

JUSTICE 1 COMMITTEE

Tuesday 23 May 2006

Session 2

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JUSTICE 1 COMMITTEE 17th Meeting 2006, Session 2

CONVENER

*Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

*Stewart Stevenson (Banff and Buchan) (SNP)

COMMITTEE MEMBERS

*Marlyn Glen (North East Scotland) (Lab)
*Mr Bruce McFee (West of Scotland) (SNP)
*Margaret Mitchell (Central Scotland) (Con)
*Mrs Mary Mulligan (Linlithgow) (Lab)
*Mike Pringle (Edinburgh South) (LD)

COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)
Bill Aitken (Glasgow) (Con)
Karen Gillon (Clydesdale) (Lab)
Mr Jim Wallace (Orkney) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Mr Kenneth Macintosh (Eastwood) (Lab)
Des McNulty (Clydebank and Milngavie) (Lab)
Alex Neil (Central Scotland) (SNP)

THE FOLLOWING GAVE EVIDENCE:

Hugh Ferry (Formerly Scottish Criminal Record Office)
Iain McKie
Shirley McKie
Andrew Smith QC

CLERK TO THE COMMITTEE

Callum Thomson

SENIOR ASSISTANT CLERKS

Euan Donald
Douglas Wands

ASSISTANT CLERK

Lewis McNaughton

LOCATION

Committee Room 2

Scottish Parliament

Justice 1 Committee

Tuesday 23 May 2006

[THE CONVENER *opened the meeting at 14:14*]

Items in Private

The Convener (Pauline McNeill): Good afternoon and welcome to the 17th meeting in 2006 of the Justice 1 Committee. All committee members are present. I ask everyone to switch off anything on their person that may interfere with our broadcasting system. I welcome to the committee Des McNulty MSP, Ken Macintosh MSP and Alex Neil MSP. I welcome also Rob Marr from the Scottish Parliament's directorate of legal services. Unfortunately, our committee adviser, Jim Fraser, cannot be here, but he will be advising us during the course of our inquiry.

I invite members to consider whether to take in private item 4, which is consideration of whether to accept written evidence to the committee inquiry into the Scottish Criminal Record Office that has been submitted after the deadline for receipt of submissions. Does the committee agree to that?

Members indicated agreement.

The Convener: I also invite the committee to take in private item 5, which is consideration of the main themes arising from the oral evidence sessions on the committee's inquiry into the SCRO. That is our usual practice, and I ask the committee to consent to that.

Members indicated agreement.

Scottish Criminal Record Office

14:15

The Convener: I wish to make a statement. This afternoon's meeting is the second oral evidence session in our SCRO inquiry. It is a parliamentary inquiry, not a judicial one. The committee has determined a remit for it, which has been published, and the committee—and no one else—will determine the course of the inquiry. The committee expects that all witnesses to the inquiry will co-operate fully, will focus on the lines of questioning from members and will answer questions in good faith, to the best of their knowledge and truthfully. In view of that, although I have the power to require witnesses to take the oath, I do not intend to use that power at this stage. However, if the committee considers that any witnesses are not giving us their full co-operation and answering questions truthfully, the committee can and will recall those witnesses. In those circumstances, I will use the powers that I have under standing orders and section 26 of the Scotland Act 1998 to require witnesses to give evidence under oath.

Members will be aware that a committee report was published last week that contained written evidence received in response to our call for evidence. That was done following a committee decision to do so. That said, we will need to consider carefully all the evidence that we receive, whether orally or in writing. As with any inquiry, we will distil the information that is relevant to our remit. Our overriding aim must be to help to restore public confidence in the standards of fingerprint evidence in Scotland. I expect the report that the committee produces at the end of the inquiry to contribute in some way to that process.

I remind members that the case of David Asbury v the Strathclyde joint police board and others is still active and as such is subject to the sub judice rule. In questioning the witnesses, I strongly encourage members to concentrate on those matters that are relevant to our goal in the inquiry, which I reiterate is about the restoration of public confidence in the standards of fingerprint evidence. I do not intend to open that up for debate.

I welcome to the committee Shirley McKie, Iain McKie and Andrew Smith QC, who is acting as Ms McKie's legal adviser. As is usual, we go straight to questions.

Shirley McKie, as you are the person who is really at the heart of the whole matter, what would you like to say to the committee about your experience? What lessons do you believe can be

learned about our fingerprint service in Scotland and the processes that we use?

Shirley McKie: I thank the committee for inviting me. To be honest, I would rather be anywhere on earth than here, but I am here in a last-ditch attempt to ensure that the people responsible for what has happened are dealt with. I can tell the committee how it has affected me emotionally, but a lot of information has been kept from me to protect me so that I can go through this whole process. There may be questions that my father or Andrew Smith QC will have to answer. Your question is huge and I do not know where to start.

You ask what lessons can be learned. The current situation is that the people who are responsible for this are still working and still lying, and I hope that this inquiry stands up and makes the people who are responsible pay for what they have done. It is not me who is affected; it is the people of Scotland. If fingerprint evidence is found in the case of anyone here whose son or daughter is murdered, it is laughed out of court. People are going to lose out in a huge way if this is not sorted out properly.

The Convener: You will appreciate that the committee's remit is to examine what happened in your case and to examine the practices and processes that were used at the time and those that have now been adopted. We also have to try to find our way through and make some positive recommendations to ensure that everyone has confidence in the process that we use. That will include the process when it is benchmarked against international standards; we want to know what the benchmarks were in 1997 and what they are now.

I will break it down a wee bit and you can answer what you feel you can. Looking at the murder investigation and the fingerprint identification process, can you say anything about where it broke down? Your evidence is quite specific that you do not believe that it was a genuine mistake; you are quite clear that you think that something else was going on. It is quite important for the committee to hear from you about where you think that it all started to go wrong.

Shirley McKie: In my heart of hearts, I honestly believe that there was a mistake initially, rather than some sort of conspiracy. I am nothing; I am nobody. I was just a police officer at work. I believe that there was a mistake because people were under pressure, as they are during any murder inquiry when a lot of evidence is taken. Perhaps a mistake was made in the hurry to identify a random fingerprint. I questioned that on day one and said that I was not in the house, so there must have been a mistake. I believed that a mistake had been made. The case was based on

fingerprint evidence and if that mistake was not sorted out, the whole case would fall.

You will have to ask the people at the SCRO why they did not go back and check or admit the mistake at that point. It might have been complacency or arrogance; I do not know. All I know is that there was millions of evidence saying that I was never in that house, but one fingerprint said that I was. It would have been easy to say, "I am human. I made a mistake," but the SCRO people did not do that. You will have to ask the people who worked there why.

The Convener: It is your evidence that, although the situation might have started off as a mistake, something further on in the process conspired to cover up that mistake. I do not want to put words in your mouth.

Shirley McKie: I am sure that you will speak to fingerprint experts. They will easily show you how the fingerprint is different from that on my left thumb. You will have to ask them. Anyone who saw the fingerprint evidence at my trial and anyone who has examined it since then has said that it is nothing like my fingerprint because there are so many wrong areas.

As soon as they were questioned about whether the fingerprint was mine or not, any reasonable person—fingerprint expert or not—could have seen differences and said, "Oh gosh, we have made a mistake", but that did not happen.

Mrs Mary Mulligan (Linlithgow) (Lab): You were explaining that fingerprint experts have looked at the fingerprint and said that it is quite clear that it is not yours. Given your experience as a police officer having worked with fingerprint experts in the past, do you have any idea how they could have made what you say was originally a mistake that went on to become something else?

Shirley McKie: I am sorry, I have no idea. You will have to ask the individuals themselves, or a fingerprint expert.

Mr Bruce McFee (West of Scotland) (SNP): You were called to give evidence at the trial of David Asbury for the murder of Marion Ross. That resulted in your later being charged with perjury, and found not guilty. Is it your contention that, if the fingerprint was established at that time as not being yours, the whole case against David Asbury for the murder of Marion Ross would have collapsed?

Shirley McKie: No. If it had been my fingerprint in that house, that would have been totally unimportant. The reason why it became a problem was that I had not been there. If the people at the SCRO had acknowledged that they had made a mistake, I would never have been a witness at David Asbury's trial.

Mr McFee: If it had transpired at that time that the SCRO had got it wrong, do you believe that that would have had a knock-on effect on the identification of other fingerprints in the Marion Ross murder case?

Shirley McKie: I do not know. I believe that, at that time, it was soon enough for the whole mess to have stopped at that point.

Mr McFee: I cannot ask you about the culture that existed at the SCRO, because you did not work for it, but what kind of pressure were you under from your employers, the police, to say, "Yes, it was me."

Shirley McKie: Immense pressure. I was bullied, harassed and humiliated from day one of the whole thing. I appeared in front of one senior officer, then a more senior officer, then a more senior officer than that, and then a procurator fiscal. Each time, they thought that they would get me to tell the truth—as they saw it. I was completely ostracised. Colleagues were told not to contact me. I was hung out to dry, completely and utterly.

Mr McFee: There is an old concept in justice throughout the world that a person is innocent until proven guilty. Do you think that you were afforded that—

Shirley McKie: Absolutely not. I tried to get assistance through the normal channels to fund my criminal trial, and I was refused by the deputy chief constable. His letter to me basically said, "You're guilty. You have brought the force into disrepute." I had not even gone through my trial, and I was refused funding. I had to fight. I have had to fight at every single hurdle. I have been given nothing that I did not have to fight for.

Margaret Mitchell (Central Scotland) (Con): My question is for Ms McKie. It is clear that, when you met Peter Swann in his Wakefield office in May 1998, you had a high regard for the fingerprint experts—so much so that you were looking for other reasons why your fingerprint had been misidentified, including its having been planted. In your letter to Peter Swann of 7 March 1999, you even asked whether it could have been someone else's fingerprint—whether, searching his brain, Mr Swann thought that that could possibly be the case. At what point did you believe that the situation had become malicious?

Shirley McKie: Until the point just before my own trial, when Pat Wertheim came from America, looked at the fingerprint and said that it was not mine, I had believed that it was mine. The thought had not entered my head that people in SCRO were lying. I had come up with some ridiculous explanations as to how the print could have got there. I believed that it was mine. One thing that did not enter my head was that the people in SCRO had lied about it.

Margaret Mitchell: Referring to what Bruce McFee asked you, you believe that the maliciousness spread. We have written evidence on this, with one constable alleging that he had logged you in. Did it go further? You believe that the police were also involved, and that it was not just SCRO or the experts.

14:30

Shirley McKie: I do not know whether only the SCRO was involved or whether the police were involved as well. I have no way of knowing that.

Thanks to my father, I have been protected from a lot of the malicious, nasty and filthy gossip, which is included on the Parliament's website and which was one reason why I felt that I could not appear here today. After all this time, after what I have been through and after all the reports and inquiries, quite frankly I cannot believe that these liars and disgusting people are even being entertained.

I have put my neck on the line so many times, hoping for Scotland that this would be sorted out. I hoped that people such as yourselves who could do something about it would do so. Instead of that, I am harassed and disgusting rumours are spread. Obviously, I cannot stop that, but it distresses me so much that you would not believe it.

Margaret Mitchell: Finally, it is clear that you were not a suspect in the Marion Ross murder case, so the very worst that should have been at stake was that you were somewhere where you should not have been. However, there seems to have been so much pressure on you to say that you were there. Can you say why that was? Why was that so important?

Shirley McKie: I do not know. Over the years, different information has come out. Initially, I thought that the reason was that the evidence for the murder inquiry was fingerprint evidence, so questioning the evidence would jeopardise the murder inquiry. Initially, I felt that that was the reason why I was treated in the way that I was treated. However, I do not know. There have been all sorts of innuendo and gossip, including that it was because fingerprint evidence was used in the Lockerbie disaster inquiry. I believe that people from the SCRO were involved in that inquiry. That might make sense, because the pressure on me has been so immense that it just does not make sense.

Margaret Mitchell: If it was malicious, might that be tied into the fact that you had previously been given a warning for being in a locus where you should not have been? For that to happen again would make it so much worse. Might that be part of how you think people were maliciously trying to tie you in?

Shirley McKie: I do not know, but I do not think so. I think that the reason for the failure to admit the mistake was purely that people wanted to say, "We're experts and we don't make mistakes. If we admit a mistake, we'll lose this murder inquiry and it might call into question other identifications." I still feel that the problem is complete and utter arrogance.

Mike Pringle (Edinburgh South) (LD): I have two questions, but I want to ask one brief question before that. Do you accept that we all make mistakes in life and, when we make mistakes, we should admit to them?

Shirley McKie: Absolutely.

Mike Pringle: The first of my two questions relates to Mr Swann, whom you consulted. I am interested to know where Mr Swann got his evidence from that allowed him to make a judgment. I do not mind who answers this question—if Shirley McKie cannot answer it, perhaps Andrew Smith or Iain McKie can—but where did he get the evidence from? Who supplied him with the material that enabled him to make a positive identification of your fingerprint?

Shirley McKie: When we were looking for an independent expert, we were told that Mr Swann was a good expert and we went to speak to him. You would need to ask Mr Swann, but I think that he looked at the fingermark on the door surround. However, Mr Swann did not take any fingerprints from me, so his examination—I will need to check this with my father—was only of the door surround.

Iain McKie: Convener, I would like to clarify that, but I have lots of things to add on this issue. As Shirley said, initially she was protected from this. I have lots of information, but I am a bit uncertain as to when I can give that information. I will follow the your guidance on that.

The Convener: Since we are dealing with the point at the moment, it would be helpful if you could say now.

Mike Pringle: I would like to know where Mr Swann got his information from and how he used it.

Iain McKie: That is a mystery, because Mr Swann should not have had access to that information. When Mr Swann made his initial examination, he was taken, properly, to the productions in the sheriff court and shown that information, but afterwards he prepared the presentation. According to our sources, he should not have had access to that information, so where he got it from I do not know. I suspect that he got it from the SCRO. Again, you will need to ask Mr Swann those questions, but I am worried about where people have got that information from.

Mike Pringle: Why should not he have had the information? Did you not supply it to him?

Iain McKie: What you have to understand about Mr Swann is that when we visited him in Wakefield initially, we thought that he was a good expert. After that, we had nothing to do with Mr Swann. He came, made his examinations, was not allowed to speak to us at all, and went away and did his reports. There was no presentation by Mr Swann at that time. He took no photographs and had no information. He did not take photographs of stuff and take them away, as far as we are aware. Later on, he obtained loads of information to which he should not have had access, so you will need to ask Mr Swann where he got that from.

Mike Pringle: Perhaps we should ask him.

The Convener: I just want to be clear about this point. What you are saying, Mr McKie, is that, when Mr Swann was retained by you, he went to examine the mark but that, at a later date, you believe that he was given other sources of material by someone—not you or your team—on which he established his report.

Iain McKie: That is absolutely correct.

The Convener: Which report was it that established his view that it was—

Iain McKie: I shall try to explain. As far as his official report was concerned—there were two of them at the beginning—that was established by visiting the sheriff court and seeing the productions. What I think you are talking about is a presentation that he prepared later on. What we do not understand is where he got that information from, because it should not have been made available to him. If that is Mr Pringle's point, my answer is that the initial report was made legitimately at the sheriff court from information that he was given. Later on, however, all that information became available, and I would certainly like to make some points relating to that, if I am able to do so.

Mike Pringle: Is it not worth while making the point now?

Iain McKie: I shall make the point. Mr Swann has been invited to give a presentation. As far as I am concerned, that is totally wrong. Mr Swann is not the witness who matters. The witnesses who matter in this case are the four SCRO experts who gave the evidence. I cannot understand for the life of me why the four experts are not being called to give the presentation. They are the ones who are in the SCRO. They are the ones who made the mistake, and you are trying to understand why that happened. What use Mr Swann would be in giving a presentation is beyond me.

The Convener: I should clarify that how the committee decides to take evidence is a matter for

us. Mr Swann is being asked to take part in a session that we have not even finalised yet. He has submitted evidence, and since you are answering questions it is important that you understand this. Let us assure you that, at this stage, we are not making any judgments, but we want you to know that we have written evidence before us from Mr Swann, who says that he had a look at the mark and that he identified it as Shirley McKie's. He is apparently an independent expert who does not work for the SCRO. It is quite important for us to understand your view on that, which is why I have given you some latitude to tell us what you wanted to tell us.

Iain McKie: Can you understand my point, which is that Mr Wertheim and many other experts are not giving presentations? My starting point is that the SCRO made a mistake, so I am trying to assist the inquiry by suggesting how the committee could perhaps best understand the situation. The only point that I am making is that, in my opinion, the SCRO experts need to give evidence. They have complained for years about not being able to be heard. Surely it is now time that they were heard. All that I am asking is whether the committee would like to give them that opportunity. If you feel that I am trying to tell you what to do, I can assure you that I would not want to do that. You have a hard enough job without me helping you.

The Convener: We will finish on that point. You will know that Mr Zeelenberg offered to make a presentation, and we have taken him up on that offer. We are trying to put together something that allows the committee to have a look at the processes from the point of view of a variety of experts, and that has not been finalised yet. As you know, we will be hearing from the SCRO officers and others who are not in the SCRO—

Mike Pringle: Can I just—

The Convener: Let me finish, please. Then I will let you in.

Mike Pringle: Can I just make one point?

The Convener: When I call you, you can. That is the privilege of being convener.

I just want you to be clear about what we are attempting to do, Mr McKie. Nothing has been finalised yet, but you will know where that offer came from.

I see Mike Pringle and Bruce McFee raising their hands, but I shall call members in order and Mary Mulligan is first.

Mrs Mulligan: I have a brief point for Mr McKie on what he said about Mr Swann. You approached him first of all, but decided that he was not suitable. Why, after your initial discussions, did you decide not to pursue the issue with Mr Swann?

Iain McKie: Initially, we went to see Mr Swann because he was recommended as a highly reputable expert. When we spoke to him we were convinced of that. However, when your daughter tells you that she has not been in the house, you know that she has not been in the house and there is evidence that she has not been in the house, you need to ponder on the matter when an expert comes back and says, "Her fingerprints are in that house." My daughter would have been going to trial for perjury with Mr Swann's evidence. Only a fool would have done that. Her lawyer suggested that she might like to come up with the silly little girl defence and say to the court, "I must have been there but have forgotten about it." We went looking for evidence from other fingerprint experts. To be blunt, Mr Swann was not taken forward because he was wrong. That was ultimately established. As you are aware, there have been 20 inquiries and 20 reports since then. He was a very reputable man who was wrong.

Shirley McKie: Initially, I thought—we all thought—that the fingerprint was mine and that it had somehow been planted. Mr Swann came back with a report that stated "The fingerprint was not a plant. Therefore it must be Shirley McKie's". He did not even take my fingerprints. As far as I am concerned, if he had been competent and done his job properly, the case would have stopped then, because we would have had a report from him that stated that it was not a plant and that it was someone else's fingerprint.

Mrs Mulligan: So it was not your own team that gave him your fingerprints to compare against the mark.

Shirley McKie: No. I now know that a proper fingerprint officer should have looked at the mark and done whatever he had to do, but then should have seen me and taken millions of fingerprints from me. Mr Swann did not take one fingerprint from me.

Mr McFee: I do not know whether this question is for Shirley McKie or Iain McKie, but Iain McKie touched on the issue. Some people suggest that this comes down to a difference of opinion. They say that the SCRO has its experts, you have your experts and a balance must be reached. How do you respond to that?

Iain McKie: My response is that I find that suggestion totally laughable. People are trying to destroy the science of fingerprinting. One issue is that it is not one fingerprint officer who looks at a fingerprint but four. I ask you to work out the statistical probability of four people in a row independently getting it wrong.

I know that the committee does not have a lot of time, but I have in front of me, and would be happy to read out, every single report that says that the

identification is wrong. It is not a matter of opinion; it is a matter of fact that the SCRO has got it wrong. The problem is that we do not know why that is. I could read out every report from the trial onwards, but I do not think that I need to do that. The suggestion that it is a matter of opinion has been put in as a blind. Some issues might be a matter of opinion, but it is not a matter of opinion to say that a horse is a horse and that a giraffe is a giraffe. However, that is what we are getting from the SCRO. It is a matter of scientific opinion. If four experts give you their scientific opinion independently of one another, it becomes a fact.

Mike Pringle: Is it possible that two people could look at one fingerprint and come up with a different answer?

Iain McKie: Given that human beings are involved, of course it is possible that that can happen. However, if they are experts and they follow the procedures that are laid down, that should not happen. You cannot have two opinions on a fingerprint; otherwise, we might as well throw fingerprinting out the window. If cases go to court and one expert says that a mark is someone's fingerprint and another expert says that it is not, fingerprinting will be destroyed as a science. At the end of the day, the experts say that it cannot happen. If two experts say different things, one of them must be wrong. Over the years, we have proven time and again that the SCRO is wrong. That must be the starting point. I am not trying to instruct the committee, but the truth is that that must be the starting point.

Mr Mulhern starts his report—the 20th on the matter—by saying “The misidentification”. If two officers disagree about a fingerprint, that can, and must be, resolved.

Shirley McKie: The committee has to sort this out. If you do not and let people say that it is a matter of opinion, fingerprint evidence will be destroyed for ever. After everything that I have been through, I still believe that it is the most powerful piece of evidence. What they are doing is disgusting. Please do not allow them to get away with it.

The Convener: I invite some of the non-committee members to ask questions, starting with Des McNulty.

14:45

Des McNulty (Clydebank and Milngavie) (Lab): I address my opening questions to Andrew Smith. I know that you were not directly involved in the procedures, but I ask for your views as an expert in these matters. Peter Swann was consulted by the original solicitor to Shirley McKie at her instruction. He reported his findings to her then Queen's counsel, Donald Findlay, who, when

he got the verdict, decided that it was not material to his case. Is it normal for evidence that presumably has been paid for from the public purse to be withheld from a trial?

Andrew Smith QC: As you rightly pointed out, I was not responsible for acting for Shirley McKie in the criminal trial. Mr Findlay was instructed, so I am not privy to the detail of what was involved. I should also say that my experience is not in practice in the criminal courts, where different considerations may arise.

As I understand it, a professional decision was taken. I also understand from the papers that I have seen that Mr Findlay was fully aware of everything that was going on. He took a decision about how to conduct the trial. I am sure that you have read the transcript of the evidence, as I have. It is clear to me, at least, that during the evidence, when Ms McKie was asked some questions about the matter, she repeatedly referred it back to her legal advisers. I do not know whether the Crown took the opportunity to ask the legal advisers, but I am confident that, if Mr Findlay took the view that Ms McKie was being less than honest in court, it would have been his professional duty to draw it to the court's attention.

Des McNulty: To be crystal clear, the defence sought evidence from Peter Swann.

Andrew Smith: Yes. That is my understanding.

Des McNulty: The identification made by Peter Swann confirmed the fingerprint as Shirley McKie's.

Andrew Smith: Yes.

Des McNulty: And that evidence was not put before the jury in that instance.

Andrew Smith: That is my understanding.

I realise that I probably have not directly answered your question, which was about whether it is normal for evidence to be withheld. It is clear that legal advisers have to make decisions about what evidence should be lodged. That was ably demonstrated by the civil litigation, because certain reports were not produced until after the civil litigation ended. It is clear that decisions have to be taken. I do not know the reason for Mr Findlay's conduct during the trial. I have not spoken to him about it and it would be improper of me to do so, but if the committee has questions that it wants to ask him, I am sure that he would be prepared to assist.

Des McNulty: Again, you might not be able to answer this question, but do you think that it is likely that the identification by Malcolm Graham of prints Y7 and Q12 was also known to Mr Findlay but was not made available to the court?

Shirley McKie: Excuse me. Are you putting me on trial again? Are you actually questioning my integrity? I am here to assist the inquiry. I do not see the relevance of your questions and I am totally insulted by them.

Des McNulty: Ms McKie—

The Convener: May I intervene? We are quite clear, Ms McKie, that you are not being put on trial again.

Shirley McKie: But the questioning from Mr McNulty—

The Convener: You should answer the questions that you feel you want to answer, but the questions are up to the member. I want to be clear that, as far as the committee is concerned, and as I said at the beginning, there is obviously information that we want to press you and others on. However, our duty is to see what contribution we can make, as a parliamentary committee, to restoring confidence in the system. That is our overall aim. I want to reassure everyone about that.

Shirley McKie: Mr Swann was not used by the defence because he was wrong and incompetent, and I was unhappy about his being there. I answered every single question in my trial honestly, unlike some people. If you have any other questions about that, that is fine.

Des McNulty: Can I maybe move on a bit—

Andrew Smith: I wonder whether I can answer your question about Mr Graham. I was not involved at the time, but I am fairly confident that the answer is no. As I understand it, Mr Graham became involved as an expert for the defence in the Asbury case, not in the trial against Shirley McKie. You look puzzled, Mr McNulty, but I am pretty confident that matters developed in that way.

Des McNulty: I am just wondering about the dates of the two trials.

Andrew Smith: Evidence that was obtained for David Asbury would be and would remain confidential to him and his legal team, especially given that he was considering an appeal. It would not be disclosed to those acting on Shirley McKie's behalf. As you might appreciate, it would not make sense to disclose to the defence in the Shirley McKie case the fact that the Malcolm Graham report apparently supported the identification.

Des McNulty: Thank you for that clarification.

Iain McKie: I wonder whether I can take that matter forward—

Des McNulty: Well, I want to press on to my next question—

Iain McKie: You were talking about Mr Graham. I would like to speak about him.

Des McNulty: I would prefer it if you did not, because we are not talking about any individual's character. I am simply concerned about establishing the facts. *[Interruption.]*

The Convener: I ask everyone to hold on. I realise that we all have a lot to say, but it is important that the witnesses answer the questions that are put to them. If by the end of the session you feel that everything has not been covered, I will let you come back on minor points.

If Bruce McFee has a supplementary question, I ask him to make it brief.

Mr McFee: I will make it as brief as I can, given the number of submissions that we have received.

Is the Mr Graham whom we are talking about the same Mr Graham who wrote to you some time later to apologise for the trauma that he had put Shirley McKie and her family through?

Iain McKie: Yes. We have a letter from Mr Graham apologising both for that and for his terrible mistake. He has now popped up again with Mr Swann and one or two other people. I put it to Mr McNulty that 20 inquiries and reports state unequivocally that it is not my daughter's print. Mr Graham is immaterial to this matter—he has apologised.

Des McNulty: Mr Smith, the transcript of 11 May 1999—

Andrew Smith: I do not have that document in front of me.

Des McNulty: Then let me read it out to you. According to the transcript of 11 May, the advocate depute asked Shirley McKie:

"Do you seriously not know whether the print was shown to anyone before Mr Wertheim?"

Shirley McKie responded:

"I don't know who has examined the fingerprint."

The advocate depute then asked:

"Do you know if anybody has?"

Shirley McKie said:

"I don't know who has."

The advocate depute asked:

"Do you know if anybody has, regardless of their identity?"

Shirley McKie responded:

"I don't know, you would need to ask my solicitor that."

When, later, the advocate depute asked:

"So you don't know whether or not anybody else looked at the print, is that your evidence?",

Shirley McKie said:

"No, I don't know".

We know Peter Swann had looked at this evidence.

Andrew Smith: I assume so. I am sorry, but I am not sure what your question is.

Des McNulty: If that is correct, let us turn to your document. You say:

"The Pursuer advises us—and we have no reason to doubt this—that she was not aware of the opinion of Swann on the matters that she was asked about. At all material times, her father was being advised of the developments and not all matters were communicated to her."

Is that your view?

Andrew Smith: Yes, that was my understanding.

Des McNulty: Is that consistent with Ms McKie's comment that she did not agree with Mr Swann's evidence?

Andrew Smith: I am sorry, but are you asking me whether I think that that is consistent or not?

Des McNulty: You are putting forward a legal case on her basis. Is there any consistency between what Shirley McKie has just said and the statement in your submission?

Andrew Smith: I am sorry, Mr McNulty, but in the submission that we prepared and lodged we stuck to the facts as best we could. We disclosed what the advice was and the instructions that we were given. I have read the entire transcript—I do not have it in front of me at the moment—and I was given certain instructions that were disclosed. The submissions were lodged on that basis. If you are suggesting that the submissions are somehow false or are designed to mislead, I would be interested to hear your basis for saying so. The submissions contain the instructions that I was given, which I followed, and show how the matter was presented. My understanding of the factual position is as recorded in the written submission.

Des McNulty: So she did not know.

I refer you to a letter from Ms McKie to her lawyers, which we date as being written on approximately 5 May 1999. I quote:

"In addition it would be extremely helpful if you could forward me a copy of the Brief you prepared for Peter Swann and the information sent to Pat Wertheim as soon as possible. In the absence of information to the contrary we were also concerned that our experts might be tending to follow the Prosecution lead instead of working to an agreed Defence agenda prepared by the whole Defence Team, including ourselves."

On 5 March 1999 it was clear that there was an awareness that Peter Swann had made an identification yet, two months later, there was an apparent denial of anybody having dealt with the

matter before Mr Wertheim. Does that not seem a slightly strange juxtaposition?

Andrew Smith: As I said to you already, I was not instructed at the material time. I do not recall—I might have seen the letter to which you refer at some stage, but I do not have it before me. My understanding is that a lot of correspondence was prepared by Iain McKie on Shirley McKie's behalf. That was a matter that I was told about. That might have been one such letter. I do not have that letter in front of me and, to be perfectly frank—and I say this with respect—it is a little unfair of you to ask me to comment on a document if I have not been provided with a copy.

The Convener: I am not going to allow any further questions on that point.

Shirley McKie: Yes, because you—

Des McNulty: I will just—

Shirley McKie: This is—

The Convener: Could everybody hold on? I think that Des McNulty has aired his point.

Shirley McKie: This is outrageous.

The Convener: Shirley.

Shirley McKie: It is absolutely outrageous.

Iain McKie: Please, convener, I have the evidence here to disprove Mr McNulty.

The Convener: I will let you speak in a minute.

Iain McKie: Thank you.

The Convener: I ask everybody to be quiet. Des McNulty has pursued his lines of questioning. On that point—

Des McNulty: I have two more questions on—

The Convener: That applies to you too, Des. You have had a fair airing of that line of questioning and you have had an answer. I will allow Iain McKie to come back on that point, very briefly.

Iain McKie: Thank you. As my daughter has said, she is not on trial here. Mr McNulty is trying to put on trial—[*Interruption.*] Would you listen please, Mr McNulty? I am speaking to you. Thank you very much. You have just read out a totally biased and précised version of what happened in court. I have five pages of transcript evidence from that trial. How many words did you read out? If the evidence is read you will understand, as our QC and everyone else understands, that my daughter did not lie at that trial.

Further, the idea has been expressed that Peter Swann was hidden. Peter Swann was never hidden. Peter Swann was known to the prosecution at the trial in May 1999. In July 1999 I

wrote a report to the Mackay inquiry, two pages of which were devoted to Mr Swann. That included his statements. Mr Swann was interviewed for HM chief inspector of constabulary for Scotland's inquiry and he was interviewed for the Mackay inquiry. Mr Swann has been interviewed and reinterviewed, but he has never been used as a witness by anyone. Despite the multiple complaints that he has made to everyone, they have never been taken up.

The Convener: Are you finished your questioning, Des?

Des McNulty: I just want to—

The Convener: You will move on from your point, but you can have another question.

Des McNulty: I will go back to Mr Smith, if I may.

The Convener: It had better be on a different point.

Des McNulty: It is on the central contention in Mr Smith's submission. I would like to summarise that point of view. I take you to page 33 of your submission, Mr Smith, as it is presented in the document before us:

"4. The multiplicity of 'mistakes': Q12 and Y7

That there was a mistake in the identification of Y7 by four experts acting one assumes independent of each other (as was the protocol we understand) was astonishing. However, there is equally strong evidence that there was a misidentification of Q12".

In the case of one of those fingerprints, not only the four fingerprint experts but Mr Swann and Mr Graham made positive identifications. Those were the first six people, as I understand it, to look at those fingerprints and make that identification. In the case of Q12, I presume that Mr Swann did not make the identification, but the other five people did. Is it not even more "astonishing", to use your language, that not only did the four fingerprint experts get it wrong but your defence expert and David Asbury's defence expert got it wrong? Is that not astonishing?

15:00

Andrew Smith: As far as Mr Swann is concerned, I am unaware of his opinion on Q12, which was the print that appeared on the tin. His opinion on that has never been disclosed to me in any sense, so I am gratified to know that.

As far as Mr Graham's report is concerned, he appears to have identified the print on the tin as being that of the deceased. However, I am not entirely sure whether his letter of apology covered that print as well or whether it covered just Y7.

Des McNulty: The logic that you suggest, if I have this right, is that it is an astonishing situation

for four people—or, rather, five or six people—to get it wrong. You say that, on the evidence, it is more realistic to suggest that there was a deliberate misidentification of Q12 and a deliberate misrepresentation of Y7. Why should Peter Swann and Malcolm Graham lie? On what basis would they lie?

Shirley McKie: Because Peter Swann's reputation is in tatters, that is why.

Andrew Smith: Let me try to deal with this. I think that we tried to make some suggestion about this in our written submissions.

As you have heard, Mr Swann expressed an opinion without, I venture to suggest, the full and proper information that one might expect from an expert witness. As an outsider, it seems to me fairly obvious that he should at least have taken the inked prints of the person whom he wanted to analyse. My limited understanding of the sequence of events is that Mr Swann expressed a view without having done that. Having expressed that view, he would have found it difficult, I suggest, to turn round as an expert and say, "Now that I have asked for the inked prints, I am in a position where I have to own up and say that I got it wrong." It is extremely difficult, I venture to suggest, for any expert to admit that they were wrong. You ask why I think Mr Swann might have lied. The only explanation that I can come up with is that he realised that he had said something that he should not have said and without doing his homework properly. I suggest that as a possible explanation, but I am sure that he can explain the matter to you.

If the committee thinks that this is within its remit and it concludes that there is no match between Y7 and Shirley McKie's print nor between Q12 and the print of the deceased, it will need to consider questions about why such a mistake was made and whether and why Mr Swann allied himself to what he saw as a body of opinion. I do not know. I did not have the opportunity to question Mr Swann on that, but the committee undoubtedly will.

The Convener: You have both had a fair airing of that issue. We will now move on.

Alex Neil (Central Scotland) (SNP): I will stick to the inquiry's remit, which is to find out why the misidentification took place, rather than attempt to retry Shirley McKie.

Shirley and Iain McKie have referred to the SCRO, but is it not more accurate to refer to the Glasgow bureau of the SCRO? Is it not the case that clear evidence from the other bureaux within the SCRO suggests that the Glasgow bureau was entirely wrong?

Iain McKie: Convener and Mr Neil, I do not know where to start with this. As I said before, I

have 20 reports that say the Glasgow bureau is wrong. Let me take up that point. The Grampian bureau believes that it is wrong. In January 2000, 14 officers from Edinburgh—I believe that it is now 13—wrote to point out the error. Let us not believe that the SCRO is at one on this; the SCRO is split. There are experts within the SCRO who do not believe that there has been an identification.

The fact is—I need to reiterate this—that my daughter is not on trial. There is now so much evidence that the identification is wrong that it is immaterial whether there were four or six experts. At the moment, there are possibly eight or nine people who agree with the SCRO but, on the other side, there are hundreds and hundreds of experts who disagree, including the inquiry by HM inspectorate of constabulary for Scotland, the Mackay inquiry, the Danish reports—I do not know where to stop. There was a misidentification. Mr Mulhern, who has given evidence to the committee, said at the start that there was a misidentification. There is no argument about that. It is not within the committee's remit to keep trying my daughter. If Mr McNulty wants to try my daughter, he should report her to the Crown Office.

Des McNulty: I never said that I did.

Iain McKie: If you want to retry my daughter, report the facts to the Crown Office and then it can be dealt with. I do not believe that this is the place to deal with it.

Alex Neil: My second question is about the statement in Sunday night's "Panorama" programme that the fingerprint that was presented at the perjury trial as being that of Shirley McKie was cropped. Can you tell me as a layman—this question might be for Andrew Smith—what "cropped" means? Why would anyone crop a fingerprint that was to be shown as evidence if they were not trying to cover something up?

Andrew Smith: I emphasise again that I am simply trying to indicate to the committee what we understand the facts to be. It would not be proper for me as a legal adviser to make any judgment about the reason for cropping. All I can say is that we had to present our case on the basis of such facts as we were able to gather.

As I hope is made clear in our written submission, in effect we had to establish malice on the part of the individuals about whom we were complaining. As the written submission highlights, one of the facts on which we founded the case was that the advice that we obtained from the experts, in particular Mr Wertheim, was that there were significant differences in the top portion of the print. The so-called charting enlargements were prepared to provide a comparison between, on one side of the page, a photograph of the mark

from the doorframe and, on the other side, a copy of an inked print from Shirley McKie. According to Mr Wertheim, the top portion of each had been chopped off, which meant that certain obvious differences—splits going one way on one but a different way on the other—had been removed. He advised us that, in his opinion, it would have been absolutely obvious to any layperson that the prints were different.

We tried to infer that the removal of the top portion of the print could have had no legitimate reason. The Executive's written response in the case stated—quite frankly, I was astonished at this—that one reason for removing the top portion was to allow for proper presentation of the prints, including the need to ensure that they fitted the standard-size photo book for presentation to the jury. I find that surprising—

Alex Neil: Are you referring to the Crown Office or to the Justice Department?

Andrew Smith: The Executive pled that in its defence, which no doubt was done on instruction. However, I dare say that it is not beyond the resources of the Crown Office—I do not wish to be flippant about this—to get a larger photo book to enable the jury to see literally the whole picture. We could not work out a legitimate reason for removing the top portion. That was only one factor in the melting pot. We were trying to get to the bottom of why that happened, so we questioned its legitimacy.

The Convener: Before allowing any other questions, I should say that, although what Andrew Smith has said is fair enough, we obviously will put the cropping issue, which keeps cropping up, to the experts, so Andrew Smith does not need to say any more on the issue. We do not need to examine him on it any further, because it will be of more value to put the matter to the experts.

Is Bruce McFee's supplementary question on the same point?

Mr McFee: Yes, my question is on that point. However, I want to clarify for the benefit of some other folk that, as I recall, the perjury trial resulted in a not guilty verdict.

Will Iain McKie confirm that the action to which Mr Smith has referred happened during the perjury trial, and that the Crown led evidence in which the top section of what was alleged to be Shirley McKie's fingerprint had been cropped? Will he also confirm that the cropped section would, in the words of the experts, easily have shown that the fingerprint was not Shirley McKie's?

Iain McKie: That was the conclusion of a number of experts. May I take that further?

Mr McFee: I would be interested to hear anything else that you have to say on the issue.

Iain McKie: Convener, I am aware of the time, and I agree that the matter of cropping is an issue for the experts, but numerous people have made it quite clear that that occurred. With respect, I think that the question should be put to the experts.

The Convener: You can rest assured that, in our evidence sessions, the committee will get to know more about why that is important. We will press other witnesses on that important issue.

Alex Neil: I am not sure whether my final question is for Andrew Smith, Iain McKie or Shirley McKie. Is it right to say that, at the murder scene, there were actually two misidentifications of fingerprints, both of which were made by the Glasgow bureau of the SCRO? Am I correct in saying that that is unprecedented in Scottish legal history?

Andrew Smith: I would certainly like to think that it is unprecedented. Again, I do not wish to be unfair but—with respect, Mr Neil—we can go only on the basis of the expert reports. I cannot make a personal judgment as to whether a print has been correctly or incorrectly identified. It would be improper of me to do so.

Alex Neil: The Crown Office has accepted that they were both mistakes.

Andrew Smith: I understand that, but I am anxious to make it clear that I am here as a legal adviser and not as a witness.

You will see from our written submission to your inquiry that this was another factor that we considered important. Our information was that there was a second misidentification. Of course, the misidentification that we were pleading was, in effect, by the same four fingerprint experts. Therefore, in this cluster, there were not just two misidentifications but at least eight—two by each individual.

I have also tried to make it clear in the written submissions that we understand and accept that the SCRO was, and probably continues to be, a competent and careful fingerprint examiner. However, we were concerned about the cluster of mistakes on one occasion. It called for an explanation. Let me put it this way: eight honest mistakes occurring at once is highly unlikely. One has to look for another explanation.

Alex Neil: To the best of your knowledge, the same four officers made the same mistake—the same misidentification—on both prints.

Andrew Smith: That is our understanding.

The Convener: We have one more technical question on cropping.

Stewart Stevenson (Banff and Buchan) (SNP): I am looking at the closed record that you submitted and in particular at “Ans. 8 for 2nd Defenders”, which is on cropping. The fifth page of that answer gives what you regard as the unsatisfactory explanation on cropping that the Executive relied on. To assist me and the committee—as the point does not appear to have been picked up by the pursuers later—will you tell us whether there is any further discussion of the subject in the paperwork that is before us?

Andrew Smith: I hope that the copy of the pleadings that is available is the most up-to-date one. It probably should be. My recollection is that it does not really go into greater detail.

The other important issue from the expert point of view was what they described as progressive cropping. Three charting enlargements were prepared in the comparison documents, and no two of them are the same. They changed the ink print round on one occasion and they changed the photograph of the door mark on another occasion. The camera or the image was moved on each occasion. We do not know why. The only advice that we got from the experts was that that was unique. That was from the United Kingdom experts as well as some Scottish experts; they had never seen multiple presentation documents.

Of course, the presentation documents themselves did not disclose that cropping had been taking place. As far as we know, it certainly was not disclosed to the defence at the time, and I assume that it was not disclosed to the prosecution, because it would have been duty-bound to advise the defence if some material part—or even some potentially material part or some arguably immaterial part—had been altered. It is a matter of well-established law that the prosecution is not there as a filter to decide what may or may not help the defence; the prosecution has to produce the evidence and let the defence decide for itself. It does not appear anywhere in the charting enlargements of the report that it did that. We drew an inference from the concealment of that important fact. Whether the details about what was in the top portion could be argued as being correct or not, the concealment—the fact that something had been held back—was something that we could not work out. We therefore drew an adverse inference.

The question of the adverse inference came from a number of different sources. We tried to make a case not on any single thing but on the multiplicity of difficulties.

Stewart Stevenson: The same answer says:

“Any defects in the quality of the digital enlargement were caused by the process of charting p.c. enlargement (which is now regarded as being less satisfactory than conventional photographic enlargement)”.

Was any technical expertise on that issue brought to bear at any stage?

Andrew Smith: It was. In fairness, I should say that there was something of a difference of opinion among the experts on that particular question as it developed. One of the experts indicated that the degraded quality may just have been because of the machinery, but another expert pointed out that they should either have gone back to the old methods or used a better machine. The fact that the enlargement had become degraded would have been obvious and those involved could have gone back to using photographic prints rather than digitally enhanced ones, which seem to have been digitally degraded for some obscure reason.

There was a difference of opinion. I say frankly that we did not feel entirely confident about that one point, but the rest remains something of a mystery to us.

15:15

Mr Kenneth Macintosh (Eastwood) (Lab): I will ask Shirley McKie some questions. You are not here on trial and we are not trying to repeat your trial in any way, but the difficulty with the proceedings is that a number of individuals are also being made the victim of a number of accusations and allegations, so we are trying to get to the bottom of those, as much as anything else.

On that basis, I ask you to go back to the original murder trial and the perjury trial and to explain to committee members why the police put your name forward for elimination as part of the process of the inquiry.

Shirley McKie: It is normal for any police officer who is involved in a murder inquiry to have their name forwarded to the Scottish Criminal Record Office, so that any fingerprints that are unidentified can be checked, in case they belong to a police officer.

Mr Macintosh: The point is that the police gave your name to the fingerprint officers.

Shirley McKie: My name and that of every other detective who worked on the inquiry.

Mr Macintosh: So it was not just your name but a list of officers who may have been at the scene. The list was given to the fingerprint officers for the purpose of elimination, so at that stage they were not trying to identify you with a view to prosecution.

Shirley McKie: No. They were just trying to write off—if you like—any unidentified fingerprints.

Mr Macintosh: At that stage, how many officers identified the fingerprint?

Shirley McKie: I do not know; you will have to ask them.

Mr Macintosh: When your fingerprint was identified for the purpose of elimination, what happened? What was your reaction? What was the series of events?

Shirley McKie: I was informed in a matter-of-fact way by an inspector that one of my fingerprints had been identified. I had expected my fingerprints to appear on a piece of evidence. I had touched the biscuit tin that the other print that was wrongly identified is on in David Asbury's house before he was a suspect, so I expected to be told that a fingerprint had been found in the inquiry to be mine. I happened to say, "On the biscuit tin?" My detective inspector said, "No—in the locus." I said, "Well, that's impossible—they've obviously made a mistake. You'd better check it out." That is how it started.

Mr Macintosh: It is clear that you were at the locus but you were not in the locus. That is the main thing.

Shirley McKie: That is right.

Mr Macintosh: Even at that stage, were there any repercussions? Margaret Mitchell asked about that earlier. Were you unduly concerned? Did that become an issue quickly? When did the matter evolve into a full-scale perjury trial? Will you describe the process?

Shirley McKie: Initially, it was nothing—my inspector said, "I'll phone up and check that." I do not recall whether it was on that day or the next day when I was told that the SCRO had checked the fingerprint that was found in the house and was saying that it was mine. That is when it all turned into the mess that we have now.

Mr Macintosh: At some point you were notified that the matter would become a perjury trial. Was that immediate?

Shirley McKie: No.

Mr Macintosh: Were there a few stages before that?

Shirley McKie: I gave evidence at David Asbury's trial and nothing happened. I think that it was about a year later that I was arrested for perjury and put in a police cell.

Mr Macintosh: At that point, your fingerprint had been identified by the SCRO and verified by a number of officers at the SCRO—you do not know how many.

Shirley McKie: No.

Mr Macintosh: But that was the end of the matter. Then, suddenly, you were arrested and you faced a perjury trial. Did you try at that point to

find an independent expert to help you in your defence?

Shirley McKie: Obviously, the Scottish Police Federation has lawyers. I go to a lawyer and they employ counsel. It is then for counsel to decide what should happen.

Mr Macintosh: Indeed. One of the reasons why I ask about that stage in the process is that I think we will hear from Peter Swann at some point—whether or not we hear from him in person, we have received his written evidence—and, clearly, some of the dates in all this are important, albeit that they may not be so in terms of the whole inquiry. Peter Swann and David Russell make a lot of the dates that matter in this case. At what point did you become aware that Peter Swann had been approached by your defence team and at what point did you become aware that he had confirmed the SCRO findings that it was your fingerprint?

Shirley McKie: I am sorry, but I am not sure of the dates. I do not even know how soon that happened after we became involved with our lawyers. I honestly cannot remember even when the visit was with Peter Swann and what the timescale was. I do not know. You have to understand that I was in an absolute and utter state. I am sorry, but I am unsure of the dates.

Mr Macintosh: But the—

Iain McKie: Excuse me for interrupting, convener, but this is wrong. We can fully explain all the dates and times. I do not know what relevance the questioning has to the fact of the misidentification. I have to say that I feel that my daughter is being tried.

Mr Macintosh: Mr McKie, I prefaced my remarks by referring to the difficulty here. Your daughter has been on trial and she has been cleared of perjury. She was found not guilty of perjury. However, throughout the inquiry, a number of accusations and allegations were made against—

Iain McKie: Can you please speak up slightly? I cannot hear you.

Mr Macintosh: A number of accusations and allegations were made against the fingerprint officers. It is important to—

Shirley McKie: The First Minister also said that this was an honest mistake. Why do you not go and ask him? Time and again, I have stood up to be counted. I have told the truth. I understand that you have people to represent and that they are in a difficult situation but, in all honesty, what else do you want me to do? What else do you want me to say?

Mr Macintosh: Nothing. I am—

The Convener: You are on your last question, Ken.

Shirley McKie: You are being extremely unfair. I am the honest person here.

Iain McKie: Are you accusing my daughter of committing perjury, Mr Macintosh?

Mr Macintosh: No. I am not.

Iain McKie: But you are saying that.

Mr Macintosh: She has been found not guilty of perjury.

Iain McKie: But you are saying that her evidence—

Mr Macintosh: I am trying not to at all. I am trying to get at the facts.

Shirley McKie: But you are and it is disgusting.

Iain McKie: Why do you not admit what you are doing?

Mr Macintosh: What I am trying to—

The Convener: Can I just intervene at this point. If you are attempting to stray into the territory on which Mr McNulty has already questioned, I will not allow it. We have had an airing of that. Please put your final question.

Mr Macintosh: To be honest, I have almost finished my questioning. I am not trying to do anything of the sort, Miss McKie.

Shirley McKie: Yes, you are. Please do not sit there and insult me. That is exactly what you are doing.

Mr Macintosh: What I am trying to do is to establish what happened. A number of the points that have come out of the evidence are clearly in conflict with one another. Some of them are a matter of opinion—

Shirley McKie: Are you calling me a liar?

Mr Macintosh: No, I am not. I am asking—

Iain McKie: You are rerunning the trial, Mr Macintosh.

The Convener: I ask everybody to take a break, just for a second. There is no question of that. As I have said—I am sure that members present will back me up on this—there is no question of putting Shirley McKie back on trial. There are controversial questions and differences of opinion, and that is difficult. I ask you to answer what you think you can answer. If you do not feel that you can answer, that is fine. I will allow Ken Macintosh to put his final question, after which I will move on.

Shirley McKie: If he continues to take this tack, I refuse to answer any more of his questions.

I have been decent with you and I have listened to you. However, if you continue with the same line of questioning, I refuse to answer. How much more evidence do you need?

Mr Macintosh: It may not be any consolation—that is not the right word—but I take no satisfaction from any of these proceedings or from the fact that a serving police officer found herself in the situation in which you found yourself. I do not think that there is anybody who does not have that human sympathy for what is happening to you. However, other people are also involved. You talk about a campaign for justice, but it is also very important that we recognise that public servants in this case have not had the opportunity as yet to—

Shirley McKie: They had their opportunity to tell the truth at David Asbury's trial and at my trial and they failed to do that. I have been through hell on earth.

The Convener: I do not feel that there are any more questions. Are there?

Mr Macintosh: I am sorry. Because so much time has passed, I was trying to establish in Miss McKie's own words some of the events and her perspective on them, rather than rehearse the entrenched positions that everyone is taking up. I am trying to find out the facts as they happened.

It is my understanding from the evidence so far that you started off by saying that it was an honest mistake on the fingerprint officers' part. However, you say that, at some point, that mistake turned into something worse—a conspiracy—and all the officers who supported it therefore joined the conspiracy. That is your position. Furthermore, you say that the independent experts whom you personally brought in and David Asbury's defence team brought in, who also confirmed that the fingerprint was yours, are wrong.

Shirley McKie: Peter Swann confirmed that it was not a plant. That is what he confirmed.

Mr Macintosh: We will let Peter Swann speak for himself. You are saying that the SCRO officers are in a conspiracy—

Alex Neil: Convener, this is absolutely outrageous.

Mr Macintosh: I am just trying to work out what—

The Convener: Everybody calm down. Ken, you have had a fair shot at this. There are not really any questions in what you are saying, so I will end it there.

I want to move on to look to the future, because that is where we might be able to do something positive. I do not disagree with the lines of questioning in so far as we must try to establish as many facts as we can, difficult though that is. However, we must move on too.

I have one question for you, Shirley. It is not strictly relevant and you do not have to answer it if you do not want to. When you gave evidence at

the Asbury trial, did you have any indication throughout the trial that the Crown was going to take action against you, or did that come completely out of the blue when it happened?

Shirley McKie: When I gave evidence at David Asbury's trial, I was perhaps more terrified than at my own trial—I do not know, because it was all horrendous. At David Asbury's trial, my fear was that, because I stood up and told the truth, I would be arrested when I left the witness stand. I felt that that could happen. When nothing happened, everything went quiet and I got back to some sort of work, I thought, "Well, okay, they've got their conviction and they'll leave me alone. There may be a way back to work for me. Who knows?" When the police turned up at my door and arrested me, it was a bolt from the blue.

The Convener: However, you are saying that, when you gave evidence, because you knew that there was already an argument about the print, you were conscious that some action might be taken.

Shirley McKie: Yes.

The Convener: Thank you. I want to move on soon to discussing the way forward, so I will take a last question from Margaret Mitchell.

Margaret Mitchell: Mr Smith, I ask you to look at page 30 of your submission and reflect on whether you are still happy with what it says at the very bottom of the page. It says:

"It may well have been that Macpherson made a mistake at the outset, when applying a low threshold of elimination. However, as soon as he was warned of the challenge by the pursuer, it was our case that his mistake should have become clear to him and he should have withdrawn his initial opinion."

The inference could be drawn from that that any police officer—not necessarily Miss McKie—who challenged SCRO experts' identification should automatically be believed and therefore anything that had gone before should be dropped. I presume that that was not what you meant.

15:30

Andrew Smith: No, it was not. You have to build into that the presumption or hypothesis that there was a misidentification; that is the background against which we made our case. Of course, I am not suggesting that a police officer should necessarily be believed every time they make a comment about a fingerprint, although one would think that that would carry significant weight. What we were driving at was that, because it was a mistake, when he went back to look at it he should have seen that it was a mistake and should have owned up to it.

Margaret Mitchell: Perhaps it might have been better to say that he should have immediately

gone back and reassessed his original assessment rather than that he should just have said, "Oh well, I will just drop the whole thing and admit I was clearly wrong because I have been challenged by a police officer."

Andrew Smith: I am happy to accept that. Your comments are taken on board.

Stewart Stevenson: I want to take this opportunity to draw on these three people's knowledge and experience of what happened in the SCRO along with their broader knowledge of the system to look at what happened in the SCRO subsequently. It is probably beyond much debate that there was a need for change in the SCRO, as indeed there is in organisations generally as technical developments are made and management theory changes. I want to ask the three of you in turn whether you think that there have been identifiable improvements in the way in which the SCRO works and is managed. If you cannot answer that question, I want you to tell me that you cannot answer it and not just answer it because I have asked it. Perhaps I will ask Iain McKie first as I venture to suggest that he has the longest experience.

Iain McKie: I have an opinion, which is all I can give you. I believe that legitimate changes have been made to procedures following the HMCIC's inquiry and the many other inquiries. The unfortunate thing is that there are two things that have not altered: the culture of the organisation and the management team in that organisation. I must be completely blunt about that.

I would like to quote from the Mackay report, even though it has not been brought before the committee. It says:

"This enquiry has also highlighted that individual and corporate working practices and procedures had existed within SCRO. Also evident was an apparent complacency and institutionalised arrogance perpetuated by a lack of any robust challenge within the judicial process. ... One cannot help but firmly believe that mistakes having been made, there prevailed a culture and mindset to preserve the reputation of individuals. There was then a criminal course of action, which disregarded the consequences and the impact on others. Sadly, this entrenched arrogance by some overshadows the dedication and excellent work evident in others."

I have no doubt that excellent work is done at the SCRO, but until the SCRO's culture and management are changed, nothing is going to happen. That is the big problem for the committee. Our position is that if you retain in an organisation people who have been proven to be wrong in inquiry after inquiry—I can only say that to you, and Mulhern was the last one to say it—what confidence can the public have in those individuals and their supervisors?

If the convener will allow me, I would like to make some reference to Mr McNulty and Mr

Macintosh. I completely understand their defence of their constituents and the pain that the families have gone through. I really do acknowledge that. We have gone to hell and back and so have they. However, at the end of the day, those people were proven to be wrong and unless they and the management are rooted out and the culture is changed, nothing will happen.

There have been many potentially excellent changes at the SCRO. Unfortunately, rotten apples rot the whole barrel and until what I have said has been done, nothing will change.

Stewart Stevenson: Can I just play back and paraphrase what you have said? Are you in essence saying that it was and remains difficult for more junior but probably more recently trained people to challenge the conclusions and processes that stem from people of long experience but whose training is more distant? Is that the essence of what you are saying?

Iain McKie: It is, and there is evidence of that going back to 1995. That is relevant to Mr Ferry, who is the committee's next witness. There was institutionalised arrogance and complacency. The culture was that the senior experts were in charge and the young experts had to do what they were told. That has carried right through the organisation to the present day. Members should observe that there have not been just two mistakes; apparently a mistake was discovered in 2000 and one was made in the Sinclair case. More mistakes could be made until the culture is changed. Experts are experts and in the SCRO senior experts were given the status of gods. We have minutes of meetings held in 1995 to prove that, which we would be quite happy to provide to the committee if required.

Stewart Stevenson: Is it your assertion that, in part, the relationship between more junior personnel and more senior personnel is derived from the police service within which they operate, where it is necessary for good discipline in a uniformed service that there be a lack of questioning of people in a senior position? Is that part of the issue? If you agree with that proposition, to what extent does the creation of the Scottish fingerprint service, somewhat more distant from the police, start—if not, in your view, complete—the process of addressing those culture issues?

Iain McKie: That is an extremely important point. I have said for years that we should be separating the forensic science services from the police service. Whether we like it or not, the police are in business to fight crime and root out criminals. I know that because I was in the police force for 30 years. In my opinion, forensic scientists are there to establish the truth in an objective fashion. One of the tragedies of the case

is that that has not happened in this instance. The truth has not been established objectively by forensic scientists. The way ahead is to separate the forensic scientists from the police. I would have no police involvement at all in forensic science at any level, because we must create a culture for the forensic scientists.

As I was a police officer, I can tell you that the police culture is different—and probably rightly so. You are absolutely right to make that observation and the Mulhern report takes us forward on that. My plea to the committee is for us to have a Scottish forensic science service in which all experts are independent from the police. I remember that, years ago, the police and the fingerprint experts were friends. I know that some of the forensics officers involved in the case have been friendly with police officers for years. That is an issue because it can be difficult, at times, to turn down friends. Let us do away with that, let us separate police officers from forensics officers, as you said, and let us go forward with a completely independent service.

Stewart Stevenson: Miss McKie, with your more recent experience of being in a more junior position than your father ended up in, do you share his views, or do you have anything to add to them?

Shirley McKie: I agree that the two areas should be totally separate. The most important thing is that any supervisors in the SCRO need to be fingerprint experts. I understand that, at the moment, the supervisors know nothing about fingerprinting. If, in my case, there had been a supervisor who knew something about the way the system worked, the case might have been stopped dead at the very beginning.

Stewart Stevenson: From what you know, which may not be sufficient to answer the question, do you think that the changes in the processes in the SCRO and the changes in the way in which it deals with things are likely to move in the right direction and to address your concerns?

Shirley McKie: No. While there is a mixture of police and fingerprint personnel, and supervisors who know nothing about fingerprinting, things will not move on at all.

Stewart Stevenson: Mr Smith, I note your previous remark that you are not a criminal—

Andrew Smith: I am glad to hear that.

Stewart Stevenson: The pause was to have been followed by the word “lawyer”, but some people might not wish to hear that other word. Although you are not a criminal lawyer, do you have anything useful to add from your knowledge and experience of the SCRO and your dealings with the police?

Andrew Smith: My only experience of the matter is from my involvement in this case. To be perfectly frank, I do not think that I can add anything useful to what has been said already.

Stewart Stevenson: That is fine. I do not want to force you to answer.

The Convener: I know that Mike Pringle is quite interested in that area.

Mike Pringle: The two questions that I might have asked about that have already been answered, but I would like to return to the question of confidence in the Scottish fingerprint service. If this is a question that the McKies cannot answer, it is something that I might come back to with other witnesses. There is some evidence that there is a bit of a rift in the fingerprint service. Do you think that the culture in the Glasgow bureau is different from the culture in the Edinburgh, Dundee and Aberdeen bureaux?

Iain McKie: I would like to answer that. As I said before, culture is all important. The Scottish fingerprint service has many good experts—in fact, some of the world’s best. However, the culture in the Edinburgh, Dundee and Aberdeen bureaux is different from the culture in the SCRO. Mr Stevenson hit the nail on the head—the SCRO is a large, bureaucratic organisation that was, until recently, closely tied to the police. Unless you resolve the differences between the Aberdeen officers and Edinburgh officers, who agree that there was a misidentification, and the other officers, there will be no way forward.

I would not blame the experts for not working with one another. How can they do that? I suppose that they and the world of fingerprint experts are looking to your committee to provide a solution. How do you resolve something that is almost irresolvable between two groups of experts? It is a cultural thing. I believe that the cultures inside and outside the Glasgow bureau were totally different.

Mike Pringle: We talked about how we can restore public confidence. I think that it is your assertion—you can confirm this or not—that the scientific side should be separated from the police force. You believe that fingerprint experts should run the fingerprint service and not civilians. Is that right?

Iain McKie: Not civilians?

Mike Pringle: In other words, it should be experts who run the fingerprint bureaux—experts who have some knowledge of how the fingerprint service works.

Iain McKie: Absolutely.

Mike Pringle: There is a problem with the management. Is that what you are saying?

Shirley McKie: The circumstances in my case, I believe, were that four fingerprint people said, "That's Shirley McKie's print." The supervisors would not know what they were looking at, so how could they possibly oversee that? They took the word of those people without being able to check it themselves.

The Convener: The committee will take time to understand the processes. What were the processes supposed to be? What were the processes in the circumstances surrounding your case? What has happened in the intervening time? There is also the question that we are discussing now, which is what lessons can be learned.

Mr McKie, you said a moment ago that everyone is looking to the committee. It is a concerning thought that everyone is looking to us for answers. I am not sure that we will be able to provide answers for everyone, but I am sure that, during the next few weeks, we will allow people to come and air their views and speak frankly about what happened and how we should change things. We might make a contribution to moving forward—I put it no more strongly than that.

What you have to say is important. In your answers to Mike Pringle, you commented on the structures. On 26 April, we heard from David Mulhern a suggestion that we should speed up the amalgamation of fingerprint services and forensic science services. For what it is worth, I did not think that an overwhelming case was made for that. Do you think that it is essential that we move to merge the services?

Iain McKie: I approve of the principle of moving from a fingerprint service to a forensic science service. If someone has achieved the status of being a forensic scientist, I am not going to argue with that, but it is abundantly clear that training and other areas of verification need to improve and that staff need to become forensic scientists. I am all for them moving into the forensic science service. Why are the two services separate? Only for historical reasons. In England, again, there is a national forensic science service but the fingerprint service is separate from that.

I was in the police and we loved having control of the fingerprint service. It is a valuable service. At the beginning, we talked about how the case happened. It may well be that it happened because of the pressure brought on one or two experts by the police. That is another issue, but we need to remove such pressure from fingerprint experts.

The Convener: So, in your view, the first structural issue is about the fingerprint service moving away from direct control by the police. There is a second issue about where it should be

placed. You support David Mulhern's suggestion that we should move quickly towards the fingerprint service being brought together with forensic science services.

Iain McKie: Yes. The fingerprint service should be moved totally away from control by the police. I do not want the Association of Chief Police Officers in Scotland to be involved in it at all. ACPOS may well be there in an advisory role, but we should have a Scottish forensic science service headed by an independent civilian.

15:45

The Convener: I have a checklist of things that I want to be clear about. One of them is the process. We have not examined this in depth, but it is apparent to me that, at various points of checking the fingerprint, the experts were aware that they were checking the prints of police officers. They might even have been aware why. In your view, is it important that the work is done completely anonymously? Should fingerprint experts be made aware of the importance of a particular print?

Iain McKie: There must be an interface between the police and forensic scientists. The information that the police have obtained at a crime scene should be handed over to forensic scientists. This is not "CSI: Crime Scene Investigation"; this is the real world. Forensic scientists are objective scientists. They can sit in back rooms in darkness—I do not care what they do—away from any police influence. The problem is that people want to get someone for high-profile murders such as the Marion Ross case. I feel that that was an issue in this case. The police needed to get someone for a brutal murder.

The Convener: I just want to be clear about this. Are you saying that, in a case in which a fingerprint expert is eliminating a print—in this case, whoever was eliminating the print might have known that it was quite an important print—

Iain McKie: Absolutely.

The Convener: Are you saying that they should not know anything about the print at all? Should they know that there has been excitement—I think that that is one of the words that you have used—around a particular print?

Iain McKie: Yes—the expert should not get caught up in the emotions of the crime. That is not their responsibility; that is the responsibility of the police. The expert should be independent from that emotion, and they should be carrying out an objective assessment. Police officers take evidence to the forensic scientists. Those officers know the forensic scientists and they talk about cases. When Marion Ross—who has been

forgotten in all this—was killed, that was an awful crime, and I do not blame the scientists for wanting to solve the case. However, we need to divide things off so that there is no suggestion or hint of pressure by the police on the scientists. I think that there was pressure in this case.

The Convener: I turn to the final point on my checklist. I presume that you would agree that it is important to make international comparisons. I would have thought that you would want to make international comparisons from the beginning to ascertain whether we were in step or out of step and whether now, as we have been moving to make changes, we are in step with international thinking. I take it that you would agree that that is important.

Iain McKie: Yes. If I am wrong about this, you will tell me, but I believe that there is a burning necessity for international standards to be applied in fingerprinting. We find that there are different standards around the world. It seems that Scotland has a big opportunity to lead the world in this area and to work towards an international standard, with Interpol or others, so that, whether a print is identified in America, the Netherlands or Scotland, the same process of verification is applied. Currently, a whole lot of different processes are applied. Some of them are good, but some of them are not so good. Let us lead the way on this in Scotland. Let us go forward from this misidentification and the awful time that our family and the families of the experts have endured and gain international recognition for an international standard. Does that answer your question?

The Convener: It does. We will draw this evidence session to a close with some brief final questions.

Mike Pringle: I return to the question of amalgamating the Scottish fingerprint service into the Scottish forensic science service. Are you suggesting that it should be amalgamated in one place for the whole of Scotland? Some people work in Aberdeen, some in Glasgow and some in Dundee. Could the two services be amalgamated in Aberdeen, Edinburgh, Glasgow and Dundee, or do you envisage one great big conglomerate?

Iain McKie: I do not think that having a big conglomerate works. I have no real problem with having the various bureaux around the country. They are all equals. The SCRO in Glasgow is equal to the other bureaux. There is no harm in having people in their separate bureaux. In fact, I do not think that it is good to bring them all together, because that leads to having another bureaucracy.

There is an awful lot of pride among the bureaux. There can sometimes be a feeling of

Glasgow moving in. We should iron that out and keep the separate bureaux, but have them all working to the same structure and procedures, with the one head. They need to be united and brought together again.

Des McNulty: I return to the issue of the four SCRO staff. A number of points have been made, and I have let them flow, but I would like to ask Mr Smith a couple of questions.

The Convener: You may ask one question before I draw the session to a close.

Des McNulty: Mr Smith, you are aware that four SCRO staff faced a disciplinary tribunal. The procurator fiscal then investigated whether there was a case against them. The decision in both cases was that the staff had no case to answer. If the process has been tested and the people have been thoroughly investigated, do you think that it is reasonable for you and your clients to continue to make allegations of dishonesty, corruption and perjury against them, without evidence?

Andrew Smith: I am unclear about the context—you are saying that the allegations have been made by me. Will you clarify that for me, please?

Des McNulty: You are sitting here as one of a group of three witnesses. A disciplinary tribunal—a quasi-judicial legal process—has taken place. As far as I understand the law of Scotland, those people have been found entirely innocent of any offence. Two years on from that decision, is it reasonable to continue to make allegations? If you want to make an issue of your involvement, have you sent any letters to anyone to warn them about what might or might not be said in defence of those four people or anybody who wishes to speak on their behalf?

Andrew Smith: I am sorry, Mr McNulty, but I was instructed in a civil litigation case, which then came to a conclusion. My client was invited to come along today to give evidence and I was invited to give her legal advice. I did so. I have not made allegations about those people and, quite frankly, I resent the suggestion that I have. If you are not prepared to tell me when I am supposed to have made such allegations, I am certainly not going to try to answer a question that has not been asked properly.

Des McNulty: I am simply asking whether it was reasonable that allegations were made; not whether you made them personally.

Andrew Smith: With respect, you said to me, "Is it reasonable for you and others to make allegations?" I resent the suggestion that I have done so.

Margaret Mitchell: My final question is just out of interest. Given all that has happened to you

over the past nine years, Ms McKie, if you could change just one thing, what would it be?

Shirley McKie: Gosh. One thing. I do not know; I cannot answer that. I just wish that the experience had not taken such a toll on my family. I cannot believe that I am involved in this situation because I told the truth—it is just ridiculous. I wish I could change my dad's health—what we have gone through is awful. I do not know what I would change. It is too difficult a question.

The Convener: As we draw to a close, I realise that we have asked controversial and frank questions, but when we conduct a parliamentary inquiry, we have to try to get everything out as much as we can and we intend to let everybody air their views. I see that Iain McKie has his hand up. Perhaps you think that we have not covered everything. I want to have the last word, but go on—you can have 60 seconds.

Iain McKie: You indicated that we might be able to say something briefly at the end, so I would like to do that. I am not getting at Mr McNulty—it is just the way things work out—but he referred to the independent Black report that looked into the discipline of the SCRO staff and cleared them. That report has been totally discredited—it took no account of Mr Mackay's criminality charges. However, I believe that the authors are to give evidence to this inquiry.

Marion Ross is extremely important in this—I hope that we all acknowledge that.

We wanted to be under oath today. The committee made a choice and that is fine, but I still think that we should be.

I was disgusted by the publication of all these documents. A headline appeared in the *Daily Record* that said: "McKie 'Was in Murder House'". That is unfair to us. I would ask the committee in future to consider the publication of evidence more carefully. It is wrong to publish gossip and innuendo that has already been cleared in the court. I make no further point on that.

The expert debate and presentation are important. I look forward to those.

We have had a good look at management culture and openness.

The non-numeric system that is about to start should be delayed. Things are not ready yet. If you go ahead with a non-numeric system, you are facing danger. It is easier to make mistakes under the non-numeric system than under any other system, and I commend that to you for your experts.

I think that you have been unable to obtain the two MacLeod reports and the Mackay report. It is not a good thing for the committee or witnesses to

be—if you like—gagged in that way, and I appeal to the committee to do all that it can to get those reports. I am aware of the contents of the MacLeod reports and I believe that they should be brought before the committee.

There should be one important additional witness, Harry Bell. Mr Bell was in charge at the SCRO for years as a civilian police officer. He is crucial to the inquiry. He was a head liaison officer with the Crown Office and he has a vast amount of information for you. He was also a head during the Lockerbie inquiry. I commend Mr Bell to you.

Last but not least, at the end of the day I would like the committee—if it can—to consider recommending a judicial inquiry.

Despite the words that we have had, this has been nine years of hell for our family and I thank the committee for inviting us here and giving us the opportunity to say what we have said. I want my daughter to get away from this. I want her to leave this behind and to get on with her life again. I hope that in some way the inquiry can help us to let go of all this. I give a personal thank you to the convener for inviting us.

The Convener: I thank all three of you. I thank you, Shirley McKie, for coming in person and giving evidence. We are pleased that you have come along and spent an hour and a half answering our questions. As you know, Iain, we have had an exchange of correspondence about the issues and we might have to agree to differ on some of them. I hope that you will take it in good faith when I say that the committee is endeavouring to be transparent and impartial throughout the process. Unfortunately, we have limited time—because of the legislation that we have before us, we are officially the busiest committee, and this is an extra meeting. However, I reassure you that we take the whole matter very seriously. We have a list of witnesses, not all of whom have been revealed yet because there are some logistical problems in getting everybody together. Not everyone is coming from Scotland. That list will be disclosed in due course once the committee has had a chance to consider the logistics.

If we decide to call any other witnesses, we will do so. That is a matter for the committee but I note what you said about that. We have got to hear from everybody and, once we have heard from other witnesses, we may well be persuaded that there are other documents or other witnesses that we want to see. You will see that there have been no holds barred. We have asked for every document that we think is relevant. We have yet to test the parliamentary power in full flight, and the inquiry has been interesting from that point of view. I will stop there as everyone has had a chance to air their views. I thank you for coming along and answering all our questions.

15:59

Meeting suspended.

16:10

On resuming—

The Convener: I welcome Hugh Ferry, the former head of the Scottish Criminal Record Office. I am sorry that we are nearly an hour behind schedule. We manage that most weeks. Thank you for coming along to answer our questions. A number of members have questions for you.

Stewart Stevenson: I would like to ask a factual question. Can you confirm the period during which you were director of the SCRO, Mr Ferry?

Hugh Ferry (Formerly Scottish Criminal Record Office): To be pedantic, I was known as head of the SCRO. The term “director” was introduced fairly recently. However, I was in charge of the SCRO.

Stewart Stevenson: From what date were you head of the SCRO?

Hugh Ferry: I was head of the SCRO from 13 November 1995 until 28 November 1998.

Stewart Stevenson: That gives a context to your evidence that is quite important. During your period as head of the SCRO, were you aware of and seeking to remedy any problems related to the management structure and processes of the SCRO?

Hugh Ferry: Very much so. I was deputy head of the organisation from 1990 to 1993. At that time, I was in charge of personnel and training matters, and a few changes were introduced. Forgive me, convener, if I go off at a tangent, but I am trying to sketch out the context. Automatic fingerprint recognition—the computerisation of fingerprints—was tendered for in 1990. I was part of the group that was responsible for the tender. We realised that the use of computers to help us with fingerprint identifications could change dramatically the way in which the operation was carried out. A number of changes were set in place as early as 1990, before I returned to the SCRO in 1995.

Stewart Stevenson: Would you have expected the first matching to have been done by computer and to have come up with one of three conclusions: high probability of match, high probability of mismatch and unable to decide? Would that be reasonable?

Hugh Ferry: The process was slightly more complex than that. Once a mark had been fed in for identification, the computer would give a score of 10, 20, 30 or 40. It was up to the operator to

determine the level at which to place the suspects and then to compare fingerprints manually on the screen.

Stewart Stevenson: It is being said that in 1997, when you were responsible for the organisation, there were no documented processes. Do you agree with that statement?

Hugh Ferry: I am sorry, Mr Stevenson, but I do not understand the question.

Stewart Stevenson: I think that we have been told that there were no systematic processes for putting fingerprints through the system. In the period to which I refer, steps 1, 2 and 3 were not documented and recorded.

Hugh Ferry: I disagree.

Stewart Stevenson: Can you describe the process during that period? How did a fingerprint arrive, and how did it pass through the various stages of handling?

16:15

Hugh Ferry: You are talking about 1995-97.

Stewart Stevenson: Yes.

Hugh Ferry: The first point that I must make clear is that the fingerprint database that the computer used at that time was only for people who had been convicted of crimes in Scotland or people resident in Scotland who had been convicted of crimes outside Scotland whose tenprint form we subsequently received. Once the mark came in, the expert would examine it to see whether he or she could identify a particular pattern type: a loop, a whorl or whatever. The committee should bear it in mind that I am not a fingerprint expert. The expert could then feed that information into the computer to minimise the number of possible matches that would come out. That was documented.

Stewart Stevenson: I have found the specific evidence for which I was looking. John McLean, in a letter to the committee, states:

“I can advise you”

—that is the committee—

“that there were no formal written procedures in 1997 for processes within the bureaux which now make up the Scottish Fingerprint Service.”

Is that correct?

Hugh Ferry: I disagree with that.

Stewart Stevenson: So, if we were to ask you to return to the committee you could bring with you the written procedures that existed at that time.

Hugh Ferry: I doubt whether I could. I have been away for nine years.

Stewart Stevenson: Can you point us to anyone who could provide a copy of those written procedures?

Hugh Ferry: The head of the fingerprint section.

Stewart Stevenson: As it exists today?

Hugh Ferry: No. As it existed at the time.

Stewart Stevenson: Why would Mr McLean write to us and say in unambiguous terms—colleagues can correct me if I am misquoting or taking his remarks out of context—that

“I can advise ... that there were no formal written procedures”.

Why do you think that he, as the current head of the service, might say that?

Hugh Ferry: I can think of no reason why he would say that. All I know is that when I came back into the SCRO—I will rephrase that. When I started off as the deputy in 1990, written procedures were drawn up. As far as I am aware, those written procedures continued to be in place during my absence and after my return.

Stewart Stevenson: So in 1990 you were responsible for drawing up written procedures.

Hugh Ferry: Yes.

Stewart Stevenson: What form did those take? Roughly how many pages were there?

Hugh Ferry: I cannot remember.

Stewart Stevenson: Who had access to them? Did the procedures take the form of a volume stuck on a shelf somewhere so that you could say when any inspections were conducted that you had them, or did every individual who was operating in the service have them at their elbow as their guide to the steps that they were required to take?

Hugh Ferry: It would be fair to say that they were not available to everyone every day. During training, people were given instructions on how searches were to be carried out. At that time, a project team, whose members have now also retired, was also in place. They were responsible for working with the manufacture of the computer and advising people on how searches should be carried out. That work was all done in 1990. The procedures could then have changed, but when I came back in 1995 I had no reason to believe that they had been changed nor did I have any reason to ask to look at the procedures.

Stewart Stevenson: You returned as the head of the service in 1995. Did you at any time during your time as head review and in any way amend the procedures that you say exist but that John McLean, the current director, says did not exist in 1997?

Hugh Ferry: To put the whole operation into context, there was a weekly meeting attended by me, the head of the fingerprint section and the other sections in the SCRO, which conveniently seem to have been forgotten about. On a weekly basis, we discussed how procedures were operating and the changes that were needed, and it was left to the head of the fingerprint section to implement the changes.

Stewart Stevenson: In implementing those changes, would he have changed the written document that documented the processes that were supposed to be carried out? How would he have communicated the nature of those changes to the people in the front line who were doing the job?

Hugh Ferry: That was down to him; he was the head of the section.

Stewart Stevenson: Are you saying, “I don’t know”?

Hugh Ferry: Correct.

Stewart Stevenson: So, you are saying that, as the head of the operation, you had no knowledge of the extent to which the people in the front line who were doing the fingerprint comparisons were adhering to any standards that you tell us existed but that John McLean—in contradiction to that—asserts unambiguously in his letter to us did not exist.

Hugh Ferry: All that I can tell you is that, on a weekly basis, I reviewed the procedures with the head of the fingerprint section. It was up to him to implement any changes that were agreed.

Stewart Stevenson: Let us be clear about this. You say that you reviewed the procedures on a weekly basis.

Hugh Ferry: Yes.

Stewart Stevenson: Are you saying that you reviewed the activities and processes on a weekly basis? Procedures must be applied with consistency. Are you suggesting that they were in such a state of fluidity that they had to be reviewed every week?

Hugh Ferry: No.

Stewart Stevenson: So, what do you mean when you say that you reviewed them every week?

Hugh Ferry: I checked whether everything was in order, whether we were experiencing any problems and whether anything had to be changed.

Stewart Stevenson: How would you have known whether you were experiencing any problems if, as you say, you did not know whether

the practitioners in the front line were operating according to the procedures?

Hugh Ferry: I would not have known. I depended on my line manager to tell me what was happening.

Stewart Stevenson: What process did you go through with your line manager to satisfy yourself that he was applying the standards that you say existed?

Hugh Ferry: I simply considered the number of identifications that were being made, the number of marks that were coming in and what the backlog was. In general, I ensured that the department or the section was working as efficiently as it possibly could.

Stewart Stevenson: Does that mean that individual cases in which there was dispute, disagreement or difficulty would end up on your desk or at your management committee for discussion?

Hugh Ferry: Yes.

Stewart Stevenson: How often did that happen?

Hugh Ferry: Very rarely.

Stewart Stevenson: How often is very rarely?

Hugh Ferry: I find it difficult to remember a specific occasion on which we had a real problem with the procedures.

Stewart Stevenson: So, you are saying that that did happen but that you cannot recall a specific occasion. You have said that you were in post as the head of the operation for three years and 15 days—that is around 1,000 days. In that period, were there any such cases?

Hugh Ferry: I honestly cannot remember a problem arising with regard to the procedures or the computerised fingerprint system.

Stewart Stevenson: But you have said that specific issues relating to specific cases would come to you or your management committee for review.

Hugh Ferry: Yes.

Stewart Stevenson: I am talking about the number of instances of that happening, as distinct from my initial line of questioning, which focused on whether there were adequate documented, understood and shared processes. I am now talking about how many cases came to the head honcho's desk in the 1,000 or so days for which you were in charge.

Hugh Ferry: Let me put it into the proper context. We seem to be being sidelined by the idea that there was only one section in the SCRO

when I was there. There were three sections. Procedures in all three sections were examined on a weekly basis and any changes were left to the head of each section. During that weekly meeting, there would be occasions on which a specific problem arose; however, I cannot recollect a specific problem that led to any changes in the way in which we operated the AFR system.

Stewart Stevenson: But there were problems that did not lead you to conclude that you needed to change the processes—is that correct?

Hugh Ferry: Yes.

Stewart Stevenson: In reviewing the particular cases that came into your purview, did you conclude that issues were associated with the conclusions on the case that had come to you? In other words, while the process did not require to be changed, it may have been applied incorrectly or may not have been followed correctly.

Hugh Ferry: Correct. Equally, a mistake could occasionally be made in our identification procedures. However, the mistake would be down to human error rather than to something that would require a change in the procedures. I hope that my distinction between the sets of circumstances is clear. A problem would come to me not because it was a problem of procedure, but because someone had failed to adhere to the procedures or had made a mistake in interpreting them.

Stewart Stevenson: Three separate units were applying the same processes. If we were to ask others who were involved in the management of those three units, do you think that we would be able to see a tangible copy of the processes as they existed at that stage?

Hugh Ferry: I doubt it very much.

Stewart Stevenson: Why?

Hugh Ferry: Because in the time since I retired, they have probably gone.

Stewart Stevenson: When did you retire, Mr Ferry?

Hugh Ferry: In 1998. A lot has happened since then.

Stewart Stevenson: I have to say to you, Mr Ferry, that in the early 1970s I worked in a technical environment in which I was responsible for developing processes and standards and I could give you a copy of them today. I find it quite astonishing that you are telling me that the processes, procedures and standards that were involved in a technical environment were so ephemeral as to have vanished off the face of the earth in a very short space of time.

Hugh Ferry: All I can tell you, Mr Stevenson, is that you and I are obviously of different managerial breeds. I was there principally to be responsible for the strategic running of the organisation. I trusted my heads of section to implement. I did not have the time to sit and look at every piece of paper that came across my desk or their desks. It was their job to run their departments and they reported any problems to me. We will obviously have to differ on the point that you raised.

Stewart Stevenson: How many staff were you responsible for?

Hugh Ferry: About 100.

Stewart Stevenson: Right—a fifth of the number for whom I was responsible.

The Convener: Can you clarify a point, Mr Ferry? Who was the head of the fingerprint section to which you referred?

Hugh Ferry: If we are speaking of 1997, it was Chief Inspector William O'Neill.

The Convener: What are the three sections to which you referred?

Hugh Ferry: There was the fingerprint section, the computer print section and an administrative section, as it was called then. That has changed now; it is no longer an admin section, but some other thing—I do not know what it is called. However, that group was responsible for carrying out the vetting inquiries with regard to people having access to children and so on.

The Convener: In your answer to Mr Stevenson you said that there were procedures. Were there procedures for dealing with such circumstances as a disputed mark? If there were, would they be written down?

Hugh Ferry: No. It was quite simple. If a mark was identified as belonging to an individual, it was then checked by three other experts. In fact, because I was concerned about effectiveness, efficiency and the strategic view, which I mentioned earlier, I argued with the head of the fingerprint section and with some of the senior experts that it was a waste of people to have one expert identify a mark and then to have three others identify it. However, they convinced me that that procedure was correct because there had been occasions when, at the fourth check, someone had said, "No, I don't agree with the other experts" and the mistake had been picked up then.

Despite Mr Stevenson's suggestion, everything was working effectively and perfectly well; the safeguards were in place. If Mr Stevenson wants hook, line and sinker and chapter and verse on the matter, I am sorry but I am no longer there and I cannot speak for what has happened since I left.

The Convener: But at the time, if the first expert identified or eliminated a print, three others would follow the same procedure on that print.

Hugh Ferry: Yes.

The Convener: What would happen if the second expert said, "I can't agree that there's sufficiency to eliminate that mark"?

Hugh Ferry: Again, it would be referred to a more senior expert and there would be a discussion—almost a case assessment—to determine where the differences were and why there was disagreement.

16:30

The Convener: Was that procedure written down at the time?

Hugh Ferry: I am not aware of that, no.

The Convener: But it might have been.

Hugh Ferry: Yes, it could have been.

The Convener: Would you expect it to have been?

Hugh Ferry: Yes, I would have thought so.

Mr McFee: I will move on from the weekly meetings and the question of four officers being required to check the fingerprint. Were you aware of any circumstances—whether they were brought directly to you or not—in which some experts refused to sign identifications when other experts would sign them? In other words, they simply could not find 16 points of comparison.

Hugh Ferry: If you are asking whether there were occasions when four experts could not agree, there were.

Mr McFee: What about when one expert refused to sign an identification because, let us say, they could find only 10 points of comparison?

Hugh Ferry: That would mean that they were not in agreement.

Mr McFee: Yes, it would mean that they were not in agreement. How was that dealt with?

Hugh Ferry: By the head of the fingerprint section.

Mr McFee: How did they do that?

Hugh Ferry: By having a case conference and determining, in their opinion, who was right and who was wrong.

Mr McFee: Did you receive, or were you aware of, any complaints from any members of staff who felt that they were pressured to mark identifications up to 16 points when they could not find them?

Hugh Ferry: Never.

Mr McFee: You were never aware of that?

Hugh Ferry: Never. I can assure you of that.

Mr McFee: My next question may or may not relate to one of your weekly meetings. Were you aware of concern being shown over the taking of the names of persons who refused to sign identifications because they did not see 16 points? Were you aware also that that would happen only when somebody continuously refused to sign that there were 16 points?

Hugh Ferry: I am not aware of anything whatever of that nature.

Mr McFee: Do you know what a Q circle is?

Hugh Ferry: A Q circle? Yes.

Mr McFee: What is it?

Hugh Ferry: Quality control.

Mr McFee: Are you aware of the meeting of 24 March 1995, when that precise issue was raised?

Hugh Ferry: I am not aware of it. I cannot remember it.

Mr McFee: You do not have any knowledge of that being raised.

Hugh Ferry: I am saying that I cannot recall it.

Mr McFee: Yes, but I am asking you whether it was ever raised in the time that you were there.

Hugh Ferry: No, I cannot recollect it being raised.

Mr McFee: You have no recollection of it being raised at quality meetings. Were you not kept informed of what happened at those meetings?

Hugh Ferry: Yes, I was.

Mr McFee: But you cannot recall that incident.

Hugh Ferry: No.

Mr McFee: Were you aware that the matter was raised with Chief Inspector Law?

Hugh Ferry: I am sorry, I missed that question.

Mr McFee: Were you aware that matters of that ilk were raised with Chief Inspector Law?

Hugh Ferry: Chief Inspector Law never raised with me any issues about people being pressurised, but he made me aware of what was going on at quality circles.

Mr McFee: To be absolutely crystal clear, in your view, no officer ever made any complaint at any time that they were being pressured to mark up 16 points in an identification when they could not find 16.

Hugh Ferry: No one ever made that complaint specifically to me and I am not aware of anyone

else being informed of that and then telling me. I can assure you of that.

Mr McFee: Okay. We may return to that at a later date.

Mike Pringle: Not being a fingerprint expert—

Hugh Ferry: Nor am I.

Mike Pringle: Nonetheless, perhaps you can help me with what my colleague has just been checking with you. You can correct me if I am wrong, but my assumption is that, if a fingerprint expert finds 16 points of comparison on a fingerprint, which is then passed to a colleague who is asked to identify it, but that colleague says that they can find only 10 points of comparison, that does not necessarily mean that the person who has identified the 10 points is saying that it is not the fingerprint that it was identified as being. Or does it?

Hugh Ferry: The whole problem, in my experience, was to do with the 16 points. That was referred to earlier by Mr McKie. There seemed to have been some heaven-sent reliance on a 16-point identification. However, during the time when I was involved, I was learning from other experts in other areas that I visited and from experts within the SCRO that, because of the unique nature of a particular mark, 10 or 12 points could be sufficient to give an identification, even if there were not 16 points, provided that there were no dissimilarities. It is quite possible that I would find 10 points of similarity and you would not find 10, or that you would find 16 and I would not find 10. It is as simple as that. It is not a science. Let us be honest. There is a forensic value attached to it, but it is not a science and you cannot say conclusively that you have found a match.

Mike Pringle: So, if the expert who looks at the mark says initially that there are 16 points of similarity and the second person says that there are 10 points, would it be likely that the first person would take the mark to somebody else to look at?

Hugh Ferry: Yes.

Mike Pringle: And to other people thereafter?

Hugh Ferry: Yes.

Mike Pringle: Would the person who had identified 10 points of similarity then disappear from the equation completely, so that there would be two, three or four new people, excluding that one person?

Hugh Ferry: As I said, there would be—for want of a better expression—a case conference, until a sufficient number of experts were agreed; the one who did not agree would have to explain why they did not agree and say where they saw the dissimilarities or where they did not see the similarities. Then there would be a consensus.

Mr McFee: What if there was no consensus?

Hugh Ferry: Then the print cannot be identified.

Mr McFee: So if there is one expert who cannot confirm an identification, the print is not identified.

Hugh Ferry: That is right.

Mr McFee: We will return to that.

The Convener: That is what we have been advised by the SCRO.

Marlyn Glen (North East Scotland) (Lab): I would like to go back to some general questions. What, if any, organisational failings did you identify during your period as head of the SCRO?

Hugh Ferry: A number. It is hard to try to enumerate them all just now.

Marlyn Glen: Rather than ask you to say how many such failings there were, I was going to ask you to explain what steps you took to address the issues as they arose. That is what we are interested in.

Hugh Ferry: Among the problems that I encountered in the fingerprint section was the fact that we were finding accommodation and the volume of work difficult. As far as I was concerned, those basic problems had to be addressed by creating a good working environment for the staff. That might sound simplistic, but that was the first problem that had to be resolved. We then discovered that we had six police officers and—returning to the point that Mr McKie made—we had to ask whether we needed police officers in there at all or whether the fingerprint section should be detached. Eventually, the police officers who were forensic experts were replaced by civilian fingerprint experts.

We also had a problem with regard to the amount of time that was being spent on examining all the marks and prints that were being sent to us; that was addressed with the AFR system, which allowed computerisation.

Marlyn Glen: Can you give us an idea of the dates of those changes?

Hugh Ferry: We started the AFR project in 1989-90. Later on, we had another problem with getting fingerprints into the SCRO in tenprint form, as we called it. That led us to bring in what we called the Livescan system, which allowed the electronic capture of fingerprints at remote locations and speeded up the system. That was an ideal operational tool, because it meant that at the point where a person was arrested, whether he was in Aberdeen or Dumfries, he could be identified on a central database. Those were the general issues that we had to address.

Marlyn Glen: I presume that the replacement of police officers with civilian experts was done

gradually. What kind of timescale are we talking about for that?

Hugh Ferry: That was achieved over the period from when I started in 1990 until about 1995. It took about four or five years.

Marlyn Glen: Did you ever raise any of those matters with the SCRO's controlling board?

Hugh Ferry: Yes.

Marlyn Glen: Were representations about those matters made in writing? Do you know whether those documents are still available?

Hugh Ferry: The minutes of the controlling committee should still be available from what was then the Scottish Office. The Scottish Office was responsible for the minutes of the controlling committee.

Marlyn Glen: So those might be available to us.

How do you consider the issues have been dealt with subsequently, given that the central dispute in the McKie case remains unresolved?

Hugh Ferry: I have quite a few thoughts on that. This is the first time that I have been given an opportunity to address the issue. First, I feel quite lonely sitting here today. Secondly, I object to this idea of a conspiracy and to the way that I have been criticised—perhaps not directly, but when people talk about the SCRO's management they are talking about Hugh Ferry—for bad management. The one thing that annoys me is that that is never put in context.

In the SCRO, we had forensic experts and forensic scientists who were never involved in scenes of crime. I was responsible for not letting our experts become scenes-of-crime officers like those in every other bureau in Scotland. Strathclyde wanted officers who would go along to the scene-of-crime examination and then come back to make an identification. We said that we wanted no involvement with that. We wanted our experts to remain completely and utterly independent. We wanted identification to be—pardon me for saying so—almost an academic exercise, so that our officers could never be accused of planting evidence so that they could get a promotion by identifying the perpetrator of a particular crime.

Those quality issues changed quite radically over the eight periods, off and on, that I was involved in with the SCRO. We ended up with a much better service. Lots of improvements still needed to be made, but change needed to be gradual. We could not, I suggest, change just for the sake of changing.

Margaret Mitchell: Good afternoon, Mr Ferry. To provide an indication of the on-going work of the fingerprint bureau, can you say how frequently

disputes would arise over the identification of a fingerprint when you were there?

Hugh Ferry: I have no idea. I honestly cannot answer that, Ms Mitchell.

As I said to Mr Stevenson, I do not believe that there is any point in having a dog and barking yourself. Provided that the main strategic issues were carried out, the person who had been appointed head of that section, who had shown that he had the ability, ran that section. I would not have liked, and did not like, having the assistant chief constable from Strathclyde police peering over my shoulder to ask me what job I was doing. If you cannot trust a person to do the job, why have him in the job in the first place?

Margaret Mitchell: I just wondered how often the identification of a print would seem unclear to someone but clear to someone else. I wondered whether that situation would have been, say, a weekly occurrence. Are you saying that you would not have been in a position to know about that kind of routine work?

Hugh Ferry: I am saying that the head of section would have dealt with that. If he had difficulties with a problem, he would raise it with me, but dealing with problems on a day-to-day basis was what he was paid for.

Margaret Mitchell: I understand that.

Were other prints disputed for elimination purposes? Various people such as doctors might have left prints at the scene of a crime that would need to be eliminated. Are you aware whether, during your time, any police officer disputed their print being at the scene of a crime and then being identified for elimination purposes, other than in the McKie case?

16:45

Hugh Ferry: I need to put something into context here that has not come out earlier. As you will be well aware, every police officer has his fingerprints taken when he joins the police. However, under an arrangement with the Police Federation, those fingerprints are stored not in the central database but in a separate database. Therefore, a routine examination to try to trace the person who had left their mark at the scene of a crime would not include the fingerprints of police officers.

When I went into the SCRO, the arrival of disclosure meant that, if any piece of evidence that should be made known to the defence was available, it had to be made known. An example of such evidence would be an unidentified mark, such as the one in the Marion Ross case. The procedure was therefore that we would have to disclose to the defence that there was an

unidentified mark. Alternatively, we had to eliminate that mark. The senior investigating officer, knowing that he would be kept abreast of what was happening, and knowing that there was still one unidentified mark, would request that the police officers who had attended the locus have their fingerprint cards withdrawn and compared with the mark. I, or the head of the fingerprint section, would agree to that. We assumed—I may have been wrong in doing this—that there was a log of the officers who had visited the scene and that their fingerprint cards would be withdrawn.

Before I go any further I should say that the Shirley McKie case was the only time that there was ever a challenge. There had been numerous previous occasions on which officers had left their fingerprints at the scene of a crime. When I went to the criminal investigation department in my early days, the first thing that I was told was to put my hands in my pockets in case I inadvertently lifted something. That was in the days before we had latex gloves. Police officers are nosey people and are always picking things up. It was incredible, but a large number of prints could be eliminated because they were the prints of police officers. In my time in the SCRO, the Shirley McKie case was the only one in which there was a challenge.

Margaret Mitchell: You mentioned the logging of people who go to the scene of a crime. Was there ever any other occasion when a print was in dispute, regarding someone who was not on the log but who was a police officer?

Hugh Ferry: I am not aware of anything like that.

Margaret Mitchell: You have said that, if there were any dubiety, a conference would be held and experts would all consider the issue.

Hugh Ferry: Yes. That was my understanding.

Stewart Stevenson: You said that you would be asked to withdraw the fingerprint cards of people who were on the list of those who had been at the locus. It appears to be beyond dispute, although I could be corrected, that Shirley McKie's name was not on the list of people who had been at the locus—albeit she was on the team. Would there be any explanation of why her name would be put forward—in the process that you have described—to have her card withdrawn, given that she was not on the police's list of people who were at the locus?

Hugh Ferry: I have no knowledge of who was at the locus. All that I had knowledge of—or, rather, that the head of the fingerprint section had knowledge of—was the names that were disclosed to him by the senior investigating officer.

Stewart Stevenson: You are saying that the process was that, under those circumstances, the

names that you would be given would be the names of those who had been at the locus.

Hugh Ferry: Yes.

Stewart Stevenson: And if you were given a list that included Shirley McKie's name, that would have come through a process within the police and would have had nothing to do with you. That is reasonable; I would not expect it to be to do with you.

Hugh Ferry: It would be a matter for the inquiry team in U division of Strathclyde police to submit to us the names of the police officers whose prints they wanted to have eliminated against the outstanding mark.

Stewart Stevenson: But your expectation is that that list—

Hugh Ferry: Would be of people who had been at the locus.

Stewart Stevenson: Was that the nature of the agreement with the federation—that only people who were on the log as having been at the locus should be listed?

Hugh Ferry: Yes.

The Convener: You are saying that the list of police officers that the SCRO received would contain only those police officers whom the investigating officer had told you were at the locus. It would not contain the full list of officers who were involved in the investigation of the crime.

Hugh Ferry: The instruction was that the list was of officers who had been at the locus. As to whether the senior investigating officer decided to submit other names, that was up to him. At that time, we could not question the rights or wrongs of who was on the list. We had to accept that, bearing in mind that we were totally detached from the inquiry. We were just trying to do our best.

The Convener: At what point in the process would the SCRO be told that there was an issue in respect of an officer's print?

Hugh Ferry: The situation was that all the marks had been identified except one, which was outstanding. Because of the disclosure requirements, the senior investigating officer would be aware of that. First, we would check whether the print belonged to a police officer who had been at the locus. Once the names had been submitted, we would do that.

The Convener: Is it correct that, at some point in the McKie case, the SCRO was given information about the significance of a mark?

Hugh Ferry: I do not understand what you are getting at, convener.

The Convener: In the evidence that was submitted to us by fingerprint experts who

checked the print for elimination, they indicated that they knew that there was some excitement—that is the word that they used—about the mark that they were checking. They seemed to know that the process was about eliminating a police officer. Are you not aware of that?

Hugh Ferry: No. I think that we are confusing matters. My knowledge of the case was, quite simply, that there was an unidentified mark at the locus. In an attempt to determine whose mark that was, we checked the prints of the police officers who were at the locus against that mark. It was not a case of saying, "We'll have to prove that it was a police officer." It was just an attempt to eliminate that possibility.

The Convener: In my view, the question is pertinent. Looking back, I wonder whether it is appropriate for experts who are eliminating a print to be told why they are doing that. If I believe the evidence that we have been given, it is clear to me that experts who were checking the print were told that the mark was significant because it belonged to a police officer. Are you saying that that never happened?

Hugh Ferry: I am saying that the mark was significant because it could have belonged to a police officer. We were trying to eliminate that possibility. If the print was not that of Shirley McKie or any other police officer, we would have been left with a murder scene at which there was an unidentified mark.

The Convener: I think that you are skipping over some key events. Because of the concern around eliminating the mark—

Hugh Ferry: With respect, the excitement to which you refer was created by Shirley McKie, not by the SCRO or anyone else. As far as I am concerned, this was a routine murder inquiry, if there can be such a thing. In this case, there was a mark that could not be eliminated. There are such marks in most cases. The mark could have belonged to the gas meter reader.

The Convener: The whole point of the checking and rechecking was that there was an issue around the mark.

Hugh Ferry: That is correct—after the print was identified as Shirley McKie's. That is a significant difference.

The Convener: That is what I am talking about.

Hugh Ferry: It became an issue after the fingerprint was submitted to us and the mark was identified as belonging to Shirley McKie, in our experts' opinion, because she had denied that it was her fingerprint.

The Convener: Looking back on the process, do you think that it is right that fingerprint experts

should be aware of the level of interest in a particular mark?

Hugh Ferry: They were aware.

The Convener: I know—we have established that.

Hugh Ferry: They were aware that the print could have belonged to a police officer.

The Convener: With hindsight, do you not think that the process should have been completely anonymous? It is clear to me that the excitement around the mark being identified as Shirley McKie's led to checking, further checking and further confidence. We will go into that matter in some detail. Everyone knew that the mark was very significant and that it belonged to a police officer who claimed that she was not there. I am suggesting that, in a pure process, experts should not get to know the significance of a mark.

Hugh Ferry: On a tenprint form, the details of the individual are shown at the top and the ten fingerprints are underneath. How do you make it anonymous? Do you cut the top off?

The Convener: Why does an expert need to know that the reason for eliminating or identifying a print is that it is the mark of an officer—

Hugh Ferry: But they do not need to know that.

The Convener: —who is disputing her presence. Why do they need to know that?

Hugh Ferry: We are at cross-purposes. I will give you my version of what happened, as I recollect it. We had one unidentified mark and it was suggested to us that we compare it with the police officers who had been at the locus. I was informed that the mark had been identified as that of a police officer but that she had denied it. That is quite clear. We all know that. I was attending a meeting that day so I asked the expert who told me what had happened, "Look, just in case there is any dubiety here, will you have that checked again and see me when I get back from the meeting?" I came back from the meeting and he told me, "Another three experts have looked at it and it is definitely the girl who is responsible, but she is still denying it."

I then went to see the ACC crime of Strathclyde, to whom I was responsible on a day-to-day basis on the controlling committee. I told him what had happened. Because of the seriousness of the matter—if it was her fingerprint, she was telling lies—he asked me to get another three experts to check it. I did that and I got the same result. They said that there was definitely no mistake and that it was her fingerprint.

The Convener: But the three experts who rechecked it knew that they were checking Shirley McKie's print and they knew why.

Hugh Ferry: They were asked purely and simply, "Could you identify that mark against that tenprint form?"

The Convener: That is all they were asked to do?

Hugh Ferry: Yes.

Mike Pringle: Going back to what you said earlier about misidentifications, what was the process if an expert was unhappy with an identification? How often did that happen? Unless I misunderstood you, you implied that it is very rare.

Hugh Ferry: That there was a misidentification?

Mike Pringle: Yes.

Hugh Ferry: Yes.

Mike Pringle: When Charles Stewart gave evidence under oath in 1999, he said:

"Personally there have been one or two identifications passed in a year that I am not happy to sign as an identification because I think there is something wrong".

He said that that happened a couple of times a year. The implication is that, during the three years that you worked there, there could have been six such cases—or slightly less or slightly more—but none of them would have been brought to your attention as head of the bureau.

Hugh Ferry: No.

Mike Pringle: Why not?

Hugh Ferry: I think that it is quite clear what we are talking about. You are suggesting that Mr Stewart was pressured into—

Mike Pringle: No. I am not saying that at all. What I said was that, under oath, Charlie Stewart said:

"Personally there have been one or two identifications passed in a year that I am not happy to sign as an identification because I think there is something wrong".

I am suggesting that, during your time at the SCRO, that must have happened—according to Mr Stewart—perhaps five, six, seven or eight times. However, you are saying that you, as head of the bureau, would never know about that.

Hugh Ferry: I was not made aware of that. I was aware of misidentifications that never became full identifications, but I was not aware that anyone was pressured or was signing forms that he was unhappy with. He should not have signed forms that he was unhappy with: it is as simple as that.

Mike Pringle: I am not suggesting that he signed any forms. I am trying to find out how often mistakes were made. In his evidence under oath, Mr Stewart said that it happened perhaps twice a year. Therefore, during the period that you were at

the SCRO, it must have happened five, six, seven or eight times, but you were never aware of that happening. Information about that did not come to you.

Hugh Ferry: No.

17:00

Mike Pringle: Were you ever consulted on your replacement, Harry Bell? Have you ever met Harry Bell to discuss the McKie case? What discussions did you have with Harry Bell subsequently? He was the next person in the post.

Hugh Ferry: I met Harry Bell once after I retired, when the SCRO moved to its new premises at Pacific Quay, in Glasgow. My wife and I, along with the other still-living heads of the SCRO, were invited to a social evening. That has been my only involvement with Harry Bell since I retired.

Mike Pringle: You were not involved in the interview process when you were replaced?

Hugh Ferry: No.

Mike Pringle: So, you have not discussed the Shirley McKie case with him.

Hugh Ferry: No.

Mike Pringle: Okay. Let us move on. There seems to be a divergence of opinion between the Glasgow fingerprint bureau and the bureaux in other parts of Scotland. During your time in Glasgow, was there any difference? Was the whole fingerprint process approached differently? Were different practices followed in the other bureaux?

Hugh Ferry: There is one point that I would like to make, for clarification. Mr Neil raised it earlier when he talked about the SCRO Glasgow bureau. When I was in the SCRO, it was a common police service that was funded jointly by the eight police forces and the then Scottish Office. It was the Scottish Criminal Record Office that had a fingerprint section and that held the whole of the fingerprint collection for the whole of Scotland. We happened to be based in Glasgow. For reasons best known to themselves, the police authorities in Lothian, Dundee and Tayside, Grampian and Fife maintained their own bureaux at their own expense in addition to the central service that the SCRO provided.

To be pedantic, there was not a Glasgow bureau of the SCRO; there was an SCRO bureau that happened to be based in Glasgow, and there were four other fingerprint bureaux in Scotland. Their practices were different—do not ask me what they were; they were nothing to do with me. Their only common practice was the fact that the majority of their experts were also scenes-of-crime officers. They used their own methods and maintained only

local fingerprint collections. If they could not get an identification from any of their local criminals or from criminals who travelled into their areas, they would refer the matter to us at the central bureau, which was based in Glasgow.

Mike Pringle: But in relation to the experts in each bureau—

Hugh Ferry: I do not know what their practices were. I cannot tell you that. I have not a clue. That was not in my remit.

Mike Pringle: Perhaps the committee can follow that up and find out whether the practices were different.

What recollection do you have of the events when the Marion Ross investigation in relation to mark Y7 took place?

Hugh Ferry: I had no involvement in that case, although I was aware that there had been a murder. At the weekly meetings, I was told about all the serious crimes, as we had to allocate resources based on the seriousness of the crimes, bearing in mind the total workloads and the backlogs that we had. Other than knowing that a murder had been committed, I had no knowledge of the case until I was told that one outstanding mark had been identified as belonging to a police officer. That was my first involvement with the Marion Ross case.

Mike Pringle: Had you no further involvement thereafter?

Hugh Ferry: I have had no involvement since then. I made a statement to Tayside police after I retired.

Mike Pringle: I was just about to ask about that. Were you interviewed by James Mackay, as part of his official police inquiry? If so, what information did you give him and have you since been made aware of any findings of the Mackay report?

Hugh Ferry: I was not interviewed by Mr Mackay; two officers from his team visited me at home.

Mike Pringle: Were they from the inquiry team?

Hugh Ferry: Yes—they were working for Mr Mackay's team. It was suggested to me that I would receive a copy of my statement to give me the opportunity to clear up any anomalies and to correct any errors, but I was never afforded that opportunity nor have I had access to the Mackay report. My appearance today is the first time, other than the Tayside inquiry, that I have had anything to do with the whole inquiry.

Alex Neil: I want to be clear about the process for identification. Are you saying that, at the relevant time, if a fingerprint identification was disputed by one of the experts who looked at it, a case conference would take place?

Hugh Ferry: That is my understanding.

Alex Neil: How many people would attend the case conference?

Hugh Ferry: It would involve the head of the section and the senior fingerprint experts.

Alex Neil: Would there typically be four experts?

Hugh Ferry: Yes—probably four or five.

Alex Neil: If one of the experts disagreed before or at the conference but the conference nevertheless agreed to go forward with the majority view, would the Crown or the defence in the case be informed that one or more experts had disagreed?

Hugh Ferry: I doubt that very much.

Alex Neil: The Crown and the defence would not be informed.

Hugh Ferry: They have been informed since the disclosure rules were introduced—which are fairly recent, as you know. However, before we had—

Alex Neil: When were those rules introduced? Did they apply when you were at the SCRO?

Hugh Ferry: Yes.

Alex Neil: At the time of the Shirley McKie case, would the defence normally—

Hugh Ferry: That is why we were checking the print.

Alex Neil: At the time of the Shirley McKie case, if one or more experts had dissented, would the Crown or the defence normally have been notified of that?

Hugh Ferry: That would have been the case only if the senior investigating officer was aware of the dispute. It should be remembered that the SCRO does not present the case; we present evidence to the SIO.

Alex Neil: I want to be clear about that, because it is very important. If there were four fingerprint experts and one said, "I disagree with that," or, "I'm not sure about that," the procedure was that the matter would go to a conference. Is that correct?

Hugh Ferry: Yes. Are you talking about what happened in the SCRO?

Alex Neil: Yes. In that situation, a conference would always be held, and even if after that one or more officers still disagreed, as long as the senior officer said that it was so-and-so's print, the SCRO would submit it to Strathclyde police—or whatever police force—as that person's print.

Hugh Ferry: That is my understanding.

Alex Neil: If that was the case, would the police be informed that the view was not unanimous?

Hugh Ferry: I doubt it.

Alex Neil: So nobody would be informed other than the people who were inside the SCRO.

Hugh Ferry: Correct—people in the fingerprint section.

Alex Neil: Would the dissent be minuted in the SCRO?

Hugh Ferry: I doubt it.

Alex Neil: Would the conference be minuted?

Hugh Ferry: I doubt it.

Alex Neil: There would be nothing at all.

Hugh Ferry: I doubt that anything would be produced.

Alex Neil: If that is the case, to the best of your knowledge in the Shirley McKie case, did any officers take a different view from the first officer who looked at the print?

Hugh Ferry: I was not made aware that any officer dissented from the view that it was Shirley McKie's fingerprint.

The Convener: I am sorry to cut across you, Mr Ferry—perhaps I am having difficulty in following the discussion, although I am trying—but I thought that you said earlier that if dissent was expressed at the case conference, that would be enough for a mark not to go forward.

Hugh Ferry: No—I am sorry. I misled you there—that was my mistake. I picked you up wrong. I thought—I do not know what I thought, to be honest, but I obviously misheard you. As far as I was aware, if dissent was expressed and fewer than three experts were in agreement, I want to make the point clear—

Mr McFee: I asked a specific question about what would happen if one expert disagreed; you told me that if one disagreed, it was not an identification. Are you now saying that that is not the case?

Hugh Ferry: No—I am saying that it is possible that other experts could examine a mark and have a consensus. I am trying to make a distinction.

Mr McFee: So you just keep going until you get a consensus.

Hugh Ferry: That is possible.

The Convener: We need to be absolutely clear about what the process was supposed to be. If you want to think about that and set it out for us in writing, that is fine, but we need to know what the process was supposed to be, so that we can consider what the process was in the McKie case. That is very important.

Hugh Ferry: I appreciate that, convener.

Alex Neil: You appear to have given at least three different scenarios, all of which must be contradictory.

Hugh Ferry: I apologise if I have done so; that was not my intention.

Alex Neil: Okay. In the Shirley McKie case, was there any dissent about the fingerprint identification?

Hugh Ferry: To my knowledge, there was no dissent in the Shirley McKie case.

Alex Neil: By your own account, the fact that you were not aware of it did not mean that dissent did not happen.

Hugh Ferry: That is correct. There could well have been dissent.

Alex Neil: Did you disclose to the Crown or to the defence at any time that you had gone to the assistant chief constable once you had been told—

Hugh Ferry: I was never given the opportunity to speak to anyone other than the Tayside inquiry.

Alex Neil: You never gave evidence to any third party.

Hugh Ferry: No.

Alex Neil: Is it true that a conference of 20 experts was held within the SCRO to discuss the Shirley McKie identification?

Hugh Ferry: When was that?

Alex Neil: In 1997.

Hugh Ferry: What date?

Alex Neil: I do not have the precise date with me. Let me rephrase the question. I remind you that although you are not under oath, we expect you to tell the truth.

Hugh Ferry: Of course.

Alex Neil: Was there at any time in 1997 a meeting of 20 SCRO officers held in a private office to discuss Shirley McKie's fingerprints?

Hugh Ferry: That is not something that I recollect. I am not saying that it did not happen, but I certainly was not at any meeting of 20 fingerprint experts.

Alex Neil: Were not you involved in calling or authorising such a meeting?

Hugh Ferry: Yes. I remember that there was something, but not the date. I would have to have time to think about it. It is not clear at all.

Alex Neil: Let us leave aside the date. To be fair to you, it was a long time ago. Was a meeting of 20 experts called?

Hugh Ferry: I cannot recollect it. I am not saying that it did not happen; it could well have happened, but I would have to think about it. At this particular moment, I cannot remember such a meeting taking place.

Alex Neil: Did you at any time discuss Shirley McKie's fingerprint with Detective Chief Inspector Stephen Heath, the officer in charge?

Hugh Ferry: The only person that I can remember speaking to about it was Detective Superintendent Bob Lauder.

Alex Neil: What was the nature of that conversation?

Hugh Ferry: Just that the fingerprint had been identified as being Shirley's.

Alex Neil: So you spoke to the assistant chief constable and the chief superintendent.

Hugh Ferry: Yes.

Alex Neil: Did anyone else in the SCRO know that?

Hugh Ferry: They knew that I had been to see the ACC.

Alex Neil: To the best of your knowledge, during your time at the SCRO, was any information disclosed to third parties, specifically Peter Swann, or was any information provided in any way to Peter Swann about Shirley McKie's fingerprint?

Hugh Ferry: I heard that question being asked earlier. I have no recollection of any information being disclosed to Peter Swann.

Alex Neil: That is not to say that it did not happen.

Hugh Ferry: That is not to say that it did not happen.

The Convener: Before we go any further, I am sensing rumblings from the committee. I realise that you are feeling a bit lonely, Mr Ferry, so perhaps we need to rethink who else we need to call. It is absolutely critical that the committee understand the processes that were used in 1997. That is vital. I know that you can provide some evidence of that, but the committee might have to go to other people as well. We will need to think about it.

However, I must impress upon you that the matter is really important to us and I want you to think about how we can get to the bottom of it. We need to understand where the processes were adopted and where they were not in the McKie case so that we can compare that with what is happening now. I give you notice that we might have to recall you or think about who else we need to talk to in addition to you. I really feel that there is a gaping hole in the evidence and that we

cannot leave it. I say that to members who are concerned that we are not getting the information that we want. That is not entirely your fault, Mr Ferry—I realise that.

17:15

Mr McFee: I understand that Mr Ferry will not have the answers to everything, but my concern is about the inconsistency of the answers that have been given to date. I have a couple of quick questions. Is it the case that a lower standard of identification pertained to elimination prints than to, for example, prints that would eventually appear in a courtroom?

Hugh Ferry: Yes, that is my understanding.

Mr McFee: So a lower standard was applied to elimination prints.

Hugh Ferry: Yes.

Mr McFee: If a lower standard is applied—in other words if the points of comparison may number only a few—do you accept that the possibility of a mistake is increased?

Hugh Ferry: Yes, if there is only one person, or fewer than four people, checking the print.

Mr McFee: You have told me what the process is. I am asking you whether you consider that the application of that lower standard increases the possibility of a mistake.

Hugh Ferry: Yes.

Mr McFee: In reply to Alex Neil, you said that you are not aware of there being any experts within your department who disputed that the print was Shirley McKie's. Were there any people in the department who could not find 16 points of comparison?

Hugh Ferry: That is a question I cannot answer, because I am not aware of anyone who could not find 16 points.

Mr McFee: Who?

Hugh Ferry: I said that I am not aware of there being someone who did not find 16 points.

Mr McFee: You are not aware of anybody who did not find 16.

Hugh Ferry: No, I am not.

Mr McFee: That is amazing.

Hugh Ferry: Why is it amazing? With respect—

Mr McFee: It is amazing because some of your officers have said in their reports to this inquiry that they could not find 16 points.

Hugh Ferry: Let me make an observation. This is the first involvement that I have had in the case and I am being asked to recall events from nine

years ago. I am doing my very best to be truthful and honest and to tell you the procedures as I knew them. If I made a mistake, I apologise sincerely to the committee. However, nothing has been done in malice.

Mr McFee: I hear you. Basically, whether we were talking about a thumbprint or a footprint, you would not necessarily know unless one of your officers told you.

Hugh Ferry: That is absolutely correct. I am not a fingerprint expert.

Mr McFee: I understand that. I am now trying to understand what control you had within the department for which you were ultimately responsible, with the sort of evidence that we are discussing going through in a developing situation in which individuals were not finding the same number of points of comparison.

Did you give authority for a blind test?

Hugh Ferry: Yes.

Mr McFee: What is a blind test?

Hugh Ferry: A blind test is where a mark has been identified by an expert or a number of experts and is then fed into the workload of another expert to test whether he or she can identify it as being from the same individual.

Mr McFee: At the time of the blind test, did anybody disagree? Did anybody say that they believed that the print was not Shirley McKie's fingerprint?

Hugh Ferry: I am not aware of that. I can only give you the information that was passed to me.

Mr McFee: Sure. Did you authorise the blind test?

The Convener: This is your last question.

Hugh Ferry: I do not know.

Mr McFee: You do not know whether you authorised it.

Hugh Ferry: I did not specifically authorise the blind test. The head of department or head of section would be responsible for that.

Mr McFee: I presume, in that case, that you did not receive the results of that blind test.

Hugh Ferry: No, I did not. I can only give you my knowledge.

Mrs Mulligan: Are you aware that ACPOS has acknowledged that print Y7 is not that of Shirley McKie? Do you have any views on that, given that you were the head of the service at that time?

Hugh Ferry: As I have stated, I am not a fingerprint expert. I had worked with the individual fingerprint experts concerned for a number of

years and I had no reason to doubt that the information that they were submitting to me was accurate, in as much as they believed the print to be Shirley McKie's fingerprint. In my opinion, they had absolutely no axe to grind. The exercise was not going to gain the experts any recognition, and it was not going to harm them in any way if they did not say that the print was that of Shirley McKie. It was purely and simply an academic exercise, if I may use that term. They were happy that it was Shirley McKie's fingerprint.

Mrs Mulligan: I appreciate that the events happened some time ago and that you have tried to answer our questions as best you can from memory. However, at that time, if there had been somebody among the experts—you say that you are not an expert—who felt that the print was not as it was identified, would the matter eventually have come to you for resolution?

Hugh Ferry: I would have hoped so.

Mrs Mulligan: Was there a process whereby the matter should have come to you if there had been a misidentification?

Hugh Ferry: I am sorry to keep going on about this, but the head of the fingerprint section was the person who was responsible for the day-to-day running of the section. He was responsible for procedures, and I was sitting at the top of the tree to resolve any conflicts that came around. All I can tell you is that I was never aware of any problem with anybody saying that it was not Shirley McKie's fingerprint. I am not saying that that was not the case; I just do not know. It is as simple as that. I have no axe to grind with Shirley McKie. I have never met her.

I am sorry to harp on about this, but the SCRO employed fingerprint experts, not scenes-of-crime officers. With regard to Mr McFee's point about procedures, I apologise if I have in any way improperly misled the committee about the number of experts who should do things. I was not involved with the work on a day-to-day basis, and it was nine years ago. When the Taylor inquiry and report were under way, it was made clear to me that I was not to contact anyone in the SCRO. This is the first time in nine years that I have seen the experts who are sitting behind me now. I could easily have spoken to people and asked what they did in 1997; however, I have tried to be as fair as I can with the committee and have told you what I recollect. If I have confused you in any way, please accept my apologies. I cannot say any more than that.

Mike Pringle: I have a couple of brief questions to finish up with.

The Convener: I want to wind up. Mr Ferry is not in a position to say much more—that is what concerns me.

I appreciate that you are trying to recollect something that happened nine years ago and that you have done your best to do that. However, from our point of view, that is not satisfactory for our inquiry. We need to discuss with you who is in a position to give us answers to our questions. I would like to have a checklist of who might be able to help us.

Mike Pringle: I have two brief questions before we get to that. You heard the evidence that was given earlier. You acknowledged that you had no knowledge of fingerprinting at all. Do not you think that the head of the fingerprint service should have, if not expertise in fingerprinting, at least some knowledge about fingerprinting? Should he not have come through the process? Is it a good idea to have in the future a complete novice who does not understand the process at the head of the service? I am looking forward. The committee is going to have to look to the future.

Hugh Ferry: I will put the matter into context as briefly as I can. Originally, all the fingerprint experts in the SCRO were police officers. That is why there was a hierarchy of police officers from the chief inspector all the way down. Principally because of cost and other pressures on policing, the police officers were gradually phased out and replaced by civilian experts. There is now only one police officer left in the SCRO—the chief inspector—and that should be phased out; however, that cannot be done overnight, as he will have to be replaced by someone else who has his expertise.

I agree with Mr McKie's view that fingerprint experts should be civilians. My only difficulty is that I do not see how we can totally remove the role from policing; the one is so interwoven with the other. The convener earlier made the point—which is, in effect, the same point that Mr McFee made—about blind testing. The only question that I have is about how we ensure that the right print has been identified from the tenprint form if we do not know whose tenprint form it is. That is my only worry. There should be an independent forensic service.

The Convener: It is helpful for us to hear that. You mentioned Willie O'Neill. Was he a fingerprint expert?

Hugh Ferry: No. He was the second-last police officer.

The Convener: Who was the most senior fingerprint expert below him?

Hugh Ferry: I believe that at that time it was Robert McKenzie. Charlie Stewart was also senior.

Alex Neil: Given that Mr Ferry left the SCRO in 1998, it would be useful for us to hear also from

Harry Bell, who succeeded him. Obviously the practices that we are discussing were relevant throughout the period.

The Convener: With the committee's indulgence and your co-operation, my view is that we need to try to piece together the bits that we do not have. That may mean talking, on or off the record, to the person who was the head of fingerprint services at the time, whether it was Harry Bell or someone else. We will need to think about the logistics of that. You appreciate what we are trying to do—we are not trying to make life difficult for you, but it is fundamental for us as laypeople to understand what the process was supposed to be in 1997. We are having difficulty piecing together that information, which we would like to have for our report.

Hugh Ferry: That is important. As I indicated earlier, I was responsible for three sections of the SCRO. I am not a computer expert, but I was responsible for the computer section. My responsibility was to ensure that we got value for money and provided a good service to the Scottish police service. Perhaps I was a bad manager, but I realised that the person who was best able to deal with the fingerprint section was the head of the fingerprint section. The same was true of the computer section. I was not involved with fingerprinting on a routine, day-to-day basis. I am not a fingerprint expert, so I could have been fooled or outfoxed even if I had been involved on that basis. It is as simple as that.

The Convener: I appreciate how open you are being with us, which has been helpful. There are no more questions, but perhaps we could have dialogue with you from today on how we can move forward and get the information that we need. Thank you for coming along to face our lines of questioning. We are pleased that you were able to come here in person to do that. You will have an opportunity to look at the *Official Report* of today's meeting.

Hugh Ferry: Thank you for your time.

Witness Expenses

17:28

The Convener: I invite the committee to delegate to me responsibility for arranging for the Scottish Parliamentary Corporate Body to pay any witness expenses under rule 12.4.3 of standing orders.

Members indicated agreement.

17:28

Meeting continued in private until 18:03.

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