

1 The Fingerprint Inquiry, Procedural Hearing

2 Sir Anthony Campbell Chairman

3 Friday, 21st November 2008

4 (10.30 am)

5 MS NELSON: Good morning everyone. Welcome back to the Fingerprint
6 Inquiry. I am Ann Nelson, Solicitor and Secretary to the Inquiry
7 and my role this morning is simply to do the health check,
8 as it were. There are emergency exits around the side of the
9 room. If there is an announcement that there is an emergency,
10 we are to leave because it will be genuine. I have this
11 morning remembered to switch my mobile phone off. Could
12 you please do the same.

13 If you need to use a loop-system, then please switch
14 your hearing aid on to the relevant setting. We do not
15 have hand-outs this morning of what may or may not be
16 said. We are waiting to hear what is said. We do hope
17 that the transcript of today's proceedings will be on
18 the website some time later on Monday. When we get to
19 the hearings themselves, we are expecting that we will
20 have a transcript up earlier than that but for
21 the procedural hearing, we do not have that procedure
22 in place. So some time on Monday, we hope to have the
23 transcript up on the website.

24 I think that the only other thing to say is please
25 use your microphone and just press the button there on

1 the microphone if you are going to be speaking. I think
2 that is all that I am supposed to be saying. I have a
3 message here: do as I am doing and please stay seated.
4 There is no need to stand. So, with that, I will just
5 hand over. Thank you very much.

6 THE CHAIRMAN: Good morning, ladies and gentlemen. What I
7 propose to do this morning is to say something for a
8 moment about new core participants; then to say
9 what my views are on the question of issues; and then I
10 am going to ask Mr Moynihan to tell us something about
11 the progress that has been made, so far as the Inquiry
12 team is concerned with regard to the gathering of
13 evidence. What I thought we might do then at the end of
14 that - so as to give you an opportunity to digest what
15 has been said - is that I might rise for a short period and
16 then sit again to hear what comments or views any of you
17 wish to express.

18 Since the last hearing when we met on 20th October,
19 we have had three applications for designation as core
20 participants. One of those is the Scottish Police
21 Services Authority and I have granted that. They will
22 be represented by Miss Amanda Jones of Maclay Murray &
23 Spens, Solicitors and they are not being publicly funded
24 by the Inquiry.

25 An application has also been received from

1 Mr Malcolm Ross and he is a cousin, I understand, of the
2 late Marion Margaret Campbell Ross and I have granted
3 his application. He will be a core participant on his
4 own behalf and on behalf of the interests of the late
5 Miss Ross. He is going to be represented by Mr David
6 Russell of Towells Solicitors and Mr Russell, as you
7 know, is acting pro bono.

8 The third application was received yesterday and I
9 have still to consider this and obviously, subject to
10 anything that further may be said this morning, I will
11 then give my decision as soon as possible about that.

12 All the core participants - that is all the core
13 participants as at 20th October when we last met, with
14 the exception of Mr Wertheim, and also some members of
15 the public, have provided me with submissions and I am
16 very grateful to them. Those submissions were designed,
17 as you recollect, to give me an outline of the issues
18 within the Terms of Reference that they would wish to
19 see the Inquiry pursue and the lines of evidence that
20 they have regarded as necessary for the Inquiry to
21 follow. Also, I asked them for a note of the witnesses
22 and documents that they would regard as relevant to such
23 lines of inquiry.

24 I have had an opportunity to consider whether, first
25 of all, these issues that were proposed came within the

1 Terms of Reference that I have been given and then
2 whether I regard them as relevant. What I want to do is
3 just to state in general terms the issues that I am
4 minded that we should examine. But I want to make it
5 clear that I am going to keep the issues under review.
6 They have to be kept under review throughout the Inquiry
7 because other issues may well arise. I know it is very
8 familiar to most of you but I think it is important that
9 I keep in mind the Terms of Reference, which are to
10 inquire into the steps that were taken to identify and
11 verify the fingerprints associated with and leading up
12 to the case of Her Majesty's Advocate v McKie in 1999;
13 and determine in relation to the fingerprint designated
14 'Y7', the consequences of the steps taken or not taken;
15 and then to report findings of fact and make
16 recommendations as to what measures might now be
17 introduced beyond those that have already been
18 introduced since 1999 and that is to ensure that any
19 shortcomings are avoided in the future.

20 What I am describing as the broad issues that I
21 propose to consider are these: first of all, with regard
22 to fingerprints, the identification and verification of
23 the marks labelled Y7, QI2, QD2 and XF; I also propose
24 as a broad issue the decision to prosecute Shirley
25 McKie; thirdly, the response of the Scottish Criminal

1 Record Office and its successor bodies to the acquittal
2 of Shirley McKie; fourthly, the fingerprint procedures
3 in the Scottish Criminal Record Office and its successor
4 bodies; fifthly, the training and qualification of
5 fingerprint examiners in Scotland and the presentation
6 of fingerprint evidence in Scottish court proceedings; then
7 also, sixthly, research regarding the current status of
8 fingerprinting as a forensic science and possible causes
9 of error.

10 Two matters that were raised in the responses that I
11 am not intending to pursue are these: the first is why
12 the appeal by David Asbury against his conviction was
13 not opposed; and, secondly, why Shirley McKie's civil
14 action was settled.

15 So far as the first of these is concerned, it is
16 apparent from my Terms of Reference that I have not been
17 asked to investigate or look into the case of Her
18 Majesty's Advocate v Asbury and therefore it does not
19 come within my Terms of Reference.

20 The second matter that I consider not to come within
21 my Terms of Reference is why the Scottish Ministers gave
22 authority for the civil action by Shirley McKie that she
23 brought against them to be settled.

24 The reason for this is that insofar as the decision

1 reached by Ministers was based on advice that they
2 received regarding the fingerprint Y7, I do not see how
3 this can influence any decision that I may reach about
4 the mark and, furthermore, so far as the Ministers are
5 concerned, there may or may not have been other
6 considerations leading to the settlement of the action
7 which would not be relevant to this Inquiry.

8 That is all I want to say at the moment about the
9 broad issues. I then want to say something about how I see the
10 Inquiry proceeding. What will happen now is that the
11 Inquiry team will begin to take statements from witnesses.
12 These will be made available to core participants'
13 representatives on a confidential basis in advance of
14 any hearing. Those statements I intend to take as
15 forming the evidence of the witness. Where a witness is
16 called to give oral evidence, then he will do so on
17 oath and the statement will be taken as forming part of
18 their statement, but this may be supplemented by
19 questions that are asked by Counsel to the Inquiry or by
20 others. By 'others', I am referring to those who have
21 received leave from me to question the witness following
22 an application in which they will have identified the
23 matters and issues on which they wish to examine the
24 witness.

25 That is all I want to say at this stage. I now

1 propose to ask Mr Moynihan to tell us about the progress
2 that has been made, particularly about the recovery of
3 documents and productions and about the preparation of
4 what is sometimes called the 'trial bundle' in
5 litigation. But I think in modern speak we should call it
6 the 'Inquiry hearing database' which of course will be
7 available to those who have been designated as core
8 participants.

9 So I think it would also help me if he would say
10 something about the taking of statements and how he
11 proposes the key issues coming within the scope of the
12 broad issues that I have outlined, can best be identified
13 prior to the hearings taking place.

14 So I now hand over to Mr Moynihan.

15 MR MOYNIHAN: I am grateful, sir.

16 If I can begin just by summarising where we are in
17 relation to the recovery of the relevant documents. The
18 Inquiry team has sought and obtained production of files
19 and documents from the Crown Office and the Scottish
20 Government. There are some specific requests
21 outstanding with the Crown Office and we expect them to
22 report back to us shortly.

23 More generally, as the core participants will be
24 aware, the emphasis has been on securing recovery of
25 items that we have identified as being likely to be of

1 high priority. A list was circulated to the core
2 participants following the first preliminary hearing in
3 October. Through the collective effort of all
4 concerned, we have been provided with all bar two items
5 on that list. The missing items are two sets of
6 negatives of Y7 and we continue to pursue the search for
7 them.

8 Notwithstanding that these two items may not have been
9 recovered yet, we do have access to sufficient material
10 to provide a secure basis for the taking of witness
11 statements. We are now moving beyond that priority list
12 to recover principal copies of previous reports relating
13 to Y7 and the other relevant fingerprints. Principal
14 copies, rather than photocopies which are available are
15 being sought simply to secure the best copy of any
16 images that are referred to in the reports.
17 Requests have been made of all concerned -- I
18 apologise if I omitted to mention this to Mr Russell --
19 requests have been made to core participants to get
20 principal copies and that is in hand.

21 Sir, if I then turn to the submissions and where we
22 are in relation to those. As you have indicated, we have
23 received submissions from all core participants, with the
24 exception of Mr Wertheim, and from some members of
25 public. In addition to proposing the issues that you

1 have considered, sir, the submissions have identified
2 relevant documentary productions and also potential
3 witnesses. The Inquiry team is currently studying those
4 lists.

5 I held on 19th November -- that is Wednesday of this
6 week -- a number of informal meetings with the legal
7 representatives of the core participants other than
8 Mr Russell -- and obviously Mr Russell is in England but
9 I have had a conversation with Mr Russell this
10 morning -- and what I sought to do was give an indication
11 of the Inquiry team's framework for the
12 investigative phase of the Inquiry and the possible --
13 and I stress 'possible' -- approach to the oral
14 hearings. It has been stressed, sir, to parties to whom
15 I have spoken that this is no more than the outline of
16 what the Inquiry team proposes and the parties are free
17 to raise any issues with you.

18 Turning to the basis of that framework of what is
19 proposed by us, I begin with witnesses. The Inquiry's
20 list of potential witnesses will be cross-checked
21 against the lists provided by core participants and we
22 will draw up a list of the witnesses from whom
23 statements will be sought. The intention is that the
24 Inquiry team will be responsible for taking statements
25 from the selected witnesses. However, when a statement

1 is being taken from a witness, the witness may be
2 accompanied by a solicitor of his choice. We would
3 intend that the draft statements that we take will be
4 verified with the witness and indeed the witness will be
5 required to sign the final document. The signed
6 statement, sir, as you have indicated, will be included
7 in the Inquiry hearing database that will be accessible
8 electronically in due course. There may be some
9 witnesses whose evidence is uncontroversial and who do
10 not require to give oral evidence to the Inquiry. For
11 those witnesses, we would intend to accept their
12 statements as their evidence. Other witnesses will, for
13 a variety of reasons, be required to give evidence in
14 person to the hearing of the Inquiry. The statements
15 they have given will be taken as forming part of their
16 evidence, as you have said, sir, and then they may be
17 asked supplementary questions either by myself or Miss
18 Carmichael as Counsel to the Inquiry and, as you have
19 indicated, sir, with your permission they may be
20 questioned by other parties.

21 If I can say something now about documents and
22 documentary productions. Documents and images that we
23 have had recovered so far are being copied on to an
24 electronic database, the intention being that material
25 that will be used at the Inquiry should be accessed

1 electronically. So we will copy and put on the
2 database the material we recover to be available to the
3 Inquiry hearing database. In due course, witness
4 statements will be placed on an Inquiry hearing database
5 and also we will identify from the totality of the
6 material we recover the documentary productions that
7 will be useful to be used at the Inquiry hearing. Those
8 productions will be added to the database.

9 Core participants will have access to the Inquiry
10 hearing database prior to the oral hearings and that,
11 sir, will naturally be subject to such conditions as you
12 consider appropriate. The nature and timing of wider
13 access, including public access, to this material has
14 yet to be considered.

15 I then turn, sir, to a matter relating to our
16 proposed expert witness. Consideration is being given
17 to instructing Professor Christophe Champod of the
18 University of Lausanne to provide assistance to the
19 Inquiry. You, sir, and the Inquiry team have had a
20 preliminary meeting with Professor Champod but, I
21 stress, no instructions have yet been issued to him. We
22 are already aware that Professor Champod has had some
23 involvement in a professional capacity with one of the
24 core participants -- that is Pat Wertheim -- but it is
25 understood Professor Champod has not expressed any

1 opinion as to the identification of any of the marks
2 with which this Inquiry is concerned and it is not the
3 intention to ask him to do so.

4 If instructed, he will be asked to produce a written
5 report and he will be called as a witness at the
6 hearings. He will be asked at the hearing to give a
7 brief introduction to fingerprints for the benefit of
8 members of the public who may not be familiar with the
9 subject in order to assist our understanding of the
10 evidence. Then, sir, it is perhaps helpful if I
11 indicate to parties the matters which, if he is instructed, I
12 would intend to ask him to assist us with.

13 So if
14 he is instructed, then I would intend
15 to ask him to assist us with a number of matters and
16 I can indicate what those are. First of all, it is
17 apparent that a number of experts have expressed views
18 based on different images of the fingerprints and marks
19 and, in the interest of consistency, it would be the
20 intention of the Inquiry team to give the expert
21 witnesses an opportunity to examine and to express their
22 opinions by reference to one standard set of images.
23 Professor Champod will be asked by the Inquiry team to
24 select what, in his opinion, the best images available
25 of each mark are, for inclusion in this standard set.

1 And then each expert witness will be asked to address
2 the standard set of images as part of the exercise of
3 taking their witness statements and their observations
4 on the standard set would be included in their witness
5 statement.

6 Secondly, sir, using the existing reports -- as I
7 have said, the principals of which we are seeking
8 to recover -- and also witness statements, Professor
9 Champod will be asked to assist the Inquiry team to
10 identify the specific areas in dispute and to facilitate
11 focused questioning on disputed details at the hearings
12 of the Inquiry. An example of that would be that he
13 could prepare illustrated images highlighting a
14 specific area in dispute and we would then use that
15 illustrated image as the basis for questioning of
16 witnesses, a common basis to question each witness.

17 Should there be any experimental work that may help
18 to elucidate matters, then Professor Champod would be
19 asked to carry this out and the results of any such work
20 would form part of his evidence.

21 He will also be asked to examine the original
22 material (that is the door frame, the gift tag, the tin
23 and the bank note) to see if any current method could
24 assist in retrieving any better or new image of the
25 marks.

1 Lastly, sir, it is understood that the Scottish
2 Police Services Authority is undergoing an accreditation
3 process in relation to the methods used to identify
4 fingerprint marks. The Inquiry team will have to
5 ascertain the progress being made in that process before
6 deciding whether it is necessary to ask Professor
7 Champod to review that work and to advise on any
8 additional procedures or developments in the field that
9 he believes would be of relevance.

10 That concludes what I have to say about the range of
11 work I am considering Professor Champod would cover if
12 he is instructed by us.

13 I then turn, sir, to the question of analysis.
14 You have indicated how you propose to identify specific
15 issues within the broad terms of the issues you have
16 identified today. The Inquiry team will review the
17 witness statements, any report from Professor Champod
18 and documented productions to identify what I have
19 called the 'key issues'. Consideration will then be
20 given to the best way consistently with the duty under
21 section 17(3) of the Inquiries Act 2005 to
22 act in fairness and with due regard to the need to avoid
23 unnecessary cost,
24 to address and resolve those issues at the oral hearings.

25 The Inquiry team will determine which witnesses they would

1 propose -- and I again stress 'propose' -- to call to
2 give oral evidence and the lines of questioning they
3 would propose to put to the witnesses. That analysis
4 would be circulated to core participants for their
5 consideration and comment.

6 It would be my intention that, as with this week,
7 informal meetings would then be arranged between the
8 Inquiry team and the legal representatives of the core
9 participants to discuss that analysis. That will give
10 the core participants an opportunity to suggest to the
11 Inquiry team changes to the list of witnesses to be
12 called to give oral evidence and/or the lines of
13 questioning to be put to the witnesses. The Inquiry
14 team will obviously give due consideration to any
15 suggestions received and will, if appropriate, issue a
16 revised analysis.

17 Sir, there may be a need for a further preliminary
18 hearing with you to resolve any outstanding matters that
19 the core participants wish to raise in relation to the
20 Inquiry framework itself in general and in particular
21 the analysis so that they can suggest adjustments to the
22 analysis and obtain a ruling from you.

23 The date for commencement of the oral hearings and
24 indeed the broad outline for the oral hearings would
25 also be addressed at that hearing. That hearing could

1 set the broad framework for the oral hearings, though
2 you, sir, as you have indicated, will retain discretion
3 to modify the framework as the hearings progress.
4 Obviously those arrangements, whatever they may come to
5 mean, will mean without prejudice to the parties' rights
6 to apply to you, sir, for permission to cross-examine
7 particular witnesses and I have had no discussions so
8 far as to how and when such an application might be
9 made.

10 So that, sir, covers the outline of the framework
11 that I am proposing and I trust, though there will be
12 differences in detail, that these are consistent with
13 the outline I have given to the legal representatives
14 earlier on this week, so they have had some limited time
15 to consider matters.

16 THE CHAIRMAN: It seems to me that there are two matters
17 that parties may wish to say something about. One is
18 the 'broad issues', as I described them. All I would
19 say about that is that it may be premature, though I
20 will of course hear what anyone wants to say about that
21 because it will be when you see the analysis that you
22 will see what comes within the bounds, or what ought to come
23 within the bounds of the broad issue. That is one view,
24 but I will certainly hear anything anyone wants to say
25 about the issues that I have described this morning.

1 The second would be about the witness statements and
2 the expert's evidence that is proposed and whether anyone
3 wishes to say something about that. It might be
4 helpful, as I indicated earlier, because some
5 participants, I gather, had some advance notice but in
6 case not, you might want to just reflect on it for ten
7 minutes and then I will sit again and hear any
8 submissions that you wish to make.

9 Is there anything that anyone wishes to raise now
10 with me before we deal with that or any other topic?

11 MR RUSSELL: Sir, would you hear any arguments concerning
12 the proposed appointment of Professor Christophe
13 Champod.

14 THE CHAIRMAN: I intend to do that after the break.

15 MR RUSSELL: Linked in with the exclusion of Her Majesty's
16 Advocate v Asbury.

17 THE CHAIRMAN: I will certainly hear you.

18 MR RUSSELL: Would you also hear a statement from Malcolm
19 Ross? It is fairly brief, in his words not mine, and he
20 e-mailed it to me last night --

21 THE CHAIRMAN: Would you like to do that now because that is
22 a separate issue. Is that within the core
23 participants --

24 MR RUSSELL: Malcolm Ross is a core participant on his
25 own behalf and on behalf of Marion Ross.

1 THE CHAIRMAN: If you wish to deal with that now, I think we
2 can take that.

3 MR RUSSELL: Thank you, sir. If I emphasise, these are
4 Malcolm Ross's words, not mine. I have transcribed it
5 and I read it:

6 "As I understand it, the primary reason for the
7 Scottish Government to launch the Inquiry is to
8 re-establish the Scottish people's confidence in their
9 system of justice. The primary wrong being addressed is
10 the brutal murder of Marion Ross. This wrong and its
11 pursuit has been manipulated, subverted and hijacked by
12 the cleverly managed McKie sideshow. This seems to
13 have been allowed by: (1) the adept manipulation of the
14 press and other methods of information dissemination by
15 the McKie faction; and (2) the serial incompetence, and
16 perhaps malfeasance, of the police and the Justice
17 officers in Scotland.

18 "If it is the wish of the Scottish Parliament to
19 re-establish public belief and confidence in the
20 Scottish police and judiciary, an uncompromising
21 analysis of the fingerprint QI2, determination of its
22 owner and the consequent identification of the murderer
23 of Marion Ross is surely the minimum requirement of the
24 Inquiry."

25 But if I may make, one point, sir, and that is

1 that Mr Ross appreciates the limitations of section 2 of
2 the Inquiries Act 2005 and, in particular, section 2(1)
3 that you have no power to determine any person's
4 criminal liability. But Mr Ross does refer to section
5 2(2) which states that the findings and determinations
6 made by this Inquiry do not prevent criminal liability
7 being inferred from any facts which are thereby
8 determined. It is said that of marks Y7 and QI2 the
9 identifications which may, and which we believe will, be
10 upheld, do infer criminal offences. There are two
11 offences which are inferred and they are murder and
12 perjury. Thank you, sir.

13 THE CHAIRMAN: Of course, I will consider what has just been
14 said but my immediate reaction is that, as I indicated,
15 we are going to look at those marks and it may be that certain
16 views may be inferred from that but, beyond that, I do
17 not feel that, really, the question of Mr Asbury's
18 position comes into my Terms of Reference as they
19 currently stand.

20 MR RUSSELL: No, sir, but the point that Malcolm Ross for
21 the family and on behalf of Marion Ross wish to make is
22 that this is perceived to be the 'McKie Inquiry': quote,
23 "I'm the victim here", David Asbury "I'm the victim
24 here" unquote and it is not so. There is only one
25 victim and that is Marion Ross, sir, and Mr Ross wishes

1 to remind those who fight over the bones in this Inquiry
2 that Marion -- (a spinster, harmless, 51, lived a sheltered
3 life, fragile, certainly profound psychological
4 problems) -- was brutally murdered, sadistically murdered.
5 And he wishes to remind everyone, sir, that she was left
6 with 13 fractured ribs, she was pinned to the floor, she
7 was stabbed with a pair of scissors, she was stabbed
8 repeatedly in the throat with both scissors and a knife
9 alternately and with her assailant kneeling on her
10 chest, breaking her ribs. She was stabbed through the
11 neck. The penetration of the knife went 5 inches into
12 her head. It went through her tongue, she was stabbed
13 through the left eye, and all the time she was a harmless lady
14 pinned to the floor. There is no victim in this room,
15 sir, apart from Marion Ross and if anyone wants to fight
16 that, fine.

17 If Mr McKie wants to have an argument in this room,
18 fine. If they want all the issues in this room, fine.
19 Any issue that anyone wants to present to this Inquiry
20 we will not object to -- any issue whatsoever, sir. Let
21 it all come out. Let the battle on the Internet end.
22 Let the McKie campaign end. Let us just have it out and
23 get it over with.

24 THE CHAIRMAN: You are right to remind us all that the
25 murder of Marion Ross is what brought all this about and

1 it was an appalling crime. I have to say, in my view,
2 it makes it even worse that it took place in her own home. But
3 I think it is right to be reminded about that.

4 MR RUSSELL: Thank you, sir.

5 THE CHAIRMAN: I will rise for a few minutes. We will sit
6 again about 11.25 and see if we can proceed on the
7 question of issues beyond the submissions
8 already made. I just repeat that in my view
9 important to see what the analysis brings to know
10 exactly what the issues are going to be. But,
11 nevertheless, I will look at any of the general issues I am
12 asked to and, secondly, I think that on the issue of Professor
13 Champod being retained I will hear anything anyone
14 wishes to say about that.

15 Perhaps I should make it 11.30.

16 (11.05 am)

17 (A short break)

18 (11.30 am)

19 THE CHAIRMAN: What I will now do is to hear any submissions
20 that anyone wishes to make -- that is on the question of
21 the broad issues -- and then I think the next topic
22 seems to me to be who we should retain or I should
23 retain as an expert witness. I will deal with that
24 secondly.

25 So perhaps we could begin with Miss Grahame. Do you

1 wish to say anything upon the question of the issues that
2 I have raised.

3 MISS GRAHAME (on behalf of the Crown Agent): Yes, there is
4 one matter I would wish to raise at this stage.

5 THE CHAIRMAN: Yes.

6 MISS GRAHAME: It is a comment in relation to the broad
7 issues which were outlined and it is in relation to the
8 second head of those issues; namely, the decision to
9 prosecute Miss McKie. The Crown Office appreciate that
10 this is a very broad and general description and
11 appreciate that matters are at an early stage and it is
12 only when the analysis is issued that we will have an
13 opportunity to consider the full detail of what is
14 envisaged by the Inquiry team under that heading and the
15 limits thereof.

16 We also recognise that the Inquiry will wish to give
17 consideration to the investigations and factual
18 information which was available regarding the marks at
19 that time prior to the McKie case and that would be
20 important to the Inquiry. But if it is envisaged that
21 this Inquiry will encompass a consideration into the
22 prosecutorial discretion and the merits of the decision
23 taken by Lord Boyd of Duncansby in his then role as Law
24 Officer to prosecute Miss McKie, then we have concerns
25 in relation to the extension of the Inquiry into that

1 area. Particularly as the Cabinet Secretary for Justice,
2 Mr MacAskill MSP, when announcing the Inquiry on 14th
3 March this year, made it clear and, I quote:

4 "The purpose of this Inquiry is not to try or retry
5 any individual for the events of the past, nor to
6 challenge the decisions of the prosecution, the defence
7 or the courts in relation to any of those events.
8 Indeed, the law is quite explicit that an Inquiry cannot
9 rule on, and has no power to determine, any person's
10 civil or criminal liability.

11 "The purpose is to open up and understand those
12 events and to learn from them, in order to ensure that,
13 for the future, Scotland has an approach to the
14 identification, verification and presentation of
15 fingerprints that everyone can trust."

16 For those reasons, sir, the Crown Office feel
17 compelled to raise this issue at this stage.

18 THE CHAIRMAN: Thank you very much.

19 Miss Jones, is there anything you wish to say on the
20 issues?

21 MISS JONES: We have nothing to say at this stage.

22 THE CHAIRMAN: Then Mr Macpherson for the Strathclyde Police.

23 MR MACPHERSON: Thank you, sir. I have nothing to say at
24 this stage.

25 THE CHAIRMAN: We come to you, Mr Russell, on the question

1 of issues. Is there anything you wish to say?

2 MR RUSSELL: I would firstly invite you to clarify precisely
3 what you had intended to exclude in respect of the
4 proceedings HM Advocate v David Asbury and whether it is
5 restricted to the failure to oppose the appeal or
6 whether you exclude HM Advocate v David Asbury?

7 THE CHAIRMAN: My intention really is this: as you have
8 seen, one of the fingerprints we are going to look at is
9 QI2 also XF, that is the one on the gift tag, as well of
10 course QD2. If I arrive at a decision about that,
11 then I would have thought under section 2(1) one would
12 come as close to an inference as I would be permitted
13 under the legislation.

14 MR RUSSELL: I was not particularly having regard to the
15 determination but with regard to the process by which
16 you arrive at that determination because the case of
17 David Asbury lays the foundations for the case of
18 HM Advocate v Shirley McKie. The exhibits are the
19 Asbury exhibits, the circumstances in which they were
20 obtained is the Asbury case and if you are minded, sir, not to
21 consider the decision not to oppose Asbury's appeal and
22 if you are, as I understand to be the position, saying
23 it does not form part of your remit, then I would
24 challenge that because I would refer you, sir, to the
25 Terms of Reference, which are stated to be secondly,

1 "... to determine in relation to the fingerprint
2 designated Y7 the consequences of the steps taken or not
3 taken."

4 Sir, in relation to the fingerprint marked Y7, the
5 consequences of the steps taken or not taken include
6 the decision by the Lord Advocate Boyd, Lord Boyd of
7 Duncansby, to grant Asbury interim liberation. That also
8 included the Lord Advocate acceding to Asbury's
9 application for leave to appeal. The consequences also
10 include the Lord Advocate's decision not to ask for a
11 retrial. The consequences of the steps taken or not
12 taken in relation to mark Y7 include the decision of
13 the Lord Advocate to withhold from the Appeal Court
14 hearing in the appeal in the case of HM Advocate v David
15 Asbury, the report of the Deputy Head of SCRO dated 27th
16 July 2001 commissioned by the Regional Procurator
17 Fiscal, William Gilchrist, whereby in relation to mark
18 QI2 the Deputy Head of SCRO conclusively in his report
19 found mark QI2 to be identical, an absolute match, with the
20 right forefinger of Marion Ross with 29 ridge
21 characteristics in sequence and agreement.

22 Now, sir, if you have regard to the brutality of the
23 murder of Marion Ross and the gravity of the issues we
24 are considering, how on God's earth could a Lord
25 Advocate, head of the Crown Office, withhold such a

1 document, such a report, such evidence from the Appeal
2 Court? These are all matters which come in the
3 aftermath of Y7, the consequences of the steps taken or
4 not taken. As you know, sir, I have a profound problem
5 with the Lord Advocate, a former solicitor,
6 grandstanding in the aftermath of BBC Scotland
7 documentaries where, in our submission, he sacrificed
8 his professional integrity to make speeches to the media
9 saying that what went wrong at SCRO at worst were
10 mistakes. That was a very serious inference that he made
11 on the basis of a television programme and as head of
12 the Crown Office in Scotland, that was simply appalling.
13 He made that speech with no review, no reconsideration,
14 no examination. He ordered a review of SCRO exhibits, had
15 1,700 independently checked and 1,700 came up as being
16 correct.

17 Sir, there is one matter which is linked to that and
18 that is that you have before you, my submission to this
19 Inquiry. This submission, which has a couple of
20 documents appended to it, is a submission made by
21 Malcolm Ross and on behalf of Malcolm Ross, core
22 participant in the Fingerprint Inquiry, on his own
23 behalf and on behalf of the late Marion Ross. So we
24 have the awesome responsibility of speaking for and
25 safeguarding the interests of Marion Ross. It is also on

1 behalf of Peter Swann, core participant, Shirley McKie's
2 former independent fingerprint expert; Martin
3 Leadbetter, witness in the Inquiry and Chairman of the
4 Fingerprint Society; and John Berry, BEM awarded for
5 services to fingerprints. And our submission, sir, unlike
6 every other submission in this room, has not been
7 circulated, has not been distributed and I understand
8 that it has not been made available because it is
9 perceived to contain sensitive and confidential
10 material.

11 What we say, sir, is that how can a submission made
12 on behalf of Marion Ross's behalf having regard to those
13 matters which I made clear in the earlier submission to
14 you, be kept secret? The decision not to disclose such a
15 submission cannot have been made for the benefit of the
16 Ross or the Campbell families nor the Scottish people.
17 So we have to have regard to the fact that the decision
18 to withhold the submission and not to circulate it must
19 be because it is, as said, confidential or sensitive.
20 But from that I can only infer that it is intended to
21 protect the reputations of Shirley McKie, Iain McKie,
22 David Asbury, Lord Boyd, the other Law officers and the
23 Chief Constables involved.

24 Sir, to go further, are we truly worried about
25 confidentiality and sensitivity in relation to, for

1 example, the grossly biased broadcasting of BBC Scotland
2 or the parading/grandstanding of sub-prime American
3 fingerprints experts? We have no concerns. We have no
4 worry whatsoever.

5 I do note that in his latest call to this Inquiry --
6 which again is made offstage which is the way of the
7 McKies -- of 13th November, Iain McKie says of this
8 hearing, broadcast on the clpex website used by many
9 sub-prime American fingerprint experts:

10 "This will be an important session as it will begin
11 to become clearer who the witnesses will be and what
12 issues will be heard in evidence. I anticipate that
13 certain witnesses will hope to limit the matters to be
14 heard but I am confident that the Inquiry Chairman, the
15 Right Honourable Sir Anthony Campbell, will be prepared
16 to open things up and ensure that all relevant matters
17 are fully looked into."

18 Well, that is exactly what we want. We are not
19 concerned about confidentiality. We are not concerned
20 about sensitivity and, if I may say so sir, if there is
21 anyone in this room who has concern as to their own
22 professional reputations, their own standing and who
23 objects to disclosure of my submission, then let me
24 throw down the gauntlet. I have a number of hard
25 copies of the submission. I invite you to let parties

1 have it, numbered if necessary so they can be collected
2 back; let them look through it; let them decide whether
3 they are worried about it and do not want it to go in.
4 After that, let us recommence and I will invite you
5 to ask each lawyer in this room and each core participant
6 in this room, to say whether they object to such a
7 submission being distributed and being openly before the
8 Fingerprint Inquiry. Each core participant, each
9 witness, each lawyer and if they want to say on the
10 record they do not want this submission going in, then
11 they can be collected back and they can go back into a
12 dark room behind the Inquiry.

13 We want an open Inquiry. Anyone can say what they
14 want and ruthlessly dissect and analyse the issues without
15 fear or favour. We really do not give a damn for the
16 high standing of Law Officers in Scotland. We are
17 severely critical of most of the people in this room,
18 though not, we hasten to add, a number of officers who
19 have done nothing more than discharge their professional
20 duty with integrity, honesty and consummate
21 professionalism. All of these people have previously
22 been gagged. They have not been allowed to speak they
23 have had their cases settled on the basis that they must
24 remain silent, apart from Ms McBride who is having to fight
25 a tribunal now. But we are not going to be gagged and

1 if we are to be gagged on grounds of confidentiality or
2 sensitivity, then that is within your remit, sir, so to
3 rule. But let someone object and say, "We do not want
4 Mr Russell's submission to go in". Let them not go on
5 the Internet tonight and say everything under the sun
6 about what has been said today. Let them just come up
7 and say, "I do not want David Russell's submission to go
8 in; it attacks Andrew Smith QC". Well, it does attack
9 Andrew Smith QC, and so what. I attack the Lord
10 Advocate. I raise issues which I believe are within your
11 remit.

12 Sir, in relation to the point which I opened on,
13 which is your inviting submissions on the generic issues,
14 I would say that I am hampered in doing that -- and I do
15 appreciate that we are likely to adjourn to another
16 date -- in circumstances where those matters upon which
17 I rely are in a submission which are on your internal
18 servers, are held and considered by your QC to the
19 Inquiry, Mr Moynihan, and have been considered by the Solicitor,
20 Deputy Solicitor, Assistant Solicitor to the
21 Inquiry. Have been considered by the Inquiry team, but
22 have not surfaced anywhere else and no-one is allowed to
23 see them. I have no problem with it, sir, and I would
24 invite you to let the parties have it.

25 THE CHAIRMAN: I can have no objection to you distributing

1 it to anyone you wish and I have no reason to do so. What
2 I have an objection to is the Inquiry breaching any rule
3 of law with regard, for example, to professional legal
4 privilege and I am not prepared to be a party to that,
5 unless I am assured that there is no claim being made
6 or that any undertaking that has been given is not going to be
7 breached. But, subject to that, there is nothing,
8 as far as I am concerned, that I want to hold back; it is
9 merely because I do not want the Inquiry to be put in a
10 position where it has taken a step which it is not
11 permitted to take.

12 MR RUSSELL: Sir, can I just say that is enormously helpful
13 and if I adopt an alternative position and say if, as I
14 anticipate will be the case, this is adjourned until
15 another date to continue -- it may not be, but if it is the
16 case -- then, prior to that, I will communicate with the
17 Faculty of Advocates and others. I have already been in
18 communication with them to signify, as I am required to
19 do professionally, what steps I intend to take in
20 relation to this Inquiry. There has been no difficulty
21 raised by the Faculty of Advocates, but I will write to
22 each party and I will give them notice of what my
23 intentions are on this submission. Then, if no
24 matters are raised, then those consents, if I can call
25 them those, I would relay to this Inquiry. Then, if my

1 submission is to be distributed, having been cleared by
2 all involved, then, with great respect to the Inquiry,
3 sir, it is for the Inquiry to distribute my submission
4 and not for me to walk round the table passing it out as
5 though I am a --

6 THE CHAIRMAN: That is another way of doing it. If you have cleared
7 the matter and satisfy me that that is so, then of
8 course.

9 MR RUSSELL: Then that the a course I will adopt. Thank you,
10 sir.

11 THE CHAIRMAN: I should add that any person against whom any
12 allegation is made should be put on notice.

13 MR RUSSELL: I would intend to communicate with everyone
14 concerned, sir, including those criticised.

15 THE CHAIRMAN: I think that would be fair. But as for any
16 suggestion that there is some reason for holding this
17 back, I have now stated there is none.

18 MR RUSSELL: Thank you.

19 THE CHAIRMAN: I think we now come round to Mr Holmes. Is
20 there anything you wish to say on the question of the
21 issues?

22 MR HOLMES: On the question of the issues, I have nothing to
23 add to the written submissions that have already been
24 made, with one caveat and that is to say that not all of
25 those that I represent were able to be here today so I

1 have not had the opportunity to take instructions from
2 everyone.

3 THE CHAIRMAN: If there is some issue, some point that you
4 want to raise, you can do it in writing and I will
5 consider it. If it is an issue other parties want to
6 discuss or should discuss, then that will be dealt with at
7 a later hearing. If there is nothing else you want to
8 raise on the point of issues at the moment, then I will
9 come back to you on the evidential matter of Professor
10 Champod in a moment.

11 Now, Mr Smith.

12 MR SMITH: Thank you, sir. If I can say at the outset, I
13 have had the opportunity of speaking to my client and I would like
14 to
15 associate myself on behalf of Iain McKie and Shirley
16 McKie with the remarks by Mr Russell earlier regarding
17 Miss Ross that whatever happened is plainly an injustice
18 for her.

19 I should also like to point out that Mr McKie has a
20 web page, sir, that has, since its inception, been
21 dedicated to the memory of Miss Ross and the injustice
22 that has been suffered and he has asked me to make that
23 absolutely clear. I think it right that we have always
24 recognised the injustice that was plainly caused to her.

25 As far as the issues are concerned, sir, we are
26 entirely content with the issues and we are content with

1 the suggestion that has been made with regards to the
2 procedure, the suggestion made by your, sir, and Counsel
3 to the Inquiry. As you are aware, I also represent the
4 interests of David Asbury. I am not sure where the
5 discussion reached with regards to the points made by
6 Mr Russell.

7 THE CHAIRMAN: That, I think, comes up under issues because
8 it is something that I will rule upon. I have expressed the view
9 that that I should not look at why the appeal against conviction
10 was not opposed. That, I think, does not come within the Terms
11 of Reference.

12 MR SMITH: I am obliged, sir. I was not sure whether
13 Mr Russell was asking you to reconsider and rerule on
14 that matter. My position --

15 THE CHAIRMAN: I think I made it reasonably clear that I
16 regard, and I think it is right that I should make
17 clear, that under section 2(1) I believe an inference
18 may well be drawn if I come to a particular conclusion
19 about some of the marks but that is as far as I see it
20 being my task.

21 MR SMITH: I am obliged, sir. I was going to remind
22 everyone about the terms of section (2)1 of the Act but
23 I understand entirely where you are coming from, sir.

24 THE CHAIRMAN: I think everyone has had an opportunity on
25 the issues to say something. I should say that I

1 appreciate that it is for the Lord Advocate to decide in
2 Scotland who should be prosecuted and who should not and
3 so the actual decision of the Lord Advocate is not
4 something that I would feel that I would really be in a
5 position to review. But I will of course be looking at
6 that evidence that we will be gathering and will have a
7 reference to the matters which were before the Lord
8 Advocate, no doubt, when he reached his decision. But in
9 my view I'm not competent to give any observation as to
10 why the Lord Advocate exercised his discretion in any
11 particular way.

12 Is there anything you wish to say on the question of
13 issues, Mr Moynihan?

14 MR MOYNIHAN: Perhaps it may assist in relation to this
15 question of the HMA v Asbury.

16 THE CHAIRMAN: Yes.

17 MR MOYNIHAN: It is a matter for you to interpret the
18 general issue as you see it. Certainly what I would
19 myself have said in answer to Mr Russell is he is
20 correct from my perspective and that of the Inquiry team
21 that, as he said, the exhibits we are looking at in this
22 Inquiry are the exhibits gathered for the prosecution in
23 HMA v Asbury. In particular, the fingerprints and the
24 marks. Plainly, one of the issues will concern the
25 circumstances in which those exhibits were obtained, the

1 marks and fingerprints. You, sir, have indicated that one of
2 the marks that we will consider is QI2 and indeed we
3 will also look at the gift tag in addition to Y7 and
4 QD2. So we are looking at a range of finger marks.
5 Sir, in terms of section 2 of the Act, the
6 distinction which has been referred to now by a number
7 of individuals is between in fact section 2(1) and
8 section 2(2). Section 2(1) does not authorise you to determine
9 criminal liability and it is for that reason that I would
10 submit that it would be inappropriate for you to consider
11 the decision not to oppose Mr Asbury's appeal. However, as
12 a number of contributors have said, in terms of section 2(2),
13 you may make findings of fact from which inferences may or
14 may not be drawn. So that is perfectly permissible.

15
16
17 Where the difficulty will be for the Inquiry team is
18 exactly where to draw the line between section 2(1) and
19 section 2(2) because there is very much a need to draw a
20 distinction of need which we are conscious. Accordingly,
21 sir, I would invite you to rule that you will not regard
22 as an issue for this Inquiry the decision not to oppose
23 Mr Asbury's appeal. But that still does permit us to
24 look at the background facts and circumstances within
25 the limits of section 2(2) of the Act. Beyond that,

1 sir, I do not think it would be appropriate for me to
2 comment on matters raised.

3 One point perhaps I should say in relation to
4 confidentiality, if I may? Plainly I have read, as
5 Mr Russell has said, his submission. I do not myself
6 wish to go into the content of that submission. Having
7 read it, I am aware that there are statements made about
8 a variety of individuals. My concern, quite apart
9 from the general issue of confidentiality, was that in the
10 interests of fairness, that before that should be circulated to
11 people that were not otherwise aware of matters, there
12 is plainly a need to give those who are specifically
13 named an opportunity to make any representations. So
14 that is why you were advised by the Inquiry team that it
15 would be inappropriate for the Inquiry team to circulate
16 these matters. Indeed, for my interests, I would
17 advise, sir, that it would be difficult for you to sit
18 by and watch those submissions distributed in the hall today.

19 What Mr Russell wishes to do is a matter for
20 himself. What he wishes to do outwith the Inquiry is a
21 matter for him but I am aware of certain issues of
22 confidentiality and sensitivity that will perhaps merit
23 some careful consideration as how these papers are
24 distributed.

25 THE CHAIRMAN: I think Mr Russell appreciates the position

1 and I stress, as counsel did, the question of fairness.
2 I think I made it clear that anyone against whom any
3 allegation is being made should have an opportunity to
4 be warned, as it were, that it is being made and to be
5 heard, if appropriate. So I think that is reasonably
6 clear and, as I understood it, that is the course you
7 propose to adopt.

8 MR RUSSELL: I do propose adopting that course of action,
9 sir, and I am grateful to you for what you have said. I
10 will communicate with the parties concerned and their
11 representatives. I readily appreciate that this is a
12 statutory Inquiry but, on a broader note, I only wish
13 that the common sense which has prevailed here with
14 regard to the giving of notification to those who are
15 going to be criticised could not implemented elsewhere
16 when it comes to trying to destroy professional
17 reputations on the Internet and in publications and on
18 BBC Scotland. No such corresponding
19 warnings have been given. Thank you, sir.

20 THE CHAIRMAN: That is outwith the Inquiry. All I am
21 determined is this Inquiry should be fair to all
22 concerned and that is my endeavour.

23 Now the next general topic I think we want to come
24 to is the question of Professor Champod. Mr Smith --. So
25 far as Professor Champod is concerned, I just want to

1 make it clear that I am of the view that Counsel to the
2 Inquiry really will need some assistance on the issue of
3 fingerprints. It is a very complicated subject, as
4 we all know, and certainly counsel will need some help
5 with that. One of the difficulties that I see with this case,
6 or rather with this work, Y7 has attracted comment all over
7 the world as far as I can make out and many, many experts have
8 expressed opinions on it and I think it would not be
9 appropriate for the Inquiry -- and I am sure you would
10 agree -- to have someone who has committed themselves to
11 a particular view. Therefore, we have striven to find
12 someone of standing who has never expressed a view. I am assured --
13 unless I am told to the contrary -- that
14 Professor Champod has never at any time expressed an
15 opinion or indeed examined, as far as I could gather,
16 these marks. I am conscious, as counsel has said,
17 of the fact that he at some stage I think had written a
18 joint paper with Mr Wertheim but that is the only difficulty
19 that I foresaw.

20 The other thing I should say is that you were asked
21 how we came to find Professor Champod. It was a
22 slightly unusual reason and that is that I read an
23 article in the newspaper, as one does tend to read
24 articles now on fingerprints that I might not have read
25 before, but in a daily newspaper in which he was

1 referred to as an expert and that really was what set it
2 in train.

3 So, beyond that, what is the view that you want to
4 take, Mr Smith?

5 MR SMITH: Sir, our position is those I represent are
6 entirely comfortable and happy with Professor Champod
7 and we are content to leave the final decision to the
8 Inquiry.

9 THE CHAIRMAN: Thank you. Mr Macpherson, have you anything?

10 MR MACPHERSON: Sir, the Chief Constable has no view and
11 takes no issue on the selection of the Professor for the
12 Inquiry.

13 THE CHAIRMAN: SPSA? Miss Jones?

14 MISS JONES: We have nothing to add, sir, no.

15 THE CHAIRMAN: Thank you very much. Mr Holmes?

16 MR HOLMES: Thank you, sir.

17 Some concerns have been raised over the proposed
18 appointment of Professor Champod relating to what his
19 role is to be within the Inquiry and whether he is
20 suitable for that role in terms of his qualifications
21 and also the professional connection with at least one
22 of the core participants.

23 I would like the opportunity to make either a
24 written submission or to take instructions and to
25 investigate Professor Champod's background as far as the

1 Inquiry is concerned.

2 THE CHAIRMAN: Certainly. It is fair that you should be
3 given the opportunity to do that. I may say that if the
4 parties -- when I say 'the parties', I mean those
5 represented here -- can point me to an expert who would
6 be acceptable to all of them, to whom they could find no
7 objection, then of course that would be helpful to me.

8 Mr Russell, have you any views to express?

9 MR RUSSELL: Yes, sir.

10 At the outset, I would say it is obviously a matter
11 for the Inquiry to seek such assistance as it considers
12 appropriate from whatever source is deemed to be
13 reasonable and likely to assist.

14 However, you did say, sir, in responding to the
15 address by Mr Moynihan that it was reasonable that he
16 should have some assistance on fingerprints having
17 regard to the complexities of this case.

18 I have to say that if that was the criteria that
19 Professor Champod was required to provide some
20 assistance on fingerprints, then he is not the man to
21 provide some assistance on fingerprints. He is not
22 qualified to do so.

23 There is one matter, a very minor matter.
24 Having dealt with -- I almost fell into my own trap
25 of calling it the 'McKie case' but it is the 'Marion

1 Ross' case -- for some considerable time, I do always
2 like to establish the credentials of the experts and
3 from whence they came because, as you know from my
4 submission, there are those who have involved themselves
5 previously who are now under investigation.

6 You indicated, sir, that you had seen the reference
7 to Professor Christophe Champod in a newspaper, and I
8 am sure it is just a point of clarification, but I have
9 only just had the reference to Christophe Champod from
10 Mr Moynihan and it is my recollection -- and I stand to
11 be corrected on it -- that he told me Professor Champod
12 had been recommended by Professor Jim Fraser who was
13 latterly sitting on the Justice 1 Inquiry of the
14 Scottish Parliament into the Scottish Criminal Record
15 Office and its successor. Just as a point of
16 clarification, if he was recommended by
17 Professor Fraser --

18 THE CHAIRMAN: I think that is right. It began from me and
19 then I asked for a book that was referred to in the
20 article, to be obtained. Then I think my recollection
21 is that the next step was that Professor Fraser -- if
22 that is his name. I do not know Professor Fraser, but
23 someone at Strathclyde who I assume was Professor Fraser was
24 asked if he knew of Professor Champod, just to see
25 whether he was someone of standing or somebody that we

1 might approach. So both are correct. It began with me
2 and I asked Mr Moynihan.

3 MR MOYNIHAN: Mrs Nelson may be in a better position to
4 explain the circumstances.

5 MR RUSSELL: I am perfectly content with that explanation.
6 Thank you.

7 THE CHAIRMAN: It is all detail but that is certainly, as
8 far as I am concerned, where it began for what it is
9 worth.

10 MR RUSSELL: Sir, Professor Champod was on Martin
11 Leadbetter's third level detail working group. He is
12 not known as a fingerprint examiner. He is not known as
13 a fingerprint expert. He is an academic and that also
14 ties in with the partial recommendation by
15 Professor Fraser, another academic, and God forbid that
16 this ends up as an academics' bean feast.
17 Professor Champod's specialty is statistical analysis.
18 forensic science, he is a professor of forensic science I
19 understand from Mr Moynihan. As I say, I am not in a
20 position to conduct any inquiry; I learnt of this this
21 morning. But his specialisation is nothing to do with
22 the graft of fingerprint identification. He is not a
23 working expert.

24 If he was to be held out as a fingerprint expert,
25 then it would have to be said that he would be next to

1 useless because he is not qualified as a fingerprint
2 examiner; he has no qualifications as a fingerprint
3 examiner; he has no experience as a fingerprint
4 examiner; we do not know of any police forces that he
5 has worked for as a fingerprint examiner; we are not
6 aware of circumstances in which he has personally given
7 evidence of identification either in civil or criminal
8 courts where it can obviously be tested. We do not know
9 when Professor Champod last conducted fingerprint
10 examination work, although it does sound like he never
11 has. We do not have any fingerprint examination cases
12 that he has undertaken over the last ten years. I say this because
13 there is this problem with experts, even on the
14 fingerprint examiner/fingerprint expert side; they are
15 held out as being top of the tree, head of department
16 sometimes, but the reality is they no longer do
17 fingerprint work. They have not seen a fingerprint in
18 anger for nine years/eight years. They might do
19 double-checking but they are no longer in the thick of
20 fingerprint examination.

21 I indicated that Professor Champod had been on
22 Mr Leadbetter's detail committee. There is, I think, a
23 disclosure that he is known professionally or otherwise
24 to Pat Wertheim. There may be Arie Zeelenburg but, from
25 my perspective, any relationship with Pat Wertheim is

1 the kiss of death. Mr Moynihan referred to
2 Professor Champod as being called as a witness; whereas
3 obviously he would be called as an expert. I would seek
4 to distinguish the role of Professor Champod as an
5 expert when he is not really an expert to the Inquiry.
6 He can be challenged, he can be cross-examined but he
7 has a very special role underpinned by the fact that he
8 acts on the instructions of the Fingerprint Inquiry.
9 That gives him a very, very high status but it also puts
10 him beyond reproach in many ways. He is obviously not
11 appointed as an assessor, but I would have difficulty in
12 understanding why it is that if, as would only be right,
13 Mr Moynihan wanted assistance with the complexities of
14 fingerprint identification, that the matter would not
15 have proceeded by way of section 11(4) which is the
16 appointment of an assessor, someone with expertise that
17 makes him a suitable person to provide assistance. The
18 assessor has the clear statutory framework in which to
19 work. Professor Champod would have none.

20 Professor Champod is apparently, in my opinion,
21 going to get into some kind of hybrid role but he is now
22 going to go away and look at the door frame, Y7, and see
23 what images he can take. He is not a scenes of crime
24 man, he is not a fingerprint expert. He may well go
25 into statistical analysis, he may play around and

1 create fabulous images but so what. They may or may not
2 assist but if he is the main underpinning expert to the
3 Inquiry, then that is going to be a very, very serious
4 issue.

5 So we do have concerns and we also have concerns as
6 to the fact that he would not be qualified to do the
7 nitty-gritty of fingerprint work in order
8 to arrive at his finished product without the assistance
9 of a fingerprint examiner or fingerprint expert (they
10 are one and the same) and the question arises as to how
11 Professor Champod -- as I say, academic he may turn out
12 to be but how would we bring in an academic at that
13 level? By all means if he can contribute, fine, but if
14 he going to be the expert to the Inquiry and he is
15 essentially a statistician (that is his territory), then
16 I come back, sir, to a very well-worn adage: lies,
17 damned lies and statistics and God help us if this
18 Inquiry goes down the academic rails that so many people
19 want it to adopt.

20 There are some very difficult issues to be
21 addressed. Mark Y7 is very difficult. It is the work
22 of a fingerprint expert. It is not the work of a
23 professor of statistics. He may be able to contribute
24 and if he can, we welcome him with open arms so long as
25 we establish the links with third parties, Wertheim,

1 Zeelenburg or anyone else. But in terms of the experts
2 to the Inquiry, no, he is not one as far as I am concerned.

3 THE CHAIRMAN: I think I should just say that so far as
4 appointing an assessor is concerned, one of my anxieties
5 was that the parties and core participants and others
6 should have an opportunity to cross-examine, which they
7 would not have with an assessor, and I am keen that as
8 much should be in the open as possibly can be.

9 On the question of the expertise of
10 Professor Champod, of course I will now take on board
11 what has been said. He has not been retained as yet and
12 I would, before I make any decision, look at what you
13 have said and what Mr Holmes says in his written
14 submission.

15 MR RUSSELL: Thank you.

16 THE CHAIRMAN: But I say again it may be that what we
17 need is more than one expert to assist in this.
18 If what you say is correct about needing an examiner,
19 someone with expertise, and if any of the core
20 participants want to put forward names for
21 consideration, then I would welcome that. It actually
22 gives me the opportunity to ensure as best I can that we
23 have the most suitable person or persons to assist us.

24 Is there anything counsel wish to say about this?

25 MR MOYNIHAN: Sir, I believe Miss Grahame wants to say

1 something.

2 MISS GRAHAME: Just to confirm that we are content to leave
3 any decision regarding Professor Champod to the Inquiry
4 and have no comment to make.

5 THE CHAIRMAN: I apologise for missing you.

6 Is there anything you want to say at this stage
7 about this?

8 MR MOYNIHAN: Perhaps it would help if I said two things.

9 One is a point of clarification which is important. A
10 difference between what I said to Mr Russell and what
11 you said today is simply that you were not party to all
12 the discussions that took place. As you indicated, sir,
13 you read an article that led us to a book of which
14 Professor Champod is one of the co-authors.
15 Accordingly, while giving thought to one of those authors as a
16 expert, given the nature of the book, we had not
17 progressed as far as knowing which of the authors was
18 the relevant one. By coincidence, we also at the same
19 time spoke to Professor Fraser, conscious of his role in
20 forensic science at Strathclyde, and the name that he
21 mentioned by coincidence was that of Professor Champod,
22 who happened to be one of the individuals we had been
23 thinking about anyway because of the book. Therefore,
24 for the purposes of the team, the one that brought
25 Professor Champod's name to the fore for us was

1 Professor Fraser. But, as you said, we may in any event
2 have arrived there because of the book that you had seen
3 and that we had by then obtained. So that is the reconciliation
4 of the two positions.

5 Sir, it also may benefit from me saying this: I
6 apologise if in what I said in covering Professor Champod I
7 may not have been specific enough. I do accept he is an
8 academic. I do not propose him as a fingerprint
9 examiner in the sense Mr Russell is speaking of; in
10 other words, someone who does, as part of his daily
11 work, examine fingerprints for the purposes of criminal
12 or other proceedings. He does have, as an academic, a
13 role, I understand, in teaching fingerprint practitioners
14 in Switzerland but that is not our reason for seeking to
15 instruct him. Sir, so far as the question whether we
16 are going beyond his expertise or not, that, sir, again
17 is something that would arise from the analysis. As I
18 had also said earlier, it is the intention to lodge a
19 report from Professor Champod and, again subject to any
20 directions you may give, he would be open to
21 cross-examination by parties to the Inquiry.

22 So unless I can assist, those I think would be the
23 points I would make in clarification. Sorry, there is
24 one other point. I would ask for some timescale. I do
25 not know if Mr Holmes has mentioned a timescale for his

1 written submission. Plainly it would assist to have a
2 timescale shorter rather than longer.

3 MR HOLMES: I would expect to be able to be in a position to
4 come back to the Inquiry within six or seven days.

5 THE CHAIRMAN: That is very satisfactory. Thank you very
6 much. Obviously I want to reflect on this and will have
7 a transcript of what Mr Russell has said this morning
8 and then have the benefit of your submission and then
9 will reach a decision.

10 That brings me then to where we go from here, so to
11 speak. I am still aiming to begin taking evidence in
12 late February and my intention is that we will hold the
13 hearings in the Maryhill Community Central Hall in
14 Glasgow. The reason for that, I should say, is that it
15 has been adapted for the ICL Inquiry and so it would be
16 a saving of public money if we do not have to carry out
17 a similar adaptation at some other venue and I am
18 obviously trying to see where we can save public money.
19 The trustees have indicated that they would be prepared
20 to allow us to use it in this way.

21 What I would expect and intend is the participants
22 and others should have an opportunity to discuss how
23 best to use the accommodation that is available.
24 Obviously as to the hearing room, that is for me, but how the
25 various rooms that we will have can be distributed can

1 be discussed and arrangements can be made.

2 It seems to me that it is going to be necessary to
3 have another preliminary hearing, perhaps later this
4 month. These premises are available to us, I think, on 11th
5 December if we are ready to use them then and, other
6 than that, I would have thought that it would be January that
7 we would then meet. I am sorry not to give a date
8 now but I feel that obviously there is a lot of expense
9 involved and I do not want to arrange a sitting day if
10 it turns out that is not absolutely
11 necessary.

12 One last thing and on a more agreeable point, since we
13 last sat, Miss Carmichael has been appointed a
14 Queen's Counsel. I am very pleased for her for that
15 but I am also pleased that she has agreed to stay
16 on in the Inquiry despite her change of status. So
17 she will be continuing as the other Counsel to the
18 Inquiry. So that you know who you are dealing with, we now
19 have two assistant solicitors Miss Emma Gilpin and
20 Mrs Debbie Blair and so if you are contacted by them, they
21 are members of the Inquiry team.

22 Is there any other matter anyone wishes to raise
23 with me?

24 MR RUSSELL: One matter, sir, and that is before you rise I
25 would invite you to ask the participants to hold a

1 minute's silence in memory and out of respect to Marion
2 Ross.

3 THE CHAIRMAN: Yes, I think that is very appropriate. We
4 will do that just now. Unless there is any other matter
5 anyone wishes to raise, then at the suggestion -- and I
6 think it very appropriate -- of Mr Russell, we will rise.

7 MR MOYNIHAN: Sir, just before you do there is one point of
8 clarification. You mentioned the date of 11th December.

9 THE CHAIRMAN: Yes.

10 MR MOYNIHAN: Is it your intention to hold a hearing on that
11 day or --

12 THE CHAIRMAN: No. I will make a decision later this
13 morning about that and you will be notified so that
14 there is no delay. Unless you want to say so now -- it is
15 a question whether counsel would be in a position to
16 produce material we need to discuss on that day.

17 MR MOYNIHAN: No, sir. For my part, it is a possibility
18 but the parties will be advised in due course whether a
19 hearing will be heard on
20 11 December.

21 THE CHAIRMAN: I am hoping we will be able to make that
22 known later today when I have discussed it with the
23 Secretary. As I said, I do not want to bring everyone
24 here unless it is for some gain and we can progress
25 matters.

1 I am grateful to everyone and now I think we will
2 stand.

3 (1 minute's silence observed)

4 (12.24 pm)

5 (Adjourned to a date to be fixed)

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