be said that staff sickness levels can be a

16 fairly concrete indicator of morale within an

17 organisation.

18 Are you able to tell us what the sickness levels at

19 the organisation are just now in comparison to, say, two

20 or three years ago?

21 A. Certainly the sickness levels have fallen significantly

22 and it's down to about 3.4 per cent.

23 Q. Can you recollect from what?

24 A. I think at one stage it was between 12 and 16.

25 Q. So when you say round about 3 per cent, what period does

1 that cover?

2 A. That's in the last quarter.

3 Q. Can you tell us what your view on morale within --

4 because this Inquiry clearly is only concerned with

5 fingerprint matters -- what your view of morale within

6 the fingerprint bureaux and staff within that is just

7 now and what you base that on?

8 A. Certainly I have to take my lead from my unit managers

9 and obviously from the staff that I meet at the

10 breakfast mornings or when I am walking round and I

11 think everyone has said what they want to do is they

12 want to move on, they want to have that opportunity to

13 move on and I'm not aware of any significant staff

14 issues in terms of morale.

15 Q. One final question: I think there is some suggestion

16 before the Inquiry that there has been a worsening

17 relationship between the SPSA and the Chief Constables

18 in Scotland.

19 Are you able to comment on that?

20 A. Certainly what I can say is that I believe the

21 relationships between ourselves (i.e. SPSA) and the

22 Chief Constables are better than they have ever been and

23 we really are, both organisations have taken this on

24 board and both organisations have put a lot of resources

25 into working on that relationship and I believe it's

1 better than it's ever been.

2 Q. In terms of the composition of the Board of SPSA, how  
3 many Chief Constables are currently on the Board.

4 A. The Board have two Chief Constables sitting on the  
5 Board.

6 MS JONES: Thank you very much.

7 THE CHAIRMAN: Yes?

8 MISS CARMICHAEL: Two very brief points, sir.

9 THE CHAIRMAN: Yes.

10 **Re-examined by MISS CARMICHAEL**

11 Q. Mr Nelson, Mr Smith gave you some information about the  
12 Mackay and Robertson Inquiry and asked for your comment  
13 about, I think as he put it, the four experts pleading  
14 the fifth. Were you aware that the Mackay and Robertson  
15 investigation was a criminal investigation in which they  
16 were suspects?

17 A. No.

18 Q. To that extent, if they were being interviewed in that  
19 capacity it would be appropriate for them to be warned  
20 they had every right to remain silent?

21 A. Sure.

22 Q. The other matter I just wanted to clarify with you is  
23 something you said to Ms Jones there. In your statement  
24 you provided us with a graph about staff sickness. I  
25 don't think we need it on the screen but the reference

1 is paragraph 44, page 13.

2 You had given us a figure April to  
3 September 2008/2009 at 6.3 per cent and I think in  
4 evidence there you said 3.4 per cent. I just wanted to  
5 clarify whether that was a more up-to-date figure or  
6 whether there was something in the graph that you wanted  
7 to alter in the light of that?

8 A. No, that's a more up-to-date figure that I have, just  
9 taken within the last three months that it's down to 3.4  
10 per cent.

11 MISS CARMICHAEL: Thank you.

12 THE CHAIRMAN: I don't think there is very much I need to  
13 ask you that has not been covered but my impression has  
14 been over many years now of forensic evidence that  
15 forensic scientists generally try to understate rather  
16 than overstate their position; in other words, I can't  
17 the remember the formula but sometimes one got a  
18 probability or a possibility and so on.

19 Would that be your experience, generally, that  
20 experts in various fields tend to err, as I think you  
21 put it, on the side of caution?

22 A. I think certainly what they would always do is give  
23 benefit of the doubt. That is something they are  
24 trained to do. In terms of our statements, whenever you  
25 move into the laboratory environment we're beginning to

1 change our statements and the conclusions will follow  
2 the lines that you have just said there, support the  
3 evidence, strongly support the evidence and we're  
4 looking across the United Kingdom at how we begin to  
5 even modify our statements to make them more acceptable  
6 and more understandable and that's a working group we're  
7 involved in here in Scotland and we have leads at each  
8 of our business centres so reports will be changing and  
9 will be improving in the near future.

10 THE CHAIRMAN: I just wondered whether from your experience,  
11 and obviously it goes back a long way of being an expert  
12 in your own field, do fingerprints create a particular  
13 problem because we have heard in the course of this  
14 Inquiry people saying about being 100 per cent certain.  
15 Which is a strange view, in a sense, because although  
16 only one person could have -- everybody has their own  
17 fingerprint but actually what the expert is doing is  
18 comparing a mark with a print and saying, "My view is  
19 that that mark is made by the person who owns the  
20 print".

21 A. That's correct.

22 THE CHAIRMAN: So really the idea of being 100 per cent, is  
23 that something you would discourage as a scientist?

24 A. Definitely. I can only speak to physical fits and in a  
25 physical fit I'm happy to speak to, you know, that was

1 definitely the same item, of the certainty of that  
2 coming together, but unless you have looked at every  
3 fingerprint in the world, unless you are completely  
4 satisfied beyond all doubt to your conclusion, I don't  
5 see how you can be 100 per cent. You can be confident  
6 but not 100 per cent certain.

7 THE CHAIRMAN: But the way that an expert in fingerprints  
8 gives his view, it could be expressed in the ways that  
9 you have been mentioning for other subjects that  
10 forensic scientists engage in.

11 A. That's correct.

12 THE CHAIRMAN: On a more practical point, I raised with  
13 another witness, at least one other witness, it seems to  
14 me that if an expert is going to be opposed (in other  
15 words, somebody is going to say, "Well, I disagree with  
16 you. I think you are wrong"), you should have an  
17 opportunity in a laboratory atmosphere to examine that  
18 person's opinion and not to be confronted with it in the  
19 witness box?

20 A. Yes, and quite often that might help through the  
21 precognition process where, you know, the defence might  
22 come in to precognosce and if we have the open and  
23 transparent environment there there's no reason why they  
24 couldn't be understanding each other's position before  
25 it actually ends up in court.

1 THE CHAIRMAN: Certainly sometimes experts, certainly in my  
2 experience, seem to resolve their differences in that  
3 way.

4 A. Yes.

5 THE CHAIRMAN: Perhaps not directly but through the witness  
6 being asked the right questions in advance of the  
7 hearing.

8 A. Exactly.

9 THE CHAIRMAN: The only other question I wanted to ask you  
10 was really it's been touched upon by Mr Smith and that  
11 is the way the evidence is displayed, I suppose is the  
12 way I would put it, in court. It does seem that there  
13 could be a danger that if, say, the opposing expert  
14 produces a very graphic description of his views or her  
15 views, that the expert who is from your side, as it  
16 were, is put at a disadvantage in that they don't have  
17 the opportunity to present their evidence in as clear a  
18 way or a way that the jury could readily understand.

19 A. No, you are correct on that. At the end of the day, we  
20 as an organisation need to move forward in terms of how  
21 we present our evidence in court and that's why we are  
22 working with the Crown Office through this DVD to see if  
23 there's any other ways we can do and improve the  
24 presentational skills of our experts in court and where  
25 there is challenge that can be dealt with at the

1 appropriate level with maybe even the two experts

2 talking through what differences they would have.

3 THE CHAIRMAN: Those were the only matters I wanted to raise

4 with you. I am grateful to you for assisting the

5 Inquiry and thank you very much for coming.

6 I think that neatly concludes the witness' evidence

7 and we will sit again at 1.50. Then it will be

8 Mr Pattison?

9 MISS CARMICHAEL: It will be Mr Pattison who is the next

10 witness.

11 **(1.00 pm)**

12 **(Luncheon Adjournment)**

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