

JUSTICE 1 COMMITTEE

Tuesday 30 May 2006

Session 2

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JUSTICE 1 COMMITTEE 19th 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:

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

THE FOLLOWING GAVE EVIDENCE:

Hugh Macpherson (Scottish Criminal Record Office)
Fiona McBride (Scottish Criminal Record Office)
Anthony McKenna (Scottish Criminal Record Office)
Charles Stewart (Scottish Criminal Record Office)

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 30 May 2006

[THE CONVENER *opened the meeting at 14:27*]

Items in Private

The Convener (Pauline McNeill): Good afternoon and welcome to the 19th meeting in 2006 of the Justice 1 Committee. All members of the committee are present, so we have no apologies.

On my right is Jim Fraser, who will advise us during our Scottish Criminal Record Office inquiry. I welcome the three additional members who have joined us—Des McNulty, Ken Macintosh and Alex Neil.

Item 1 is consideration of whether to take agenda items 3 and 4 in private. Do members agree to take in private item 3, under which we will consider whether to accept late submissions to the Scottish Criminal Record Office inquiry?

Members indicated agreement.

The Convener: Under item 4, we will consider our approach to the remainder of the inquiry. We normally take such items in private. Do members agree to do so in this case?

Members indicated agreement.

Scottish Criminal Record Office

14:28

The Convener: Agenda item 2 is evidence taking for our Scottish Criminal Record Office inquiry. I want to make a brief opening statement.

This afternoon's meeting is our third oral evidence session for our inquiry. At last week's meeting, I made a short statement on the terms of the inquiry. I would like to repeat some of the remarks that I made then before we take evidence.

The inquiry is a parliamentary inquiry, not a judicial one. No witness who appears before the committee is on trial, but the committee expects all witnesses to co-operate fully, focus on the lines of questioning and answer questions in good faith, to the best of their knowledge and truthfully. I have the power to require witnesses to take the oath, but I do not intend to use it at this stage. I want to record in the *Official Report* that if the committee thinks that witnesses are not giving us their full co-operation or are not answering our questions truthfully, it can recall them. 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.

The overriding aim of our inquiry must be to help to restore public confidence in the standards of fingerprint evidence in Scotland. I expect the report that we will produce at the end of the inquiry to contribute to that process.

14:30

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. I remind members to be wary of their lines of questioning and to ensure that they comply with that rule.

I welcome this afternoon's witnesses. Before us are Hugh Macpherson, Fiona McBride, Anthony McKenna and Charles Stewart, who are all fingerprint officers at the Scottish Criminal Record Office. Thank you for appearing before the Justice 1 Committee.

I will begin the questioning, and it would probably be most relevant if Hugh Macpherson could respond first. The committee would like to understand the timeline of what happened from the beginning. You will appreciate that we have a lot of evidence piling up. The different pieces of evidence do not all give the same dates, and they do not tell the committee in what order the events unfolded. We would find it very helpful if you could

start at the very beginning and tell us in what order things happened, which fingerprint officers checked the prints and what happened thereafter.

Hugh Macpherson (Scottish Criminal Record Office): I was the first fingerprint officer to check the print known as Y7 against the elimination fingerprint form of Shirley McKie. Mr Geddes and I had visited the locus. At that time, we also attended Kilmarnock police office, where we were given a list of eliminations of persons who had legitimate access to the locus. On that list was the name of Shirley Cardwell or McKie. We received more than 400 impressions for the Marion Ross murder inquiry. It was simply a case of working our way through those impressions, looking at which ones were fragmentary and sufficient, and then moving on to the elims.

As I said in my submission, we expected a high volume of eliminations from the Marion Ross murder inquiry, basically because a lot of extension work had been done at 43 Irvine Road in Kilmarnock, and the then chief inspector, Willie O'Neill, wished a lot of elimination prints to be submitted. It was a case of working our way through all the impressions and doing our usual comparisons.

As for timelines, the first mark of significance was mark XF, which was from a gift tag. That was identified at the beginning of January 1997. Towards the end of that month, we identified impression Q12, which was the right forefinger print of the deceased, Marion Ross. A few weeks later, mark Y7 was identified as the left thumbprint of Shirley McKie. Unfortunately, I have seen no paperwork regarding the matter for many years, as you can imagine. To give you an absolute timeline specifying exactly when I made the identification would be very difficult.

The Convener: We appreciate that. We note from the submissions that you have not had access to the paperwork.

I will take you back a bit. You and Alister Geddes went to the scene. That is the first thing that happened, before there was any elimination of prints.

Hugh Macpherson: When we attended the locus, print Y7 had not been identified. There has been much play and much said about that being an important mark. The only thing of importance was that it was found 2ft away from where the deceased was found. It does not take a top detective to know that that could be a significant mark. I have worked on murders before, however, and could give you a couple of examples of instances where we might think that a mark is an important one at first but that turns out not to be the case. An old lady was murdered in Glasgow, at the top of the town. The perpetrator had

smashed the glass and had been scared off. The broken pieces of glass had been swept up by the old lady. You might think that the prints found at the point of entry would be the significant marks. However, in this case, the marks found at the point of entry were eliminated as belonging to the deceased and the perpetrator was eventually identified from prints found on items in the kitchen. All we can do is make comparisons—it is up to others to decide whether they are significant.

The Convener: So you would normally visit the locus.

Hugh Macpherson: I have certainly done so in the past. In this case, the main reason for visiting the locus was the discovery of an unusual horseshoe-shaped print on an armchair, which had attained significance because someone passing 43 Irvine Road had seen a person looking out of the window. It was thought that the perpetrator might have moved the armchair. When we viewed the mark in situ, we were able to determine which digit had made it. Because of its unusual flexure, we requested a further set of the deceased's elims, and the print was subsequently identified as the deceased's right forefinger. We also visited the locus to pick up the list of eliminations bearing the name of Shirley Cardwell or McKie.

The Convener: Did you get that list from Willie O'Neill?

Hugh Macpherson: No. I am afraid that I cannot remember who gave it to us. It might have been Detective Inspector McAllister in Kilmarnock police office.

The Convener: And it was a list of all police officers who apparently were at the locus.

Hugh Macpherson: Yes.

The Convener: Just to be clear, by "locus" we mean inside Marion Ross's house.

Hugh Macpherson: Yes.

The Convener: So the purpose of putting Shirley McKie or anyone else on the list was to eliminate people who had a valid reason for being at the scene of the crime.

Hugh Macpherson: As in any whodunit, you try to take out as many marks as possible so that you are left with significant marks that belong to the perpetrator.

The Convener: What was the next event in the chain? Did you proceed to eliminate the marks?

Hugh Macpherson: Yes.

The Convener: Did you go through all the officers on the list?

Hugh Macpherson: We worked our way through the list. I cannot remember exactly, but I think that there were about 30 names on the list. I believe that it still exists somewhere.

The Convener: Did Alister Geddes check the elimination prints after you?

Hugh Macpherson: Yes.

The Convener: So both of you checked all the eliminations.

Hugh Macpherson: When a murder inquiry involves 428 marks, you have to ask Strathclyde police's identification bureau to prepare further sets of marks. With such cases, we work weekends and shifts. Obviously, Mr Geddes and I could not work on such a case alone. Worksheets had to be made up, and such inquiries involve most people in the department.

The Convener: How many fingerprint officers were working to eliminate the officers on the list?

Hugh Macpherson: I cannot remember offhand.

The Convener: But there were more people working on it than just yourself and—

Hugh Macpherson: Yes. People got overtime and worked on the case at the weekend.

The Convener: But you happened to be the fingerprint officer who eliminated the Shirley McKie print.

Hugh Macpherson: Yes.

The Convener: And Alister Geddes examined the elimination prints after you. The evidence says that he could find no more than 10 points of similarity.

Hugh Macpherson: Mr Geddes was happy with the identification of Y7 as Shirley McKie's left thumbprint.

The Convener: But is it correct to say that he could find only 10 points of identification?

Hugh Macpherson: Yes.

The Convener: And that is not unusual.

Hugh Macpherson: No. He was happy to identify that mark as Shirley McKie's left thumbprint.

The Convener: Okay. So what happened after that?

Hugh Macpherson: Because of the position of the mark, I felt that I should apply the 16-point standard to it. The other impressions—XF and Q12—had all been signed up to the 16-point standard by four experts. Basically, the criteria that I applied to Y7 were the same as those that I had applied to the other marks identified in the case.

The Convener: Even though, at that stage, you were simply eliminating the print as belonging to a police officer.

The Convener: Would you normally do that?

Hugh Macpherson: There is nothing to stop me doing that. Normally in a case, only the marks of the deceased and the accused go to court and those are marked up to the 16-point standard. All I did was to apply to the mark the same criteria that I applied to the marks that were identified previously in the case. I could find 16 points—that was my main reason.

The Convener: Who checked the identification after Alister Geddes had done so?

Hugh Macpherson: Mr Stewart, Ms McBride and Mr McKenna checked the identification before it was telephoned to the incident room, which I believe was in Kilmarnock. DI McAllister telephoned me back and asked whether I was definite about the identification. I said, "Yes. It has been signed up by four experts, including me." He said to leave the matter with him, as he felt that there might be some difficulty.

The Convener: At that stage, did you know that the identification or elimination had any significance?

Hugh Macpherson: No. All I knew was that it was a police officer's mark. However, police officers are regularly identified at crime scenes—that is not unusual.

The Convener: When did you become aware that there was an issue with the print?

Hugh Macpherson: All the procedures that we followed were in line with the procedures that were laid down at the time. Much has been made about procedures then and now. However, it does not matter what the procedures are now; the identification would remain the same.

Sorry, could you ask the question again?

The Convener: We will ask you questions about the process, so do not worry—you do not have to go through it all now. I am interested in the start of the process. Who checked the identification and at what point did the SCRO become aware that there was an issue with the print?

Hugh Macpherson: The four of us signed the identification and it was telephoned out. I was off for a couple of days, on 17 and 18 February—I still have my diary from 1997 if anyone wants to question the veracity of that statement, but it is a fact and I have checked it with management. When I was on annual leave, an unprecedented procedure was put in place, which was basically like a blind trial in which other experts were asked to look at Y7 and come to their conclusions. The quality assurance officer, Mr Alan Dunbar,

telephoned me to say that the procedure had been put in place, which was when I first knew that an issue had arisen. I say that the procedure was unprecedented because I do not believe that it has ever been put in place for an accused person. That was my first recollection that the identification was contested.

The Convener: So you became aware of the issue through Alan Dunbar.

Hugh Macpherson: Yes.

The Convener: And you had no knowledge beforehand that there was anything unusual about the print.

Hugh Macpherson: No.

Stewart Stevenson (Banff and Buchan) (SNP): I have a question on the timeline that you may or may not be able to answer. When you were provided—perhaps by DI McAllister—with a list of the names of about 30 police officers, was that before or after David Asbury's house had become an issue? In other words, where in the sequence of events did that happen? At some point, you were looking at fingerprints from David Asbury's house.

Hugh Macpherson: I am sorry, but I do not recall.

Stewart Stevenson: Let me ask the question that made me ask that. Perhaps someone else can fill in the details, although I do not know. You suggest that, to your knowledge, the list of 30 names should have been a list of people who were at the locus, which was the house of Marion Ross. In your experience of other investigations, is it unusual to be given not a list of police officers that relates to a specific address, but a list of all the officers who are involved in the case and who therefore may have been at other addresses? Was that a variation of procedure? Is it an absolute that you expect to get only the names of officers who the investigating officer has established have been at the location in question?

Hugh Macpherson: I cannot answer that, although perhaps one of my colleagues can.

Charles Stewart (Scottish Criminal Record Office): There was more than one location. Fingerprints were taken from the house of the deceased and material was taken from David Asbury's house. The list is not split to show which police officers are relevant to certain articles—it is just a list of police officers.

14:45

Stewart Stevenson: That is fine. I am not reading anything into your answer; I just wanted to be clear, because Mr Ferry was not entirely clear about the matter when he gave evidence at last week's meeting.

When the list came in, had you already started to work on David Asbury's house? Was that part of the investigation at that stage? The witnesses might not be able to answer that question.

Hugh Macpherson: I am sorry. I cannot answer that.

Anthony McKenna (Scottish Criminal Record Office): It is hard to answer such questions without having the case papers in front of us. Sometimes it depends on the senior investigating officer in a case, who might be very specific about which officers are in which rooms. I remember a murder case in a close; when I asked for elims I was given the whole shift, although there was no way that the whole shift had been stuck up a close in Maryhill. It depends on the SIO who directs the whole thing.

Stewart Stevenson: It is clear to me that it is the SIO who carries the responsibility.

Roughly how long after the murder were you provided with the list of 30 names? Was it two days, two weeks or two months later?

Hugh Macpherson: Unfortunately I cannot tell you the date that I was at the locus. I know it was prior to February, when Y7 was identified. That is all I know.

Stewart Stevenson: I cannot remember the date of the murder. You said that print XF on the gift tag was identified in early January, so you are suggesting that a month later you had the list of police officers.

Hugh Macpherson: I am worried about timelines. The four officers who were the subject of the Mackay report have been denied access to the report, although we have seen the abridged version on www.shirleymckie.com, which contains a timeline. Mr Robertson's timeline says that on 18 February I asked Ms McBride to compare Y7 against the new set of elimination fingerprint forms that had been received. That is inaccurate, because I was on annual leave on 17 and 18 February and it would have been physically impossible for me to speak to Ms McBride about the further set of Ms McKie's prints and the further photograph that had been taken. I am a wee bit wary of the timelines; I am sorry, without access to the paperwork, I cannot answer your question.

Stewart Stevenson: It is important that you tell us when you are uncertain. I do not think that we will pick at the reasons for your uncertainty.

Hugh Macpherson: I do not want to come across as prevaricating.

Stewart Stevenson: No, no.

Mike Pringle (Edinburgh South) (LD): Would the diary to which Mr Macpherson referred help with the other dates about which Stewart Stevenson asked?

Hugh Macpherson: No. My diary tells me when I was on annual leave and what shift I was working—late shifts, early shifts, weekends and so on.

The Convener: For the record, after Alister Geddes made his check, who was the next checking officer?

Hugh Macpherson: I believe that it was Mr Stewart, but again—

The Convener: Can Mr Stewart confirm that?

Hugh Macpherson: The initials would be on the back of the photograph, I believe, but I would need to see the photograph. Mr Stewart might be able to comment.

Charles Stewart: All that I can say is that I am aware that I saw the mark at some point, but I cannot honestly say whether I saw it immediately after Mr Macpherson saw it or after either of the other two witnesses saw it.

Fiona McBride (Scottish Criminal Record Office): I can help. I checked the mark after Charles Stewart, Hugh Macpherson and Alister Geddes. I know that because I was told that Alister Geddes had already looked at the mark and when I appended my initials on the back I asked who else had seen the mark and whether I should add their initials. Hugh Macpherson had seen the mark, so I put his initials on the back, and I was told that Charles Stewart had seen the mark. I know that Tony McKenna had not seen the mark at that point, because I put only three sets of initials on the back.

The Convener: So the last person to check was—

Anthony McKenna: Myself.

The Convener: Is it unusual for four officers to look at one elimination print?

Witnesses: No.

The Convener: So that was standard practice at the time.

Hugh Macpherson: The initials would be put on the screen. That is how we would be able to tell who had looked at the mark previously.

The Convener: Although Mr Geddes is saying that it was Shirley McKie's print, there was no issue with his asking someone else to check because he could find only 10 points.

Hugh Macpherson: No. I am glad that Mr Geddes will be given the opportunity to speak to the committee. He will reaffirm what we have said. He was happy that the identification was sound.

The Convener: We heard evidence last week from the former director of the SCRO. In all

honesty, I do not know how reliable this evidence is, and the committee is thinking about how we are going to tackle this question. However, he said that if there was an officer who could not agree the identification, there would be a case conference and that person would have to explain why they thought that it was not an identification. Can you confirm that that was the normal process?

Hugh Macpherson: I am not too sure about that. I do not know what Mr Ferry meant. I compared the mark. If Mr Geddes had come back to me and said, "That is not an identification," I would have been duty bound to go to the chief inspector and say to him, "We have a dispute here." That was not the case. There was no dispute regarding the identity of the thumbprint. I am not too sure what Mr Ferry was referring to.

Mr Bruce McFee (West of Scotland) (SNP): My question is for Fiona McBride. You said that you signed the initials of Charles Stewart and Hugh Macpherson—is that right?

Fiona McBride: I printed them on the back. That is correct.

Mr McFee: You printed them on the back of the photograph.

Fiona McBride: I did.

Mr McFee: Is it normal practice to put somebody else's initials on the back of what could turn out to be a piece of evidence?

Fiona McBride: To put it in context, back in 1997 the processes were still evolving, and I was aware of a practice that Kenneth Graham, a fingerprint expert, had started. What used to happen is that someone would check a case, come to their decision and pass it on to the next person. At the end, when they had checked all the marks, they would sign to say that they had done so. I wanted to keep track of what I had looked at. I noticed that Kenneth Graham had started to put his initials on cases along with the date. It was not the main signature; it was just so that he could keep track of what he had seen, what he had not seen and what he had yet to check. I thought that that was a pretty good idea, and I put my initials on the back of the photograph for that reason. I asked Hugh Macpherson whether he minded my putting his initials on it, too, as I thought that it was a good idea. He said, "Well, okay then."

Hugh Macpherson: We also received many—

Mr McFee: Sorry—you asked Hugh Macpherson whether you could put his initials on the back of it as well. I presume that you must have been in reasonably close proximity.

Fiona McBride: No. He came round to see whether I had finished with the mark yet. We worked in separate sections. It was just a case of there being a random choice—

Mr McFee: So, did you phone him up? Did you speak to him face to face?

Fiona McBride: He came round the cabinets and asked me whether I had finished with the mark.

Mr McFee: And then you said, "Do you mind if I put your initials on it?" Would it not have been easier for Mr Macpherson just to put his own initials on it?

Hugh Macpherson: There is nothing sinister about it. The initials were already on the screen, as it was. You talked about putting initials on a piece of evidence. We have many photographs of Y7 and we use a clean copy for our production book.

Mr McFee: I am trying to ascertain what the practices were. To me, as a member of the public, it seems strange for somebody to put somebody else's initials on an important piece of evidence that ultimately resulted in a perjury trial. Can you understand why that would seem strange? I wonder how widespread that practice was in the bureau at that time. Was it normal practice for people to sign for other individuals?

Fiona McBride: I did not sign it. I put his initials on it.

Mr McFee: You initialled it for other individuals.

Fiona McBride: It was just a device for tracking the case. No, it was not practice; it was just something that I had noticed another fingerprint expert doing, and I thought, "That's a good idea. I'll do that, too." If anything, I am rather pleased that I did that—thank goodness I did. Mr Robertson's timeline does not mention when Charles Stewart checked the mark and it has me checking the mark on a separate day from Hugh Macpherson. Thankfully, I put the initials on the back, so I know when I saw it and that I saw it after Charles Stewart and prior to Tony McKenna. So, thank goodness for that information being here today. If I had not put that on the back, the picture would be even more blurred.

Hugh Macpherson: It was merely a tracking log to ensure that four people had initialled the identification before it was phoned out. At the end of the day, we would sign the ident envelope.

Mrs Mary Mulligan (Linlithgow) (Lab): Is there any possibility that having initials on the back of the print might in some way put pressure on other colleagues to agree with what they are looking at?

Fiona McBride: At that point, there were no initials on the back. There was only one colleague left to sign the thing and that was Tony McKenna, and I did not know that he was going to be the next person to look at it. At that point, four individuals had agreed that mark Y7 belonged to Shirley McKie or Cardwell.

Mrs Mulligan: So it would not be a case of members of the team not being quite sure but feeling that, if someone more senior had signed it, they ought to sign it too.

Fiona McBride: In the SCRO—I cannot speak for other bureaux—we are trained to look at a mark from every angle to ensure that we are absolutely certain of our own decision. No pressure whatsoever is put on us. In fact, Hugh Macpherson came round and said that Alister Geddes had not signed for a full 16. At that point, I thought that he was being extremely open and honest and was giving me—not that it was required—even more of an excuse, if you like, not to sign the case at all if I did not want to.

Mr McFee: Did Alister Geddes's initials appear on the back of the photograph?

Fiona McBride: I asked who had seen the mark and I put initials on the back for those who had seen 16 points of similarity, as far as I can remember. However, I would have to see the original material to verify that.

Mr McFee: So, you do not know whether Alister Geddes's initials were put on the back of the photograph by himself or by anybody else.

Fiona McBride: It might have been by me. I cannot remember.

Mr McFee: I am trying to ascertain whether you know whether Alister Geddes's initials were on the back of that photograph.

Fiona McBride: There were no initials on the back prior to my receiving the mark. After I had seen the mark, I know that I put Hugh Macpherson's and Charles Stewart's initials on the back, and my own. I could not say whether I put Alister Geddes's initials on. I would have to see the original case material.

The Convener: I have a more technical question. As you probably know, we have been down at the SCRO, so we are learning a bit about the process as we go along. As far as you are concerned, are elimination prints treated differently from suspect prints, or just the same?

Hugh Macpherson: It depends on the case. In a volume crime case, the prints of a householder might be treated differently, but in my experience that does not happen in a special case.

Fiona McBride: Maybe it will clear matters up a little bit to explain that, when an identification is made, a fingerprint expert does not look for 16 points. A fingerprint expert might look for eight points or 32 points of similarity for the comparison. Once we have achieved whatever is decided on, dependent on quality and quantity of the characteristics revealed, we look to see whether the identification is sufficient for court purposes

and whether we can get 16 points of similarity, because it is the court that requires 16 characteristics in sequence and agreement.

The Convener: Does that mean that, in process terms, there is no difference between an elimination print and a suspect print, because you are just trying to get a match at that point?

Fiona McBride: Precisely. They are both identifications.

Hugh Macpherson: Is it possible to quote from the Taylor report? It says—

The Convener: You are the experts, so I would rather hear it from you.

Hugh Macpherson: The report states:

“The aim of fingerprint comparison in Scotland, at present, is to find 16 points or characteristics of friction ridge skin detail on a crime scene mark that are identical in sequence and agreement with a fingerprint given by a donor. This applies to donors who are suspects and those who have given their fingerprints for elimination purposes.”

They are one and the same thing. We have always maintained that, no matter what the comparison, it could end up in court, even if it is a negative comparison. Where two persons are accused in a case, a fingerprint expert might find that one of the comparisons is negative. I have had to go to the High Court in Ayr to testify that I had compared someone negatively. Any comparison has to be given due diligence, whether it is an elimination print, a suspect print, an automatic fingerprint recognition ident or a manual ident.

Mr McFee: I would like to ask a further question on that point.

The Convener: Well, you had better make it brief—not 20 questions.

Mr McFee: I will be brief. Fiona McBride said that the court requires 16 points of similarity, but Geddes identified only 10. Is that why Geddes did not end up giving evidence in court?

Fiona McBride: You will have to ask Mr Geddes that. I really could not say why the court chose not to use him or why it used me. I have no idea.

Mr McFee: So, you do not know whether the fact that Mr Geddes was not able to get 16 points was notified either to the police or to the defence.

Fiona McBride: I have no idea.

The Convener: We might want to return to the issue because it is important for us in understanding the process. Every time I ask the question, I get a slight variation in the answer, so I reserve my right to come back to it.

The four of you have identified Shirley McKie's fingerprint, but at that point it is an elimination print—all that you are doing is eliminating a police

officer who, as far as you are concerned, was legitimately at the locus.

Fiona McBride: Absolutely.

15:00

The Convener: So you make the call to—did you say to whom?

Hugh Macpherson: It was either the incident room or—certainly Detective Inspector McAllister phoned back to ask me whether I was sure of the identification. I said yes.

The Convener: What was your involvement after that?

Hugh Macpherson: We carried on comparing what impressions were left. I think that we searched about eight prints in the AFR, and they were negative. At the end of the day, I think that 12 suspects were quoted in the inquiry—

The Convener: What is the AFR?

Hugh Macpherson: I am sorry—AFR is the automatic fingerprint recognition system. It is a computerised search system.

We checked 12 suspects and they were negative. That was the whole thing about the Marion Ross murder inquiry—all the impressions identified emanated from elimination fingerprint forms being compared against crime-scene marks. There were no suspect identifications, no manual identifications and no AFR identifications. You ask about our involvement afterwards, but the case came to a close eventually. The next involvement would have been preparation of the productions for the David Asbury trial in 1997.

The Convener: Did you have any further involvement with the McKie fingerprint at that point?

Hugh Macpherson: No.

Mike Pringle: Obviously, you will not have seen the Mackay report—although you may have seen it on Shirley McKie's father's website. The report contains an implication that other experts in the Scottish Criminal Record Office in Glasgow failed to identify the fingerprint and said that they could not identify it. Is there any truth in that?

Hugh Macpherson: As I said, the quality assurance officer, Mr Alan Dunbar, phoned me—just as a matter of courtesy—to let me know that an unusual procedure was taking place. As I said, that procedure has never been afforded to an accused person. I was off at the time of the call and had no involvement in the blind comparison. Mr Dunbar phoned me back a few days later to say that all persons who had carried out a comparison of Y7 against the left thumbprint of Shirley McKie were happy with the identification.

So, where it comes about that five officers in the SCRO disagreed, I do not know.

Mr McFee: Could this be a question of the definition of the word “disagreed”? Is it the case that there were potentially five officers who did not find 16 points of comparison, or who could not look at the prints for one reason or another? What about Foley and Bruce? Did they find 16 points of comparison?

Hugh Macpherson: Again, Mr Foley will be able to tell you himself. I was not involved in the blind trial and I do not really feel that it is up to me to speak about that.

The Convener: Yes—we have not dealt with the question of the blind trial. We will come to it, but Mr Macpherson obviously cannot speak about it because he was not involved.

Hugh Macpherson: I was not there.

The Convener: At this stage, we are trying to establish Mr Macpherson’s involvement.

Mr Macpherson, your next involvement was preparation for the Asbury case.

Hugh Macpherson: That is correct.

The Convener: Some of you gave evidence in that trial.

Hugh Macpherson: I gave evidence and Mr Stewart gave evidence.

The Convener: It would be normal for two officers to give evidence in a trial—there was nothing unusual about that.

Hugh Macpherson: There was nothing unusual.

The Convener: Before you gave evidence, were you aware that the McKie fingerprint would be an issue?

Hugh Macpherson: What I remember of the trial is that the fiscal came out from the advocate depute who was prosecuting the case and said that aspersions may be cast that Q12 had been planted on the tin. As a result, I do not believe that I was cross-examined about Q12 when I gave my evidence. I do not remember there being too much about Y7.

We had to prepare 13 or 14 books, which was unusual. Usually, we would prepare only the marks of the deceased, elims and the accused. In this instance, we had to prepare 13 or 14 books, which included the marks of every person who had been identified in the Marion Ross murder inquiry.

The Convener: That was unusual.

Hugh Macpherson: Yes.

The Convener: But you were not told why you had to do it.

Hugh Macpherson: I could guess that it was possibly because of Y7, but I was not told why.

The Convener: You were not told, but you assumed that that was why you had been asked to do something unusual.

Hugh Macpherson: As I said, before I went in to give my evidence, there was an insinuation that Q12 may have been planted.

The Convener: But when you gave evidence that never arose.

Hugh Macpherson: If somebody were to come up and say to me, “What happened was this—here is a transcript of the trial”, I would hold my hands up. However, I do not recall being quizzed about the validity of Q12.

The Convener: Mr Stewart, you gave evidence at the trial too. Is your evidence the same?

Charles Stewart: I do not even remember being cross-examined.

With regard to the preparation of evidence, if the fiscal asks for something, the fiscal gets it. We are not in a position to argue with or challenge the fiscal. The evidence that the fiscal wants is prepared; that is why all those extra productions were prepared in this case.

Hugh Macpherson: We had to prepare books that included every mark that was involved in the case—more than 400 marks. That, too, was unusual. All the marks that were insufficient or outstanding were included; basically, it was a full disclosure.

The Convener: After the Asbury trial, were you involved in the McKie trial?

Hugh Macpherson: Yes.

The Convener: Did you and Mr Stewart give evidence in that trial?

Hugh Macpherson: Mr Stewart gave evidence in that trial; I believe that he was in the box for about two days. He was followed by Ms McBride. I think that I gave evidence on Friday afternoon, but I was in the box for only a short time.

The Convener: So the three of you gave evidence at the trial.

Hugh Macpherson: Yes.

The Convener: Did you feel that the SCRO was being put to the test, in the sense that the trial centred on the fingerprint?

Hugh Macpherson: No. It was unusual for three witnesses to be taken. Usually there are only two, or, if our evidence is accepted, only our joint report is taken and there are no witnesses.

The Convener: But there were three witnesses, which was unusual.

Hugh Macpherson: Yes.

The Convener: Was that done so that the SCRO could defend its position, in that you—

Hugh Macpherson: You would have to ask the people who prosecuted the case.

The Convener: Right. So that decision was made by the Crown Office.

Hugh Macpherson: Yes.

The Convener: Was that your last involvement in the identification and in the trial?

Hugh Macpherson: Yes. That was the last involvement until the beginning of this year, prior to the hearing that was never convened on 7 February. We were afforded the opportunity—or we were asked—to prepare further enlargements regarding Y7 and Q12 for the hearing at the Court of Session, which we did. We all separately prepared enlargements of Y7. I believe that I just prepared enlargements of Q12, which were sent off to the Crown Office—sorry, Mr Dunbar and I took them along. I had a precognition at the Executive prior to the hearing and we took along those productions.

Impression QD2 was also included in those productions. I had been off sick and came back on a Wednesday to be told by Shona Bathgate, an Executive lawyer, that a Danish report had been released, which said that the Glasgow fingerprint bureau had made a further mistake: namely, that QD2 did not belong to David Asbury. I looked at the QD2 impression again and prepared enlargements. There was no doubt that QD2 was made by the right little finger of David Asbury. I took the enlargements that I had prepared with me at the time of my precognition.

Subsequently, the QD2 was sent to an independent expert, Mike Pass, who identified it. After that, I believe that it went to a Mr Arie Zeelenberg. He, too, agreed with the identification. In this instance, one can say that all concerned were unequivocal that the QD2 was identified as that of David Asbury. As far as I can recall, that is the extent of my involvement.

The Convener: Okay. We may have other questions, but we will stop at that point. I wanted to get on the record what happened from the beginning to that point. Thank you.

We move to questions on processes in 1997.

Stewart Stevenson: I saw Miss McBride in the public gallery last week. I know that she heard what Mr Ferry said about the processes. I want to explore with our four witnesses some of the things that Mr Ferry said. Again, I will start by referring to what John McLean said in his written evidence to the committee:

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

Mr Ferry disagreed with that. In the first instance, I ask Mr Macpherson to give us his recollection of the situation in 1997.

Hugh Macpherson: There was no procedures manual as such, but the different sections had written-down instructions. In 1991, the AFR was introduced. Obviously, that meant that processes and procedures had to be put in place on how to deal with cases, including how to search them on the AFR and what to do with the results. Although there was no procedures manual as such, there were—by custom and practice and word of mouth—written instructions on the procedures that should be followed.

Stewart Stevenson: In essence, you are agreeing with John McLean; you are saying that Mr Ferry is incorrect.

Hugh Macpherson: Yes.

Stewart Stevenson: Right. So, there were processes in place that related to the AFR. What form did they take? Were they copies of pages from the operating manual for the equipment? Was it something that each person had informally or was it a little more substantial?

Hugh Macpherson: I think that everyone was issued with a copy of the operating procedures regarding the AFR.

Stewart Stevenson: In essence, it was a technical manual that related to—I am simplifying grotesquely—which button to press on the machine to achieve a particular action.

Hugh Macpherson: Yes.

Stewart Stevenson: So it was not about the mainstream process under which the bureau received a fingerprint for assessment and came to a conclusion. There was no manual that documented all the steps that the bureau would undertake between those two points.

Hugh Macpherson: No, I do not believe that there was.

Charles Stewart: I cannot remember whether the processes were written down. When a case came in the door, the first thing that happened—as still happens—was that someone examined the fingerprints to see whether they were suitable for comparison purposes. If they were not, the case was finished at that stage. If the fingerprints were deemed suitable for comparison, and if they were of the right quality, they could be searched against the AFR system and compared against any submitted elimination prints or those of any submitted suspect. I think that the process has not changed. The process was probably not written

down in those days, but that is how it worked and it is more or less what we do now.

Stewart Stevenson: If I may, I will dig down a wee bit. I was seized by the words that Fiona McBride used earlier today, when she said that “the processes were still evolving”. I think that she was talking more about 1997 than the situation today.

Fiona McBride: Yes.

Stewart Stevenson: When a print arrives, I think that you have a process of logging it in so that you know that you have got it and where it is. Is that a fair comment?

Hugh Macpherson: There is an office management system.

Stewart Stevenson: Right. So, the system records the existence of the print as work that you have to undertake. Does it record the subsequent activities related to the print? Let us say that—the example is entirely for the sake of argument—a print is put on Fiona McBride’s desk for the first evaluation. Is that the sort of thing that is recorded?

15:15

Fiona McBride: May I answer that question?

Stewart Stevenson: Yes, of course.

Fiona McBride: I think that it would be nowadays, but the process was not as formalised when we made the identification. A case that a person was finished with would be moved into a basket for someone to lift up or to someone who happened to be free of work at that point. There was a random process. A person would sign the paperwork at the end of the comparison, but a person might have to look for a case in the interim. They would not know exactly where a case was.

Stewart Stevenson: I am trying to understand the process. You said that a person would pick up a case and pass it on. In what physical form would the case be? For the sake of argument, would there be a pink folder with a gold star on the top right, which meant that the case was a fingerprint case rather than a personnel file, for example?

Fiona McBride: That would have been nice. Unfortunately, however, boring buff envelopes were used to which fingerprint forms would be attached. The photographs would be inside.

Stewart Stevenson: So papers would be attached to the outside of the envelope and there would be photographs of fingerprints inside it. That was the physical form that a case would take.

Fiona McBride: Yes. There might also be paperwork relating to a phone call that had been made—suspects may have been quoted or

whatever. The paperwork might have been either within or outwith the envelope.

Stewart Stevenson: If, for example, in 1997, Hugh Macpherson was looking for a case that happened to be in your hands, would he have been able to go to the office management system and find out that you had the case?

Fiona McBride: No.

Stewart Stevenson: What process existed to stop people mislaying evidence, or indeed a whole case or any part of it? Perhaps paper-clips held extra papers to the outside of envelopes.

Hugh Macpherson: Special cases were kept in a separate locked cabinet.

Stewart Stevenson: Perhaps I am uniquely disorganised. My desk is not 100 per cent organised and tidy every minute of the day—it has to be restored periodically to the state of order in which I would like it to be. The important question that I am getting at is that, in 1997, would there ever be only one case on someone’s desk?

Fiona McBride: That is possible.

Stewart Stevenson: But it is unlikely. It is more likely that there would be several cases on someone’s desk.

Fiona McBride: People would often have several cases, but if a form or photograph went missing, a person would have the administration part of the docket with the impressions on it. When a person picked up a case, they would always check that everything was present that was supposed to be present; if something was not there, they would look for it. The entire office would stop to look for a photograph or form if need be, although that happened extremely rarely. Things were not clumsily done. Things did not go missing.

Stewart Stevenson: Let me go right back to the beginning and be as dim as I can be. Are you saying that there was a standard form—pre-printed, I presume—on which there would be a case number and the exhibits at that stage? Did such a form come in right at the outset and then travel through the office?

Hugh Macpherson: There was a form 13B.

Stewart Stevenson: Right. We are becoming specific, which I like. That was what I was after.

Charles Stewart: The submitting police force would submit its scene-of-crime impressions with form 13B, which would say how many fingerprint impressions had been submitted and whether the force had submitted any eliminations or any known suspects at that stage. That was the first source of information that we would receive. Some of that information would be transferred to the case

envelope, in which everything would be stored. That was the starting point. Form 13B was the basic information package.

Stewart Stevenson: The creation of a form 13B would be recorded, so you would know which cases were in your system.

Charles Stewart: In those days, the system was manual. The information would not be on the office management system.

Stewart Stevenson: I quite like manual systems. Let us not get bogged down with that.

Charles Stewart: Part of form 13B would be filed geographically by the police division in an index book. If somebody phoned to ask whether we had case such and such, a person could look at the book and say whether we had it.

Stewart Stevenson: They could say that they had the case somewhere.

Charles Stewart: The person could then go to the appropriate team. If the case was a murder, they would go to the person who was dealing with it.

Stewart Stevenson: So there was a basic framework that allowed you to know what was in the room somewhere. Roughly how many people were working in the bureau on fingerprints in 1997?

Hugh Macpherson: Roughly 35.

Stewart Stevenson: How many different rooms were they in?

Charles Stewart: In 1997, we had one big fingerprint hall, subdivided with cabinets and other furniture.

Stewart Stevenson: In essence, you were all in one room. Were you uncomfortable with that sort of informality?

Fiona McBride: I do not know exactly what you mean by informality.

Stewart Stevenson: If you are looking for a particular case, form 13B tells you that someone in the room has it, but short of going round and asking all 35 people, you do not know, at the instant an inquiry is made, who has the case.

Hugh Macpherson: There was a clerical desk where, as Mr Stewart said, the bottom half of form 13B was filed in a book. You could go to that book and look up the case. We were split up into geographical teams. I was in charge of RUX and Dumfries—

Stewart Stevenson: Sorry, can you explain RUX?

Hugh Macpherson: R division, U division and X division of Strathclyde police. I was also

responsible for Dumfries and Galloway police and Grampian police. If there was an inquiry about a case, you would be able to go to the form 13B book and trace who was working on that case.

Stewart Stevenson: The individual or the group of individuals?

Hugh Macpherson: The group. There were teams—I was team 4 in 1997.

Stewart Stevenson: So you are sustaining what John McLean said—that there was no manual that described the exact process that you would undertake. You relied on the fact that people had been trained in the same way and you expected them to undertake processes to an appropriate standard. There was not a book that described that standard.

Fiona McBride: Every time that someone picked up a case, they would check to see that everything had been done properly prior to that. Throughout the process, it was constantly checked by the next individual. We would have kept a note of where things were in that way.

Stewart Stevenson: How do you know that things have been done properly if you were not recording the process? To take a small example, the process by which you annotated the back of a photograph seems relatively casual.

Fiona McBride: That would only be in the case of an identification.

Hugh Macpherson: Particularly in a special case, work sheets were generated for elim comparisons, suspect comparisons and AFR search and they would all be initialled. If a certain person was compared against a certain mark, those would be initialled with the date. All those work sheets were available.

Stewart Stevenson: But if Fiona McBride is checking, as she suggests she would do—and I accept that—to see what has been done before, there is not a manual that says what should have been done before. The process is based merely on experience and the fact that things are done the same way. Perhaps I can bring Mr McKenna in at this point.

Anthony McKenna: In a volume crime case, you had the second part of form 13B, which was kept in the docket books. If you compared two suspects and they were on that, you would sign on the docket book that you had done the first check. It would be put into a second-check basket and whoever did the second check would sign the green docket as well as the front of the envelope. There was a double process.

Stewart Stevenson: So the second, third and fourth—or however many—people are aware of the conclusion that preceding people have

reached when they are setting out to confirm or reject.

Anthony McKenna: You are talking about identification; I am just talking about form 13B.

Fiona McBride: If I were to have picked up a case out of a second-check basket, I would have checked it and then recorded my findings.

Stewart Stevenson: When you say “checked”—you know, simple minds are sitting here—what does that mean?

Fiona McBride: It means checking the photograph against the form, ensuring that the forms in front of you are in fact the suspects that are noted and checking them against the photographs in the case.

Stewart Stevenson: So you are checking that the paperwork is consistent.

Fiona McBride: I would check it to see whether it was an identification or negative or whatever. I would go back to record my findings. At that point, I would note what someone else’s findings had been. The implication might be that, in some way, we were so knowledgeable about whoever had seen the case before us that that would have an effect on our work. However—

Stewart Stevenson: I am making no implications at all. I am just trying to understand the process.

Fiona McBride: No—that is the way that I am taking it or seeing it, although that is perhaps not an implication that you are making.

I would mark off the case, I would notice that someone had not signed for it and I would wonder who had seen it before. It came out of the second-check basket, which meant that someone must have seen it before me. I would then have investigated to find out who should have signed the front of the docket. Prior to that point, I would not know who that would have been.

Stewart Stevenson: When there were differences of view on identifications, what process did you go through? Mr Stewart said in his written evidence that he would come across one to three such instances a year, if I recall correctly.

Charles Stewart: It depends what you are saying is a difference of opinion. In those days, if somebody said that an identification was wrong, that would be taken straight to the chief inspector and he would investigate it. Now, there is a different procedure.

Stewart Stevenson: At this stage, we are interested in what happened in 1997.

Charles Stewart: If, in 1997, somebody said that they thought that a mark had not been

identified correctly, the procedure was to inform the chief inspector, who would review and look into the matter.

Stewart Stevenson: Was the chief inspector a fingerprint expert?

Charles Stewart: No, he was not.

Stewart Stevenson: Would he review only the process?

Charles Stewart: He reviewed the process. He would probably instruct the senior fingerprint expert present to carry out a review based on fingerprint comparison. The chief inspector could not review the identification as such, because he did not have the knowledge to compare fingerprints.

Stewart Stevenson: Your written evidence mentions one to three occasions per year.

Charles Stewart: There will be regular differences of opinion. Alister Geddes and Hugh Macpherson might both say that there is an identification, but there could be a difference of opinion, if you see what I mean, in terms of the standard for court. That is common; that still happens. Experts see things in different ways, based on their training and experience. It is not automatic for every expert fully to agree with every other expert.

Stewart Stevenson: Let me develop a hypothetical situation. Two experts each find 10 points of comparison, with 16 being the court standard. If the overlap of those 10 was limited to four—in other words if, between the two, there were six points that were different—but the number of points came to 16 in aggregate, would that be a case for a different quality of investigation, compared with a situation where both the experts came up with the same 10, but were disagreeing with someone else? How do you deal with such situations?

Charles Stewart: If you made an identification, I could identify the print according to X number of characteristics. The next examiner could look at it and use completely different characteristics from those that I had used. It depends on how much detail and information are available for the fingerprint that is being compared. As for the situation that you described, with two different examiners both finding 10 points, I do not know what we would have done in those days. I cannot honestly remember how the identification would have been progressed, if it would have been.

Stewart Stevenson: Do you now have a formal technical process—I do not wish you to explain it to us, except to the extent that it is necessary—for resolving such situations?

Charles Stewart: We now have a process in place under which, if one examiner records the findings and a second examiner anonymously checks them, and the latter records their findings and realises that they are different, that is dealt with and goes through a facilitated discussion.

Stewart Stevenson: Did that process come in after 1997?

Charles Stewart: Yes.

Stewart Stevenson: When, roughly?

Hugh Macpherson: It was quite recently.

Charles Stewart: Two years ago, I think.

Stewart Stevenson: Why was it brought in?

Hugh Macpherson: Purely to be open and transparent and to show that any disagreements were openly recorded on the diary page, with the case.

Stewart Stevenson: Let me move on to the vexed issue of cropping marks for court presentation. Is that normal practice?

15:30

Charles Stewart: Mr Mackay accepted in his report that cropping was not unusual, and that it is virtually standard practice in fingerprint bureaux throughout the United Kingdom.

In this case, we were expected to produce our illustrations using a charting personal computer. The machine was bought for us and we were told that we could use it—that was it. We did not like the machine: it was of very poor quality and had many operational problems. To produce a reasonably sized illustration, it was necessary for us to focus on a very small area of the mark. If I had picked a big area of the mark, my enlargement would not be any bigger than the actual size. I had to narrow in on the area of the mark on which I was working, so that the illustration showed as much as possible of that area.

Mr Mackay recognised that cropping is standard practice. When reviewing the case, the independent expert would have the original size scene-of-crime impression, along with the fingerprint form. That is how most experts carry out review work and comparison.

Stewart Stevenson: Would the defence normally be provided with the uncropped mark, so that it had sufficient quality to verify independently the conclusions that you had reached?

Charles Stewart: The Crown or procurator fiscal normally supplies the defence with our full production book, which contains all the scene-of-crime impressions at actual size that have been

identified as belonging to the person. A copy of our report and the fingerprint form that we used as the basis for the comparison are in the book, as well as illustrations, if those were produced in the case. The full parcel of material is available for the independent expert to review.

Stewart Stevenson: Is that different from the cropped presentation that could be used in the court? Is the thumb print, or whatever, presented uncropped?

Charles Stewart: The thumb print is not enlarged, but is presented actual size. That is how we, as experts, work initially. Most experts work with the actual size scene-of-crime impression, against the actual size impression on a fingerprint form.

Stewart Stevenson: I understand that.

Charles Stewart: The illustration is purely for court purposes to help the jury to understand how we go about making our comparisons.

Stewart Stevenson: I have a final question before we move on. What sort of workload did you have in 1997? I think that you said that there were 35 people on the four teams. What sort of throughput did you have? In this case, you had to deal with 400 or so fingerprints.

Charles Stewart: I am sure that the bureau could supply the relevant statistics for the year. I could not tell you from memory what they were.

Stewart Stevenson: Let me put it this way. Subjectively—I do not expect you to answer in any other way—do you think that a lot of overtime was being worked?

Hugh Macpherson: Yes.

Fiona McBride: You said that there were 400-odd marks in the case. In some cases there are two marks—one of the suspect and one elimination print. There was a requirement for some people to work overtime, but that does not mean that all cases were massive. My answer is purely subjective.

Stewart Stevenson: So the subjective view is that in 1997 the SCRO was not under exceptional or unreasonable pressure of work.

Charles Stewart: Under Scots law, once a person has been arrested they must be brought to trial within 110 days. In a murder inquiry, there is an expectation that the fingerprint bureau will be able to carry out all the required comparisons and to produce its reports within that timescale. If there are 400 marks and a large number of elimination prints and suspects in a case, it is necessary for other people to work on the case and for overtime to be worked, because we are trying to meet a deadline for court purposes.

Stewart Stevenson: In the evidence that he gave earlier, Hugh Macpherson said that XF was identified in early January and Y7 was identified in the middle of February, which is a period of six weeks. I am picking out only three of the approximately 400 marks that you were examining. I am asking very generally whether in 1997 you felt yourself to be under unreasonable and undue pressure, specifically at the time of Marion Ross's murder.

Hugh Macpherson: There has always been a heavy workload in the Glasgow fingerprint bureau of the SCRO. That is a double-edged sword: it keeps the experts fully adept at comparison work and keeps their expertise current, but it is also stressful. The Leishman report stated that two, three or four people—I cannot remember the exact figure—had left the SCRO due to stress-related illnesses. I do not know whether that report can be made available to the committee.

Stewart Stevenson: So some people moved from experiencing stress, which up to a certain point is a positive thing, to experiencing distress, which is clearly a negative thing.

Hugh Macpherson: Yes.

Fiona McBride: May I say something, just to put the matter in perspective? In the SCRO, it has always been the case that the quality of the work comes first, then the quantity and then the cost. Of course, cost has nothing to do with us; only quality and quantity have. Therefore, if I were to spend an hour on a mark, there is not a person in the SCRO who would tell me not to do that—that goes for everyone. Of course, stress is subjective and people experience it in different ways. However, if someone wants to spend an eternity on a mark because that is necessary, no one would question them on that.

Mrs Mulligan: Can I come back to the question of cropping? Did the booklets that you produced in the court case include cropped photographs?

Hugh Macpherson: They did not include cropped photographs. As Charles Stewart has already pointed out, we used the charting PC, which ceased to be used some six years ago. No one in the department liked using it. It was bought at a cost of £30,000 by management, who were not fingerprint people, but no one in the department enjoyed using it. Eventually, it was scrapped.

I have to say that an enlargement is only an illustration. I started in the SCRO in 1970; from then until 1983 we produced enlargements for every case, whether summary trial, sheriff and jury trial or High Court trial. In 1983, we had a ruling from the Crown Office that said that we need no longer produce enlargements for summary trials. All I am trying to show is that enlargements are

merely illustrations of identifications that are used to highlight the characteristics that have been used.

Since 1983, we have been the only bureau in Britain that is open and transparent, and which prepares case-specific enlargements for trials. Other bureaux use generic enlargements that just show what ridge endings and bifurcations are. I find Mr Gary Dempster's inference about our enlargements in the McKie case quite annoying. The Aberdeen fingerprint bureau, in which he works, produces enlargements only at the request of the fiscal. On the print in question, we may not have shown the whole print, but we showed the relevant area and the majority of the print was displayed on each occasion in the 13 or 14 books that we prepared for the Marion Ross murder inquiry.

Mr Pat Wertheim has cast aspersions, saying that we produced three sets of enlargements and that we degraded them one after another. That is utter nonsense. We used the machine to the best of our ability and produced the enlargements that were shown in the books. The way Mr Wertheim put it over it was as if we had prepared three sets of enlargements for one case. The first set of enlargements that was produced using the charting PC was from the mark Y7 and the original elimination fingerprint form of Shirley Cardwell, as she was then. The third set that we produced was from the custody form of Ms McKie in the perjury trial and from the mark Y7. In between times, we were asked by a fiscal to prepare another report, which only Mr Stewart and I signed, regarding the position of mark Y7, and we produced another set of enlargements.

To me, it is a strength that we can produce three sets of enlargements that did not use the same material. We are asked to prepare the evidence by the Crown. We do not say, "I'm going to pick this form or that form." We are told, or requested, to use certain forms; on three separate occasions, we did that.

Mrs Mulligan: You say that you are the only bureau that gives all the details. Do you mean all four bureaux in Scotland or just the Glasgow bureau?

Hugh Macpherson: The Glasgow bureau is the only one that, as a matter of course, prepares case-specific enlargements. No one else does that in Scotland or in England and Wales.

Mrs Mulligan: It is useful for us to understand that, given that a different view is being expressed elsewhere.

I understand your explanation that because you wanted to provide the best possible view of the print and were unhappy with the machine, you focused on a specific area, which is why the

cropping took place. We are told that when someone who is examining a fingerprint finds a difference, that shows that the print is not the same as the one with which they are comparing it. Can you understand that that could suggest a reason for removing part of a print?

Hugh Macpherson: That depends on one's mindset. As far as I am concerned, there is a subtle movement in impression Y7. Just above that subtle movement, there are further characteristics that, as far as I am concerned, validate my identification. On the "Panorama" programme, Mr Wertheim claimed that he found dozens of differences. I disagree entirely with that assertion.

The fact that the two independent experts who viewed and agreed on the findings on mark Y7 put no malicious interpretation on our production of illustrative enlargements is worthy of note. Mr Gary Dempster and Mr Pat Wertheim have made such an interpretation on national television.

The other point to bear in mind is that when we move to a non-numeric system in August 2006, no enlargements will be produced. All I am trying to say is that enlargements are made for illustrative purposes only. Any expert who is worth his or her salt does not make a judgment about whether there has been a misidentification by looking at poor-quality enlargements. We are the first to admit that what was produced by the charting PC was unacceptable, but it was a very difficult machine to use. Have Mr Wertheim and Mr Dempster used that machine? The answer is no.

Mrs Mulligan: Thank you. We will discuss the non-numeric system later.

The Convener: I want to clarify what the members of the jury saw. Which image did they see?

Hugh Macpherson: They would have seen the highlighted identified points on which we based our identification.

The Convener: So they would not have seen the full mark.

Hugh Macpherson: No—but the best evidence was in the production book.

The Convener: Is that standard practice in other bureaux or is it standard practice only in the Glasgow bureau?

Hugh Macpherson: It is not standard practice in other bureaux because they do not prepare enlargements, although they may do so if the fiscal asks them to. We are the only bureau that prepares case-specific enlargements—that means enlargements of a mark from the case—as a matter of course. Other bureaux produce only generic enlargements, which just illustrate what a ridge ending is and what a bifurcation is.

The Convener: Why is your bureau the only bureau that presents evidence to the jury in that way? What is the point of that?

Hugh Macpherson: The fiscal asks for such enlargements. When we move to a non-numeric system and case-specific enlargements are not produced as a matter of course, it may still be the case that a fiscal wishes to have enlarged a bloody impression on a knife.

The Convener: It was not your decision that the enlargements should be presented, but the procurator fiscal's. The fact that that is how the information was presented to the jury was the fiscal's decision, not yours. Is that correct?

Hugh Macpherson: That is why I said that after 1983 enlargements were no longer produced for summary trials. Since 1983 until today, the fiscals have wanted us to prepare enlargements only for sheriff and jury or High Court trials. We do not make such decisions.

The Convener: I just wanted to be clear about whose decision that was.

As you know, the cropping issue has been quite controversial. You have spoken about that. If you highlight areas of similarity, are you potentially cutting out areas of dissimilarity?

Hugh Macpherson: Not in my view.

I have forgotten what I was going to say.

15:45

The Convener: I asked you the question because we are in the difficult position of receiving evidence in which there are differences of opinion about the matter, so we obviously want your opinion. Other experts say that points of dissimilarity are quite important when they are trying to get a match; it is therefore legitimate to put it to you that, if you focus on the areas of similarity in a print, you exclude the areas of dissimilarity. In your view, how significant is that if you are trying to get a match?

Fiona McBride: I will explain from a different viewpoint. When the mark is compared by an expert, all parts of the mark are compared and a decision is reached after that. If it is required, we will prepare the enlargement for court; however, the expert has already formed a conclusion and has measured and evaluated the different characteristics in the mark in coming to a conclusion about similarity or dissimilarity. The enlargement is merely an illustration of the identification process. As Hugh Macpherson said, some places use a generic enlargement—the same thumbprint, or whatever it is, is wheeled out time and again.

The Convener: That is not what my question is about. My question is about whether the points of dissimilarity are important. It seems to me, as a layperson, that if you crop an image to focus on the points of similarity, you exclude possible areas of dissimilarity. My question is this: how significant is that in examining a print?

Fiona McBride: When we examine a print, we include areas of possible dissimilarity. We come to a conclusion and then, later on, the enlargement is used merely as an illustration for the jury. If the Crown had asked us to do so, we could have produced something entirely different that bore no relation whatever to the case. We had already measured, evaluated and come to a conclusion on all parts of the mark, so we were not hiding or discounting anything. We had already accounted for that information; it was just not produced for the court.

Charles Stewart: I will take that one step further. It depends on the quality of the fingerprint form that we are comparing the mark against. If the fingerprint form is not well taken, there may be certain areas on the scene-of-crime impression that we cannot compare against the fingerprint form because that area does not physically appear on the fingerprint form. We can compare only what we have against the form that we have. Quite often, we say, "Well, that appears to be him, but we would need another form to allow us to make a fuller decision," or "We cannot give you an answer just now because of the quality of that form—we need a good quality form to allow us to offer any opinion to you." We can compare only what we have against the forms that we have, and I seem to remember that I could not compare the top of fingerprint Y7 against the fingerprint form that we had because the form was not taken well enough in that area. I do not know whether that helps the committee, but it could explain why other people think that there is dissimilarity. To my mind, I could not fully compare that fingerprint against the form because all the areas that I required were not showing on the fingerprint form.

The Convener: Okay. So far, that is helpful. We will move on to the question of mark Y7.

Marlyn Glen (North East Scotland) (Lab): Bear with me if it seems as though I am going back to the beginning. I am going to ask about mark Y7, although I realise that you have answered the question implicitly.

Do all four of you consider that mark Y7 matches Shirley McKie's left thumbprint, irrespective of whether there are 16 points present?

Anthony McKenna: Yes.

Fiona McBride: Absolutely.

Hugh Macpherson: Yes.

Charles Stewart: Yes.

Marlyn Glen: Is there any information of any kind that might cause you, individually, reasonably to doubt or reconsider that opinion?

Charles Stewart: I have not seen any information anywhere that would cause me to reconsider. I was quite happy—in either December or January, when the Scottish Executive came back to us and wanted more productions—that I was able to see the mark again and carry out another comparison, because I had not seen it for all those years. I still found nothing in it that gave me any great problem. It is a difficult mark and it suffers from a bit of movement—there is a fair amount of distortion—but I still have not seen anything from anybody that leads me to question my finding.

Marlyn Glen: You looked at the mark again recently.

Charles Stewart: We were absolutely delighted to see the mark again in either December or January, when the Scottish Executive wanted more productions to be prepared for it. That was the first time we had seen it for six or seven years.

The Convener: Mary Mulligan.

Mrs Mulligan: I think—

Marlyn Glen: I want to give the other witnesses an opportunity to answer that question.

The Convener: Sorry.

Marlyn Glen: I want to find out whether you agree with Charles Stewart. Is there any information of any kind that might cause you to change your mind?

Hugh Macpherson: No.

Fiona McBride: No.

Anthony McKenna: No.

Marlyn Glen: I wanted to check that with all of you because of the evidence that we took earlier.

Was attribution of mark Y7 to Shirley McKie made independently by each of you with no interference, influence or pressure of the kind that has been suggested? Was there any pressure—direct or indirect, stated or implied—from any other party?

Charles Stewart: We probably all go about looking at a mark in completely different ways. I usually start with the scene-of-crime impression and work out what surface it is on and what finger it is. That gives clues to the problems that I might encounter in the comparison process. Then I start looking at the appropriate fingerprint form. If I think, "Maybe this mark is a left thumb," I would

start looking at the left thumb. If I thought that it was the right forefinger, I would start with the right forefinger and work my way around the rest of the fingers carrying out a comparison, which takes time.

Certain marks are easier to work with on a comparator, which is a machine. We put the scene-of-crime impression on one side and the appropriate fingerprint form on the other side and they come up on a screen. We take a pen and make marks so that we are not reliant on our memory of what we have looked at. Eventually, one reaches one's own conclusion.

Was there pressure? No. I think that we are all quite conscious that we try not to apply extra pressure to people who are carrying out comparisons. We look at a mark for as long as it takes. Sometimes, it is close to finishing time and we say, "I'm going to look at that in the morning with fresh eyes. I'll start again tomorrow." Pressure is not and should not be an issue. For the same reason, we have had senior investigation officers coming into the office saying, "Can you compare this for me? I'll watch you while you do it," but the answer is, "Oh no, you won't. There's the door—off you go." We do not need extra pressure.

Marlyn Glen: I invite the other witnesses to respond.

Fiona McBride: Hugh Macpherson gave me the mark to compare. I took some time to compare it. When he came to see whether I had finished with it, I told him to go away, which he did. Eventually, I said, "Here you are—I've decided." There was absolutely no pressure whatever. He just wondered whether I had finished the comparison. I said that I had not and he went away.

Anthony McKenna: There was no pressure on me at all.

Marlyn Glen: Thanks. It is important to establish that.

Mike Pringle: Mr Stewart, you referred to identifying the mark in January or February. Will you explain why you were looking at it again then? It would be good to have that on the record.

Charles Stewart: The Scottish Executive's solicitors came back to us looking for us to prepare further productions for the civil hearing that was meant to take place in February this year. They came in and told us what they wanted and we made certain materials available. The first thing that we did was to carry out our comparison again. After that, we each prepared our own illustration for the Executive's solicitor and submitted it to the solicitor.

Mike Pringle: So it was for the Executive.

Charles Stewart: It was for the Executive's solicitor.

Mike Pringle: Fine. I just wanted that on the record.

Mrs Mulligan: As Marlyn Glen did, I want you to think back to 1997. Were you aware at that time of any dissenting views within the Glasgow office?

Hugh Macpherson: No. As I have already stated, Mr Dunbar phoned me to say that everyone who had carried out a comparison agreed that it was the left thumbprint of Shirley McKie.

Mrs Mulligan: I do not know whether this would have been appropriate, but were you aware of any other views from other bureaux?

Hugh Macpherson: No.

Fiona McBride: I do not know whether any other bureau had been shown the mark at that time. I am not, in any case, sure whether such a thing existed at that point.

Mrs Mulligan: So any suggestion that there was a difference of view came later.

Fiona McBride: Absolutely. Yes.

Hugh Macpherson: In 1997, for the David Asbury trial, Mr Malcolm Graham looked at and agreed with all our productions, including Y7, QD2 and QI2. In 1999 Mr Peter Swann looked at Y7 and agreed with our findings. I believe that the chief inspector of the identification bureau was the first person to highlight the fact that an independent expert did not agree with our findings. That is my memory of events—another witness might be able to confirm that.

Mrs Mulligan: Did you provide Y7 to Mr Swann so that he could pass comment on it?

Hugh Macpherson: No. I have never provided Mr Swann with anything to do with Y7.

Charles Stewart: I presume that Mr Swann got the productions from the fiscal, because that is how independent experts normally work. A lawyer approaches an independent expert and arranges with the fiscal for the material to be made available. The independent expert goes to a court or fiscal's office and is put in a room and given the original productions that we would have worked from at the time, in order that they can carry out comparisons. The bureau does not provide material directly to independent experts in Scotland; experts get their material from the Crown. I think that the system is different in England.

Mrs Mulligan: I am not asking how you think Mr Swann got the fingerprint, but I want to ask each witness whether they provided him with the fingerprint.

Fiona McBride: No.

Anthony McKenna: No.

Hugh Macpherson: No.

Mr McFee: I want to go back to basics. In the opinion of each of you, is mark Y7 one print?

Charles Stewart: Again, I have never had a fingerprint form that has been taken high enough to the top of thumb to allow me to fully compare the top of the thumb to see whether it is continuous with the lower part. It could be continuous; it could be that there is slight pressure distortion because the thumb has been put down twice. Without having a form that shows the whole of the right area, I cannot give a definite opinion.

Mr McFee: Are you saying that you did not have a form that showed you all the print?

Charles Stewart: We had the scene-of-crime impression—Y7—but the fingerprint form that was taken for Shirley McKie was not taken well enough, to my mind—

Mr McFee: With respect, the question was whether mark Y7 is, in your view, one print.

Fiona McBride: What do you mean?

Mr McFee: There was a suggestion that it could be another print or a double touch. Do you think that mark Y7 was created by one and the same person?

Charles Stewart: During the comparison process I was very wary because I could see a lot of pressure where the bone is at the top of the finger. That amount of pressure usually means that there is a possibility that the finger came off the surface and was put down again at some point. I cannot say definitely whether that happened, because I was unable to compare the top of the impression against the fingerprint form, which is the only way of saying whether the fingerprint was continuous.

Hugh Macpherson: As I think I have explained, in my view there is a definite twisting of the print. For me, above the area of subtle movement there are characteristics that I believe validate the impression. It looks as though the finger was put down and twisted and turned.

Fiona McBride: Without being present when the mark was laid down, I cannot say whether the thumb was put down and moved one way, put down and moved another way or put down twice. I just know that it is Shirley McKie's print.

Mr McFee: So you would have to be present to know—

Fiona McBride: I would not guess. I could not tell from looking at the mark in exactly what direction it had been twisted. I just know that the mark is consistent with Shirley McKie's left thumb print.

Mr McFee: Is it one print or not?

Fiona McBride: I would not hazard a guess.

Mr McFee: Okay.

Anthony McKenna: There is some sort of movement.

Mr McFee: I am interested because one of the experts whom you cite—Mr Swann—came to a clear conclusion. Far from not hazarding a guess, he concluded:

"Thus, it was assessed to be a 66 degree anti-clockwise movement of the tip of the thumb, which resulted in ridge characteristics seen at 12 o'clock on the Crime Scene Mark, appearing at 2 o'clock".

That is a pretty accurate picture.

16:00

Fiona McBride: That is his prerogative.

Mr McFee: Of course it is. I am interested in the issue because Mr Swann clearly agrees with your identification, but I want to find out whether you reached it on the same basis.

Fiona McBride: I really could not say, because I cannot see what Mr Swann saw—

Mr McFee: With respect, you said that you would not guess, but Mr Swann said that there is a 66° anticlockwise rotation. That is quite a difference in approach.

Fiona McBride: We are two separate experts. Mr Swann based his decision on his experience and I based my decision on mine. I will not pretend that I see something or know something. I know that it is Shirley McKie's thumbprint—I have no doubt whatever about that. I saw the form, although I cannot remember how far up it I saw, because it is a long time since I last looked at it. Mr Swann seems to be in agreement with us. Whether or not the mark was in one piece, that does not take away from the fact that it is Shirley McKie's thumbprint.

Mr McFee: We will perhaps come to how Mr Swann identified the mark a little later.

Why did you not like—for want of a better word—the top of the mark? I will concentrate on one or two comments that you made at the perjury trial. You said:

"I did not care for the top part of the fingerprint".

When the advocate depute asked you why, you said:

"I'm not sure of the exact reasons but probably distorted. It may not even be the same author. It may be the same author but it is likely dragged or pushed, but it was of no value to me because I couldn't interpret the ridges properly as it wasn't clear."

When Donald Findlay questioned you on what was wrong with that part, you said:

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

Is that a reasonable summation of what was said?

Fiona McBride: I suppose that that is what I said at the time.

Mr McFee: I turn to Mr Swann's written evidence to the committee. For those who are interested, it can be found on page 265. He states:

"Almost every latent print is distorted to some degree, but some are distorted to the extent of creating a problem in recognition. Some loop patterns, which is what we have here, whether right or left slope, will lean more or less in the Crime Scene Mark when compared to the inked print, giving the impression, not of similarity, but of difference. That too appears to have occurred with Exhibit Y7. Having said that, there can be no excuse at all for any competent Expert to be deceived by an apparent difference in ridge flow or the position of ridge characteristics, because of external forces. Movement can be severe, resulting in distortion, but as all competent Fingerprint Experts are well aware, Identification is based on the sequence of ridge characteristics in the two prints, Crime Scene Mark and inked print, and not on ridge flow or pattern which are simply 'class characteristics'."

You say that only somebody who was not an expert would attempt to interpret those ridges, but the independent expert who supports your case says that there is no reason for any competent expert not to form a conclusion from them. Is that a difference of opinion among two experts?

Fiona McBride: No, it is not a difference of opinion—the mark is clearly Ms McKie's.

Mr McFee: With respect, that is not the question. How do you explain that difference of opinion? We have read your credentials—you and Mr Swann have years of experience. One of you says that there is no excuse for a competent expert not to use the top part of the print; the other one says that only somebody who was not a competent expert would use it.

Fiona McBride: That is obviously because we had different fingerprints—or different forms—to look at. Mr Swann perhaps had access to Shirley McKie's mark further up and based his decision on that, whereas, when I checked, it was merely the mark of a cop at the locus. I did not see the mark again, because it was taken from me. Therefore, I have not been able to provide as full an analysis as Mr Swann has provided.

Mr McFee: Mr Swann could hardly take an entirely different impression from the scene. Mark Y7 could not be reproduced. You could not go to Shirley McKie and say, "Give me another mark Y7, please."

Fiona McBride: No, but he could have taken another fingerprint from her. In fact, I think that she said that she had her fingerprint taken millions of times.

Mr McFee: So you think that he reached his decision solely because he might have looked at another—

Fiona McBride: I have no idea and, in any case, it is irrelevant. It is still Shirley McKie's mark.

Mr McFee: I respect your view, but I think that the issue is very relevant when two experts claim entirely different things.

Fiona McBride: I think that that is because you do not understand the process properly. Perhaps Mr Swann will be able to explain it better.

Mr McFee: Perhaps I will ask Mr Swann when he gives evidence.

Mr Stewart, the advocate depute asked you:

"were you conscious of any dissimilarity appearing between the photographed impression and the print on the form?"

Do you recall that exchange?

Charles Stewart: I am sorry, but it was very long ago. I have not seen the transcript.

Mr McFee: Well, you said:

"Within the area of the impression we made our comparison from, no".

The advocate depute then asked:

"Were you aware of any else where out with"

the top section of Y7, to which you replied:

"There are a few characteristics or what appear to be characteristics appearing at the top of the finger on the mark from the scene of crime mark."

When the advocate depute asked:

"What sort of dissimilarities are we talking about in that area?",

you said:

"In that area there appear to be three or four characteristics that do not appear against any of the fingerprint forms we have made the comparison against".

Charles Stewart: I explained that earlier when I said that the fingerprint forms on which I based my comparison did not show a full enough area of the finger to provide all the detail.

Mr McFee: But if you had not ruled out the top of the thumb, would it not have been in order to get a fingerprint from Ms McKie that revealed the full area?

Charles Stewart: If we were quite happy that identification had been established, there was no need to pursue the matter any further. We would ask for another form only if the quality of the original form did not allow us to make a full comparison and so reach a conclusion. That is how we worked in those days.

Mr McFee: So, in your opinion, it makes no difference if the mark has three or four

characteristics that you cannot pick up from the tenprint or whatever from Ms McKie.

Charles Stewart: From one's historical experience of comparing fingerprints, one knows that if a certain quantity of characteristics is in sequence and agreement, it is likely that the rest will also be in sequence and agreement. If you do not have the material to make a comparison, you cannot reach a categorical conclusion one way or the other.

Mr McFee: So, in essence, you are saying that you think that you made enough comparisons in the middle section of the fingerprint.

Could a certain degree of pressure or distortion turn a right-opening bifurcation into a left-opening bifurcation?

Charles Stewart: Having read his material, I think that Mr Wertheim's interpretation of the mark is completely wrong, because he has made no allowances for any pressure or distortion on the mark. Earlier, you mentioned 60-something—

Mr McFee: Mr Swann talks about a 66° rotation.

Charles Stewart: I have seen a version somewhere—I cannot remember who produced it—that shows clearly the twist and movement in the mark. Mr Wertheim does not allow for that at all. I suppose that that is another difference of interpretation between experts.

Mr McFee: But could distortion turn a right-opening bifurcation into a left-opening bifurcation, or vice versa?

Charles Stewart: Bifurcations will either open up or join ridge endings depending on the amount of pressure that is applied. Skin is an amazingly elastic substance that stretches and distorts very easily, which is why there is a great difference in quality between what you can make comparisons with. The fingerprint form should be of good quality, because it is taken under ideal circumstances.

Mr McFee: But could distortion turn a right-opening bifurcation into a left-opening bifurcation?

Charles Stewart: Is Mr Wertheim looking at the right area to see that? He says that he sees right-opening ridge endings. I must admit that I do not think that that bit of the finger is that genuine.

Mr McFee: I am sorry to press you on this matter, but could distortion change the direction of the opening or not?

Charles Stewart: My experience suggests that distortion will not change something that opens one way into something that opens another way. Instead, it will turn a bifurcation into a ridge ending either by crushing or separation. However, the area of the finger that Wertheim is talking about

does not appear in the forms that he has looked at. As a result, he has not made a comparison.

Mr McFee: Is that a no, then?

Charles Stewart: It is very hard to say.

Mr McFee: I am just trying to get a yes or no answer.

Charles Stewart: It is possible, but I would think it very unlikely.

Mr McFee: Very unlikely. Okay.

Margaret Mitchell (Central Scotland) (Con): Is it true to say that Y7 is a complex mark as opposed to a straightforward one?

Charles Stewart: Yes.

Margaret Mitchell: I understand from your submission that there has been no legal pronouncement on the identification of the mark. Is that correct?

Charles Stewart: That is correct. Ms McKie was found not guilty. That is the verdict of the court, but that does not necessarily mean that it is or is not her fingerprint.

Margaret Mitchell: So, to date, even all these years later, there still remains a difference of opinion between two experts—or perhaps not between two experts, but views differ among experts. I am trying to get to the heart of how, if that is the case, there has been a malicious charge. Can you confirm that it is two experts' opinions that have caused the controversy?

Charles Stewart: A difference of opinion between experts is not unusual or unique. It happens. There have been quite a few cases in recent times in which experts have expressed different opinions, and I think that that will always happen, because that is basically what experts do. Each expert uses his or her own training and experience to reach a decision.

Margaret Mitchell: I understand that. I wanted to consider particularly the Crown involvement in the case. Your submissions have been critical of the Crown's lack of robustness, particularly in the McKie case, in not calling witnesses that it could have called. Will you comment on that?

Charles Stewart: I was surprised that, during the McKie case, the Crown did not call Malcolm Graham, who apparently gave evidence in the Asbury case. One would have thought, logically, that he would have been one of the first people whom the Crown would call as a witness. By the same token, one would have thought that, as the Crown was aware of Peter Swann's examination and involvement, it would have called him as a witness as well. It seems funny that neither of those people, who were the defence experts

employed by both of the accused persons, was called.

Margaret Mitchell: On the presentation of the material itself, you have made it quite clear that what the fiscal asks for the fiscal gets. In view of that, can you go back and suggest anything that you think would have aided the trial that the fiscal should perhaps have asked for?

Charles Stewart: Using the charting PC was always going to be problematic, because it was a poor piece of equipment. If one had a clear scene-of-crime impression, one could have a reasonable quality enlargement, but as soon as one had a mark that was of poor contrast or just not very clear, the charting PC did not provide any benefit at all. That is why we did not like the machine and were quite glad to get rid of it. In hindsight, we would have preferred to use photographic enlargements, because that is what we had used for years until the charting PC was introduced. Now, thankfully, we have gone back to using photographic enlargements for illustration purposes.

Margaret Mitchell: Is there any question about how evidence is presented? I think that I read in the Taylor report that a 16-point identification was almost like a gold standard and that, although the defence would obviously bring in its own experts to challenge such an identification—to get legal aid, apart from anything else—it was previously unheard of to have any problems with a 16-point identification. Is that the case?

Charles Stewart: I think that there have been problems with identifications to various standards throughout the world for years. There have been a few wrong identifications in the United Kingdom to a 16-point standard. Historically, when I started, we gave evidence regularly. Then, sometime early in the 1980s, we started producing evidence by means of a joint report, which meant that our evidence was produced and given to the fiscal, who then served it on the defence, and the defence had a certain number of days to challenge or accept the evidence. The evidence is usually challenged by the independent expert even if it is not challenged in open court, if that helps.

Margaret Mitchell: Is it your view in hindsight, or did you feel at the time, that the Crown case was not robust enough?

Charles Stewart: My personal feeling was that, as long as there was one expert saying black and another saying white, the jury would be told that they must find beyond all reasonable doubt, and that any jury would have a problem with that. That is my opinion.

Margaret Mitchell: So the Crown really should have realised that, with two conflicting views and two independent witnesses, Mr Swann and Mr

Graham should have been called as a matter of routine.

Charles Stewart: To my mind, they should have been called.

16:15

Margaret Mitchell: In your written evidence, I notice that there was no opportunity to mount a counter-campaign. You were apparently told that all of this was sub judice. You were instructed not to speak about it.

Charles Stewart: We have been warned about the sub judice rule several times. A chief constable told us to ensure that we said nothing so that things would soon blow over. We have been the victims of a one-sided campaign and we could not speak out or attempt to defend ourselves at any stage.

Hugh Macpherson: When it was said last year that there was “an honest mistake”, the director called us in and gave us the briefing that the Crown had given. It was basically about “an honest mistake”. However, one of the first things that we were told was to remember the sub judice rule regarding the David Asbury case. At all times, as public servants, we have had no opportunity to state our case.

Margaret Mitchell: Is it your contention, because there has been no legal pronouncement on the identification of Y7, that to say it was “an honest mistake” was inaccurate?

Hugh Macpherson: We believe that there was no mistake, honest or otherwise.

Margaret Mitchell: In asking that question, I was thinking particularly about the First Minister's statement.

I also want to ask about the lack of a robust public response from the management of the SCRO—which you have highlighted—from Strathclyde police and from the Association of Chief Police Officers in Scotland. Was that the normal way for those groups to treat bad news?

Charles Stewart: Historically, the police service has ignored any attacks on itself; it just lets them blow over. That is how the service normally reacts. It never seems to be robust enough to defend itself. That is what I have seen over the years.

Fiona McBride: I was interviewed by a specialist solicitor from the Scottish Executive and I was told, “It's not a terrible problem—we are attacked in the press quite often and it all blows over and you just get on with your job.” I had to point out that I could not get on with my job because of what was happening and that I was never going to get back into court. I think that, at one point, Mr McKie said that he was going to

ensure that none of us got back into court. Of course, if we were to be accepted by the Crown, the usual independents would rear their heads, so I suppose that the Crown would not take a risk with us. I pointed out to the solicitor that I understood where she was coming from but that, as a result of the case, we could not do our job.

Hugh Macpherson: The circumstances were quite unusual. When we were suspended on 3 August 2000, we were still being cited to give evidence in court. It was only when we returned to work in May 2002 that we were told that we had been removed—without our knowledge—from the expert witness list.

The four of us sitting here have been through a 13-month police, fiscal and Crown inquiry and we have been through an ad hoc disciplinary inquiry. We were exonerated by both. In fact, the disciplinary inquiry stated:

“In the case of the four suspended experts the procedures followed and the relationships maintained throughout the initial work, the preparation for the court cases and in the years following remained professional and correct.”

To emphasise the point, during the summing-up at the end of Ms McKie’s perjury trial, the presiding judge, Lord Johnston, stated:

“None of the experts are deliberately trying to deceive you or themselves.”

We also had a meeting with Sean Murphy, who was the prosecution person in the Ms McKie perjury trial. I hope that somebody will correct me if I am wrong, but he said that fingerprints did not lose the case. I believe that it was Mr Murphy and Mr Gilchrist that we had a meeting with. Much has been made of the poor presentation of fingerprint evidence by the experts, but that is what we were told. Our integrity and the presentation of our evidence were not issues.

Margaret Mitchell: I will sum up this little line of questioning, convener. Rather than this being some malicious conspiracy, there may be some other explanation. First, in failing to bring forward two experts who would have backed up your case, the Crown was not robust enough in its original defence of the case. Secondly, despite the fact that Scottish ministers seem to have ignored the sub judice rule, it meant that you were unable to defend your stance. Thirdly, Mr McKie was probably very well versed in the media. He had been an officer with Strathclyde police and knew the kind of batten-down-the-hatches reaction that would be taken. Therefore, he had a free run at things for a number of years. Are those accurate assumptions? Are they alternatives to the malicious conspiracy theory?

Charles Stewart: It offers an explanation of much of what happened. The very lack of action in

defending us by our employers and others higher up the chain caused us no end of problems.

Hugh Macpherson: We have been asked to appear on the “Frontline Scotland” and “Panorama” programmes. If I may, I will quote what was said in one of the letters from Ms Shelley Joffrey:

“You should know that we have received a written legal undertaking on behalf of Shirley McKie that she will not sue the BBC in respect of any allegations made against her on Panorama. However, it is possible that Miss McKie could still sue anyone making allegations against her.”

That is another reason why we have not come forward.

Margaret Mitchell: I believe that certain parts of the media are very nervous about being sued. That is very bad for democracy.

Mr McFee: Convener—

The Convener: Hold on, Bruce. I want to check a couple of things.

Did the Crown communicate to you that it would not take any further the proceedings that it was considering taking against the four of you?

Hugh Macpherson: Yes. All of us have a letter from Mr Gilchrist, the regional procurator fiscal, in which he states that no proceedings would be taken against us in the fingerprint cases of Shirley McKie and David Asbury. Mr Gilchrist looked into all aspects of both cases.

The Convener: You talked about the statement that was made in the Parliament last year. A statement was made in the Parliament in 2001 by the then Minister for Justice, Jim Wallace. Were you informed that the apology would be made to the Parliament?

Hugh Macpherson: No.

The Convener: The first that you heard of it was when the minister made the statement to the Scottish Parliament?

Hugh Macpherson: I cannot remember if that was when we were named in the Parliament. I am not sure about that.

Fiona McBride: Was that not Mike Russell?

The Convener: A statement was made around 2000 or 2001.

Hugh Macpherson: Certainly, we were not informed of it.

The Convener: You are not sure if you were.

Fiona McBride: Was it definitely an apology? I seem to remember that there was something from Jim Wallace.

The Convener: It was an apology to Shirley McKie.

Fiona McBride: Was it? Perhaps it was for the hurt or something, but not to do with the fingerprint identification. I am not sure. I cannot remember.

The Convener: Okay. I want to be clear about what you were aware of at the time of the perjury trial. Many things have been said about the way in which the Crown conducted the trial. You are not in a position to give us evidence—that is a matter for the Crown—but were you aware of the existence of Peter Swann's report at the time of the trial?

Charles Stewart: We knew that he had been used as an independent expert. When we went down to the court on the first day, we were talking to John Murphy beforehand. We mentioned to him that we heard that an independent expert had been used by Miss McKie and that he had agreed with our findings. We informed him of that at that point. I do not know whether the Crown knew about that beforehand.

The Convener: So, you in the SCRO knew about the existence of a report by Peter Swann when the Crown went into the perjury trial.

Charles Stewart: Yes.

Hugh Macpherson: I do not know whether we knew that the report was by Peter Swann. All that we knew was that somebody agreed with us.

Fiona McBride: I did not know about it at all.

The Convener: But you mentioned earlier the advocate depute, Sean Murphy, who represented the Crown in the perjury trial against Shirley McKie. I am asking whether you were aware of the existence of the report at the time that the trial was being conducted by the Crown. You seem to have been aware of something.

Hugh Macpherson: We definitely knew about Malcolm Graham, but I am not sure whether we knew about Peter Swann.

Charles Stewart: I must admit that I had thought that we did. I think that we heard about it that day. I am not 100 per cent sure about that, however.

The Convener: Okay. That is fine.

We are still on the question of Y7. I will take one brief question from Bruce McFee on Y7, before we move on.

Mr McFee: You said that Sean Murphy, the advocate depute, said that the fingerprints did not lose the case. Did he go on to tell you what did?

Fiona McBride: No. He did not tell me what did, but he said that someone was lying at the trial. He said that it was between two people and that he knew which one it was, but he could not separate them in evidence.

Mr McFee: That is interesting. I wonder whether that was ever reported. You mentioned the Black report, although not by name—the one that exonerated the four officers. Do you know whether Black had the advantage of reading the Mackay report?

Hugh Macpherson: I have no idea. The Black report was certainly published after the Mackay report.

Mr McFee: But you do not know whether Black had read the Mackay report.

Hugh Macpherson: No.

The Convener: We can come back to that. We are on the identification of Y7. There are a lot of reports and I want us to be clear about which report fits in where.

Alex Neil, is your question on the identification of Y7?

Alex Neil (Central Scotland) (SNP): I think that my question is relevant. It is in relation to the Tulliallan presentation.

The Convener: We will move on to that later, so I will take your question then.

Stewart Stevenson: In the witnesses' view, is a copy of the print obtained via the internet unsuitable to be used for the purposes of comparison? If so, why?

Charles Stewart: As an expert, I was always taught to ensure that I had the original material and that I knew its provenance—that it was genuine and correct. I have seen images on the internet that are purportedly mark Y7 but they do not bear much relation to what I looked at because there is a brush mark that damages the lower half of the mark. I was always taught to base my comparison and identification on original material.

Stewart Stevenson: So your concern about sourcing marks from the internet is not about the technology. It is simply about the provenance, or having an audit trail to show that the mark is a sufficiently truthful—in the technical sense—representation of the original. Mr McKenna clearly wants to come in.

Anthony McKenna: The SCRO has always said, "Please look at the original material." Not so long ago, the Federal Bureau of Investigation had a misidentification using internet material in relation to the Madrid bombing. I believe that Mr Bruce Grant sat at this table and said that he could not understand why anyone would use internet material. Two of the best bureaux in the world—the FBI and New Scotland Yard—say, "Please do not use internet material."

Stewart Stevenson: To be clear, that is not a comment on the technology. The concern is

simply about the lack of provenance of what one might find on the internet, which does lie occasionally.

Anthony McKenna: What causes me concern is the lack of clarity. The FBI and New Scotland Yard are now saying, "Don't use internet material. Use original material."

Stewart Stevenson: But the clarity issue is a technical issue. It is different from the provenance issue.

Anthony McKenna: I do not understand what you mean by "provenance". Do you mean where it came from?

Stewart Stevenson: Yes. There is no evidential trail to prove that a thumbprint on the internet that is purportedly yours is not, in fact, mine.

Anthony McKenna: Yes. You mean that you do not know where it came from.

Fiona McBride: That is one aspect. However, I suppose that digital images vary according to the technology that is used. If another expert chooses to use material from the internet, I think that they are taking a risk. They will certainly not be looking at the same material as I looked at, but I certainly would not tell them what they should or should not do.

Stewart Stevenson: So, again, it is simply about the end-to-end process being understood by the expert when they use—

Fiona McBride: That, and the technology.

Stewart Stevenson: I was including the technology in what I said.

Do you know whether the image that was used at Tulliallan by SCRO experts came from the internet? What was its source?

Fiona McBride: That would have to be answered by Robert McKenzie and Alan Dunbar.

Charles Stewart: None of us was present at Tulliallan so we cannot offer much comment that would help you.

Hugh Macpherson: We have been criticised for the quality of the charting PC enlargements. If one puts images on the internet, they will be further degraded, so surely—

Stewart Stevenson: Why will they be further degraded?

Hugh Macpherson: They will be pixellated images, will they not?

Stewart Stevenson: Well, I could get all technical, because I happen to be an expert on that, but I will not rise to the bait.

The Convener: Let me be clear: you are really not in a position to give us a view on whether looking at an image on the internet is suitable.

16:30

Fiona McBride: I would not take a risk on it. If other people want to do so, that is entirely their prerogative.

The Convener: However, your evidence is that it is best to look at the original material.

Fiona McBride: Yes.

Alex Neil: According to the official minutes of the Tulliallan meeting, Mr McKenzie accepted that, if the top portion of the print was of common authorship to the bottom portion, it was likely to be a right thumb rather than a left thumb and not Shirley McKie's. Mr Dunbar agreed with that.

Anthony McKenna: The question is for Mr Dunbar and Mr McKenzie.

Alex Neil: But does it not—

Anthony McKenna: We were not present at the Tulliallan meeting, so we do not know whether the minutes are correct.

Alex Neil: Let me finish the question. Do the minutes not blow a hole through the idea that the SCRO is in unison on the issue?

Fiona McBride: Only if they are true. Only Mr Dunbar and Mr McKenzie could answer that.

Alex Neil: They are the official minutes.

Fiona McBride: Mr Dunbar and Mr McKenzie will be able to say whether the minutes are accurate.

Alex Neil: If the minutes are accurate, and if they say what I have suggested, do they not blow a complete hole through the idea that the SCRO is in unison on the issue?

Fiona McBride: I do not want to make any assumption on that. The question is for someone else to answer.

Anthony McKenna: We have never received the official minutes of the Tulliallan meeting, so we cannot comment.

Alex Neil: Perhaps Mr McKenzie can show them to you.

The Convener: For information, the committee is not aware of any official minutes either.

Alex Neil: Convener, I think that we should try to obtain them.

The Convener: I thought that you had a copy of them. Were you not reading from them?

Alex Neil: Not directly, but I know that they exist. The minutes will prove my point to be correct and blow a complete hole through some of the evidence that we have just heard.

Mrs Mulligan: Convener, I want to be clear: was Mr Neil quoting from the minutes? I understood that he was quoting from them.

Alex Neil: I was quoting exactly what the minutes say, but I did not actually quote from the minutes.

Mrs Mulligan: The committee would like to see the minutes if he has them.

The Convener: I note that Mr Neil has quoted what he believes the minutes say, but he does not have the minutes. The committee notes that minutes of the Tulliallan meeting may exist and, if they exist, it would certainly like to see them.

Alex Neil: The minutes exist.

Des McNulty (Clydebank and Milngavie) (Lab): Good afternoon. I think that the witnesses have been through a terrible process, given the way in which they have been treated by various people, including their employer. Will Mr Macpherson, as the prime identifier, confirm that he has not been invited to make a presentation on his identification since the trial? Is that right?

Hugh Macpherson: That is correct, yes.

Des McNulty: Is it not extremely unfair—I will put it no more strongly than that—that you have been suspended and debarred from doing your job for an extended period without being given a single opportunity to make a presentation on your judgment on the fingerprint?

Hugh Macpherson: I have given my judgment in two court cases.

Des McNulty: You have said in your evidence that you saw the mark again relatively recently, at the beginning of this year. An issue has been raised with the QD2 fingerprint, which was examined by Danish experts. Were those the Danish experts on the basis of whose evidence you were suspended?

Hugh Macpherson: That is correct.

Des McNulty: Do you state emphatically that their evidence is wrong?

Hugh Macpherson: Their report is flawed, yes.

Des McNulty: Is it completely flawed?

Hugh Macpherson: Their report states:

“QD2 did not originate from David Asbury.”

However, it has subsequently been shown that our identification was correct. Mr Mike Pass agreed with us. Even Mr Zeelenberg agreed with us.

Des McNulty: I understand that the Scottish approach to the circumstances under which defence witnesses may examine fingerprint evidence differs from the approach south of the border. In England and Wales, evidence can be posted to people for them to do the corroboration. In Scotland, on the other hand, the witness has to travel to see the evidence in a setting such as a police station. Is that correct?

Hugh Macpherson: That is correct, yes.

Des McNulty: Is there a reason for that?

Hugh Macpherson: The Crown holds the productions—that is the reason, really.

Des McNulty: I am trying to follow the logic and to work out who identified the fingerprint in an appropriate setting between your initial identification and the trial. I will go through some names. There were the four of you who are present here; there was Mr Dunbar; there was Mr McKenzie; a Mr Halliday is mentioned; there was Malcolm Graham; there was Peter Swann; and there was Pat Wertheim.

Hugh Macpherson: Are we talking about print QD2?

Des McNulty: Yes. I am trying to work out how many of the people who saw the fingerprint evidence in the closed setting said that it was not Shirley McKie's fingerprint.

Hugh Macpherson: I think that we are getting a bit mixed up between QD2 and Y7.

Des McNulty: I am sorry. I am talking about Y7.

Hugh Macpherson: I believe that 10 experts within the SCRO agreed that Y7 was the left thumbprint of Shirley McKie.

Des McNulty: There were those 10; there was also Malcolm Graham, Peter Swann and the contrary voice was—

Hugh Macpherson: There was also John Berry and Martin Leadbetter.

Des McNulty: Before the trial? I am talking about before the trial.

Hugh Macpherson: Sorry.

Des McNulty: Before the trial, Pat Wertheim saw it. I am not sure whether David Grieve saw it as well. In effect, the overwhelming majority of the experts who looked at the identification agreed with it. Is that right?

Hugh Macpherson: Yes.

Des McNulty: I refer now to the experts who looked at it over the internet. John Berry, in his evidence, suggests that it is normal to display a print that is to be looked at over the internet as a rolled print rather than a plain print. Is that correct? Does that give a better identification?

Hugh Macpherson: Yes.

Des McNulty: Mr Stewart referred to the fact that the image that was given on the internet had a scrape on it, so there was a distortion on the print as shown on the internet.

Charles Stewart: That is correct, yes.

Des McNulty: Mr Berry also referred to a distortion. You mentioned 66°, Mr Macpherson.

Hugh Macpherson: I did not mention 66°. However, I actually saw the print in situ and there was a twist to it.

Des McNulty: The people who saw the print in its proper setting identified it as being that of Shirley McKie. The people who saw the print over the internet—the plain print rather than the rolled print, with the rotation and with the damage—are the people who refused to identify it as being that of Shirley McKie.

Hugh Macpherson: Yes.

Des McNulty: Presumably, that is a product of the campaign conducted over the internet to encourage people to make that identification.

Alex Neil: That is out of order.

Des McNulty: I am just asking.

The Convener: It is not out of order, but let me say this before anybody answers anything: the line of questioning that Des McNulty is pursuing is very relevant to us, but the problem is that those who are here are not in a position to confirm everything. For the record, and for everyone's information, I point out that one of the tasks of this inquiry is to pull together all the information about who saw what, where and using what original materials. We will have some discussion about that later, but the committee is pretty clear that we want an analysis of who saw the print, when they saw it, who they worked for, whether they were independent and what materials they used. In other words, we will conduct an in-depth analysis to assist us.

I do not know whether that helps anybody, but I thought that the committee might benefit from that reassurance. I ask the witnesses to answer what they think they can answer today. However, I do not think that they are in a position to confirm who saw what, where. All that they can confirm is what they saw.

Alex Neil: The other point of order is—

The Convener: There is no point of order, but you can give me a point of information.

Alex Neil: The remit of the inquiry is not to establish whether it was Shirley McKie's fingerprint.

The Convener: That is correct.

Des McNulty: The point that I was making is that the four fingerprint experts who are before us today as witnesses have been significantly maligned in respect of their professional competence and they have been alleged to have been involved with a conspiracy. The evidence

that has primarily been used to do that has come from a swathe of expert support. I am asking the panel members for their view of the images on which the expert support has been gathered. That is a legitimate question for them to respond to.

The Convener: Your line of questioning is fine. All I am pointing out is that the value that we will attach to the answers will depend on whether the panel members have first-hand knowledge. I do not think that anyone is disagreeing with that. Carry on.

Des McNulty: The question is: what do you think of the images on the internet?

Charles Stewart: The version that I have seen is certainly different from the mark that I compared. There is a brush mark right through the bottom half of it, which obliterates some characteristics and has caused damage. I would need to see a life-size mark to establish whether it was comparable. I would not want to compare it from what I have seen on the internet.

Hugh Macpherson: I come back to the point that was made earlier. We work from original material. That is all I can say.

Des McNulty: I come back to my original point. The procedures for identifying fingerprints in Scots law require that people work with the original material.

Hugh Macpherson: Yes.

Des McNulty: So we should take into account only identifications that are based on the original material.

Hugh Macpherson: Mr McKenna made the point that Mr Bruce Grant said that it was bizarre that some people had based their opinion on non-original material.

The Convener: I think that we knew that. I think that you have told us that previously.

Mr McFee: In your knowledge, did Martin Leadbetter, Malcolm Graham and Arie Zeelenberg see the original marks and tenprints?

Charles Stewart: Given that Malcolm Graham was employed by the Asbury defence team, I assume that they would have arranged with the fiscal to make the productions available for him to examine. I assume that he has seen the original material.

Mr McFee: I am thinking more of Y7.

Charles Stewart: That would be in the production book. If the Crown made the material available to him that mark would have been in it.

Mr McFee: And Zeelenberg?

Charles Stewart: I do not know what Mr Zeelenberg has seen. I understand that he made several comments about working from the image

on the internet because he thought that it was the best image, but you would need to ask him.

The Convener: That is exactly what we will do. With the greatest respect, we need to ask the experts directly what they saw. We will do that. As you know, we will talk to Arie Zeelenberg for the second time.

Hugh Macpherson: At the Tulliallan meeting, Mr McKenna and I were represented by Mr Des Leslie. He said that he could not believe that professionals would not wish to work from original material.

The Convener: On the issue of your position and your expert view, I presume that you are not in a position to make a presentation because you do not have access to the materials.

Hugh Macpherson: That is correct.

Charles Stewart: All the materials that we prepared have gone back to the Crown or the Executive. They are in possession of them. We have asked for them, but they will not release them to us.

Hugh Macpherson: We asked for them to be returned to us, but they said that they were now the property of the Crown Office.

Anthony McKenna: The Executive.

Hugh Macpherson: Sorry, the Executive.

Stewart Stevenson: To be absolutely clear, the phrase "original material" was used. I recall that the fingerprint was on a door surround. Is that correct?

Hugh Macpherson: Yes.

Stewart Stevenson: The bit of wood sawn out of the door frame is clearly original material. Are you describing anything derived from it, including a photograph or a lift of the print from it, as original material?

Hugh Macpherson: Original material would be the photograph of the print in situ.

Stewart Stevenson: Okay. When the photograph is reproduced in a variety of ways, what has to happen for it to stop being original material? What are the limits to what you describe in your evidence as original material? What is the test?

16:45

Fiona McBride: If the identification bureau took a photograph and a negative, I suppose—although I am not a photographic expert—that it would be possible to use that negative to reproduce the original material. It is not possible to take a photograph of the original mark, because it has been damaged, so crucial ridge detail will have

been obliterated for the identification. So a photograph would have to come from the identification bureau negative, as the original mark no longer exists on the door post.

Stewart Stevenson: Therefore, when you use the term original material it means the negative, and there are acceptable technical processes for creating derived images—turning the negative into a positive, for example—that would be sufficient for evidential and analytical purposes, equivalent to using the original material.

Fiona McBride: You really have to ask the identification bureau about that. I receive photographs from it in good faith. There is a process and everyone signs in that process to prove the veracity of the material. I do not know; the identification bureau would be able to say what would normally be submitted or accepted. I am not a lawyer and I am not a photographic expert.

Stewart Stevenson: I am not trying to make a legal point, because I know that you are not lawyers and neither am I. I am simply trying to establish that original material—to use the term in common English, if you like—means that there is a singular original, but that in your analysis you are working not from that negative but from something reproduced from it, in a controlled way that you understand and trust. Is that correct?

Fiona McBride: It is from a verifiable source, which is the negative, which is from the identification bureau.

Stewart Stevenson: Yes, but your analysis is based on analysis not of the negative but of something derived in a controlled and verifiable way from it.

Fiona McBride: Of course.

Stewart Stevenson: So it is entirely possible for there to be processes to derive multiple instances of reliable and verifiable material, such as you have worked on, that others might use. I am asking you to comment not on any particular process or technology, just on that general point.

Fiona McBride: I would rather not comment on that point, as I am not entirely sure what point you are making. Again, it goes back to the identification bureau, the original negative and any prints taken from it. I do not know exactly what you mean—

Stewart Stevenson: But the prints—

Fiona McBride: It goes back to what you said earlier about the digital process and reproducing on the internet. I do not know exactly what techniques you were referring to, so I would rather not comment.

Stewart Stevenson: I shall just comment from a position of some expertise. The internet is capable

of distorting or of being absolutely truthful. The issue is the provenance and the technology; the internet is absolutely neutral.

Anthony McKenna: I think that what you are getting at is the question of what is the original material. The original material is the negative taken by the scenes-of-crime officer. He photographs the thing in situ, and that is probably the original material.

Stewart Stevenson: I do not want to make a meal of it. I just want to be absolutely clear that you are not doing your analysis on the negative collected at the time.

Anthony McKenna: That would be printed and sent to us. If you are asking whether we would actually go down to the scene and examine the door frame, the answer is that we would not. If you sent me that door frame, I would be happy to examine it.

The Convener: I would like you to be clear about this, because if we are going to ask other experts for their definition of original material I want to understand clearly what your definition is. Is your definition of original material the negative of the first photograph taken of the mark? Is a reproduction of that what you see first?

Hugh Macpherson: With regard to a lift and whether impression Y7 had been dusted and lifted by means of acetate and placed on a vinyl, the ruling in the case of HMA v Dennison in 1977 was that the best evidence was the lifted impression, not the articles from which the lift came. When you dust a fingerprint impression—which is 98 per cent water and 2 per cent oils and fat—you lift the majority of that print from the article and place it on the vinyl. With regard to a lift, that is the best evidence.

With regard to the photograph, in my view the best evidence would be the negative of the photograph that was taken of Y7 in situ. Yes, you could have multiple photographs of that and they would still be best evidence, as long as you have the negative.

I have to say that when we were asked to prepare the productions for the hearing that was never convened on 7 February 2006, the original negative was not available. The original elimination form of Shirley McKie was not available.

Stewart Stevenson: I think that we can close this line of questioning at this point quite simply. Throughout the last 20 minutes or so, you have been using the term original evidence. I want to be absolutely clear when the term was being used by you, in good faith—I am perfectly content to accept that. We have been talking not about the negative but verified photographs that were derived from it.

Hugh Macpherson: Yes.

Stewart Stevenson: Right. That is sufficient for my purpose, convener.

The Convener: In the McKie case, was there eventually a lifted impression?

Hugh Macpherson: Not for Y7. As I said earlier, we produced many lifted impressions in our books of productions. There was a combination of lifts and photographs. The decision whether a print is conducive to being lifted or is better being photographed in situ depends on the surface involved. That is down to the identification bureau officers; we are totally and utterly office bound, if you like. Apart from the time earlier in our careers when we went out and photographed the scenes of crimes—

The Convener: So the scenes-of-crime officer makes the decision whether it will be a lift or a photograph.

Hugh Macpherson: Yes.

The Convener: Just before we move on to the next section, there are a few points that I need to put to you on the issues that are in the public domain. As you are all too well aware, a variety of fairly well known fingerprint experts from around the world are slating SCRO, for want of a better word. Some of the evidence that we have heard so far suggests a culture issue within the SCRO. We have heard that all of you are bound by each other's decisions. The culture within the SCRO is what has forced those experts to describe this as a misidentification. The committee agrees that it is a bit worrying to hear experts from around the world saying on the news on a fairly regular basis that there are confidence issues within the SCRO.

Hugh Macpherson: As recently as last Thursday, there was another example of that with Allan Bayle appearing on "Newsnight" and saying that there has been another misidentification in the Glasgow fingerprint bureau. He was very quick to go on "Newsnight". I have every confidence in my colleagues, who are hard-working, honest and well trained—some of them are here today. Once this matter is looked into, I am quite confident that Mr Bayle will be found to be inaccurate. I am talking about Mr Bayle, along with a Mr Macleod and whoever it was from the Aberdeen fingerprint bureau who also declared a misidentification. I am quite confident in my colleagues. I am also confident that this will be found to be another spurious allegation to add to the others—for example, on QD2—that we have talked about already.

Yes, it is worrying. I hope that one of the things that will come out of the inquiry is that the traducement of me, my three colleagues and the Glasgow fingerprint bureau will be put to rest once

and for all. When Mr Bayle is shown to be wrong in this instance, I hope that he will be as quick to go on "Newsnight" or to be reported in *The Herald* to say so. When Mr Neil finds out that it is inaccurate, I hope that he will retract his statement that the Glasgow bureau should be shut down.

Alex Neil: Can I follow up on that, convener?

The Convener: Let me first complete my line of questioning.

The issue is at the heart of the matter. As you will appreciate, opposing points of view have been put to us—Mike Pringle will address that in depth a little later. What would motivate someone such as Allan Bayle, whom I do not know and I have not met, or Arie Zeelenberg, whom I have met, to go so public with their criticism of the bureau?

Hugh Macpherson: That is a question for Allan Bayle.

Fiona McBride: What is interesting is that our work was checked for a year prior to the identification and a year after it. The result was that our work was 100 per cent error free. I find it remarkable that suddenly so many misidentifications by the bureau have been reported. I can only imagine that rather than there being a culture problem at the SCRO it is more likely that there is a culture problem outwith the SCRO. If crime is reported often enough, everyone imagines that Glasgow is a city full of stabbings and robberies and that you cannot walk down the street without being attacked. Perhaps it is the case that every time someone now looks at an SCRO case they are already biased and it is easier to come to a conclusion. That is in direct conflict with the findings in all the reports and with our work that was tested. Perhaps it is not us who should be looked at; it should be those others who find it easier to have something to say about the SCRO.

Alex Neil: You could sum up your evidence as saying that everybody is out of step in the fingerprint world except oor Tam—and oor Tam is you—with the exception of Mr Swann and Mr Graham, and the latter wrote to Iain McKie to apologise for his original mistake.

You say in your evidence that the First Minister is wrong, the Crown Office is not up to the job, Strathclyde police are part of a conspiracy against you, Tayside police investigations are totally wrong, the Dutch fingerprint people are useless, the Danes are useless, the Americans are useless, the Durham guys are useless, your colleagues in the Lothian and Borders bureau are not much better and you totally ridicule the Aberdeen bureau. So, everybody is wrong bar you.

Fiona McBride: May I answer that? I hope that someone with experience of the same quality and

quantity of work that the SCRO deals with will look into the latest case. If, for example, Mr Bruce Grant looked into that case and found that there had been a misidentification, it might be valuable for him to look at QD2 and go on to look at Q12, but stop short of Y7 if he must because, after all, we are not here to retry Shirley McKie. Why not allow someone with the same knowledge, experience and skill as those in the SCRO—as was statistically evidenced in its work base—to check the case?

Alex Neil: I agree with Fiona McBride on that. I have written to the convener to suggest that the Executive's international fingerprint experts be asked to study the latest alleged misidentification to establish whether it is a misidentification.

In your evidence, you rubbish the report by Her Majesty's inspectorate of constabulary, which led to reforms after 2000.

The Convener: Ask a question, Alex.

Alex Neil: A total of 20 expert reports now confirm the misidentification of Shirley McKie's fingerprint and you will still not accept it. How can you have credibility?

Fiona McBride: The solution is what I said a moment ago—please check the marks again, perhaps stopping short of rechecking Y7, but look at the other work.

As for rubbing the HMIC report and so on, I am not aware of ever having made such comments.

Alex Neil: It is in Mr Stewart's evidence.

Mike Pringle: To be fair, we have covered the issues. When there is a group of experts on one side and another group on the other, it is extremely difficult to know which side to believe.

I think that Mr Stewart said that experts disagree quite often. How often have experts in the SCRO bureaux disagreed about a fingerprint? Am I correct that you said it happens perhaps two or three times a year?

Charles Stewart: Are you talking about wrong identifications or about the difference in opinion about the court standard? Those are two big and different questions.

Mike Pringle: Okay, explain both.

Charles Stewart: Erroneous identifications are few and far between and most bureaux would hope that that is the case. Sometimes, a first expert identifies a mark then a second expert identifies it and one says, "It meets the 16-point standard"—the present standard required by the court—whereas the second expert says, "I cannot confirm that." That is reasonably common; that is the nature of opinion. What you see in the

fingerprint is what you see in it. You cannot tell someone else what to see in it, because it is your interpretation. There are always differences of opinion between experts, based on what they see. Most of the time, experts agree on an identification, but at the moment they are constrained because we have an artificial standard for court purposes. If we were non-numeric, most identifications would go to court.

17:00

Mike Pringle: We may come back to that issue later. What happens when there is a difference of opinion of the sort that you have just described?

Charles Stewart: Are you talking about what happens now or what happened back in 1997?

Mike Pringle: I am talking about both. We are trying to examine what happened then and what the process is now. Let us start with what happened then. If one expert said that he thought that a mark was Mike Pringle's fingerprint and another said that he did not think that it was, who would make the ultimate decision about that?

Charles Stewart: The onus then would have been on the people involved to take the matter immediately to the chief inspector, who would have carried out his own investigation.

Mike Pringle: But he is not a fingerprint expert.

Charles Stewart: No, but he would have asked the senior fingerprint expert in the bureau to review the case. He could also have gone elsewhere, if he wanted. I do not know how we would have dealt with the matter, because I was not involved at that level.

Mike Pringle: By elsewhere, do you mean outside the bureau?

Charles Stewart: I see no reason why not. I do not know whether the chief inspector would have done that.

Mike Pringle: You have described what happened in 1997. What happens now?

Charles Stewart: If someone claims that an identification is erroneous, a form is filled out and it goes straight to the management, which deals with it and investigates the matter. Mr McKenzie and Mr Dunbar will be able to tell you about that in greater detail.

Mike Pringle: Because they are now responsible for the process. Would Mr Innes or Mr McLean have any input into it?

Charles Stewart: They would be aware that it was taking place, and I assume that they would control it. I am not involved at that level, so I cannot really answer the question. You will need to ask Mr Innes.

Mike Pringle: The implication was that Mr Ferry would not have been involved in the process. Is that correct?

Charles Stewart: I cannot honestly say.

Mike Pringle: Do you accept that mistakes can be made in relation to fingerprints, or is the matching of fingerprints a completely error-free process?

Charles Stewart: Every person involved in the comparison process is a human being, and to err is a very human failing. We can all look at something today and not find a match, but look at it tomorrow and be able to identify it. We can look at a print one day and think that it probably belongs to a particular person. However, we can look at it the next morning, see that it is more problematic and not make an identification. There is a checking system in place that should be robust enough to ensure that if an individual has made a mistake, it is found somewhere else down the line. Mr Macpherson can say more about that.

Hugh Macpherson: In the early 1980s, for a period of about four years, I was the first civilian fingerprint expert to be given the task of being the final signatory on identifications. Before that, the chief inspector final-checked all identifications—his was the fourth signature on identifications. The task then fell to the senior inspector, and eventually it came to me. I had experience of stopping a misidentification in the bureau in the 1980s.

Misidentifications are an absolute rarity. When you think of how many comparisons are carried out in the Glasgow fingerprint bureau—all the different manual and computerised searches and suspect and elimination print comparisons—that is clear. Millions of comparisons have been carried out between 1970, when I started, and today. Misidentifications are rare, but they happen. The Manchester bureau, the Garda Síochána and New Scotland Yard have had misidentifications. Mr McKenna has already referred to the misidentification that occurred recently in the Brandon Mayfield case. There was a famous misidentification in Nottingham, where a Neville Lee was locked up on remand for six months for a serious rape because his print was misidentified. That was the first time that Mr Peter Swann came to my knowledge. He was on a programme with Sue Cook. He had nothing to do with the misidentification but was illustrating the fingerprint process. Yes, there are misidentifications; to deny that would be wrong.

Mike Pringle: I think that Fiona McBride said that she was not aware that the fingerprint was still in existence. We were told earlier that it is still in existence; it is still on the door frame and is being held by the procurator fiscal. I do not know whether that is right or not.

Fiona McBride: It is not in its original form; it has a brush mark across it and is therefore not an exact representation. All the characteristics that we looked at are not present.

Mike Pringle: I presume that you have not seen the print since the brush mark was put on it.

Fiona McBride: I was handed Pat Wertheim's evidence in court. I did not recognise the mark and I thought that that was my fault. I had not seen the print for a long time and I thought, "Why can't I recognise it?" I was told, "Oh, you know what mark this is—you've seen it before. It's Y7." It was only after sitting down and hearing Pat Wertheim give his evidence that I realised that I had not recognised the print because it had been damaged. I was in court and saw the mark that Pat Wertheim produced, but it was not what I had looked at.

Mike Pringle: Is there any merit in the suggestion that some have made that the print should be re-examined? If the print is not the original, the only way of re-examining it would be to look back at the original negative and take a copy from it.

Fiona McBride: Various suggestions have been made. One was to do a DNA test on the mark, but it was said that Shirley McKie had been brought back to the locus and could, for example, have breathed on the print, which would explain why her DNA could be on the print and why an examination would be valueless. Someone else suggested checking all the prints on the doorpost for Shirley McKie's DNA. If it turned up only on that one mark, that might be fairly strong evidence. However, I am not an expert on DNA and I could not say whether the print should or should not be re-examined.

Mr McFee: May I clarify one point, convener?

The Convener: If you make it very brief—and I mean brief. Other members want to come in.

Mr McFee: Ms McBride, is it your evidence that the brush line that you say now goes through the mark is such that the mark has been rendered useless for the purposes of identification, or such that you could not pick out the characteristics that you picked out previously?

Fiona McBride: I could not possibly comment on that. Because I have already checked the mark, and know that it is an identification, it would not be possible for me to revisit the print with an open mind and say whether it is or is not an identification. From my point of view, it is absolutely Shirley McKie's mark. Whether someone else could look at it and find sufficient characteristics and valuable evidence, I could not possibly say. I have already seen the evidence from the original material and I know that it is her

mark. I cannot judge what someone else could see.

Margaret Mitchell: Throughout, you have not deviated from your original stance. Rather than accepting what Mr Neil has suggested—that you are out of step with everyone else—do you think that a more balanced opinion might be that of Lord Hodge? He says that he believes that you acted in good faith and that

"Where there was conflicting evidence from independent experts over the match of fingerprint Y7 and the pursuer's print, they were entitled to discount the contention that the fingerprint was so obviously not the pursuer's that an assertion that the fingerprint was her print had to be malicious."

Lord Hodge is clearly saying that no malice was intended. Is that a more balanced view? And does it lead us to doubt the credibility of Pat Wertheim when he says that he identified the print in 60 to 90 seconds as being not Shirley McKie's?

Fiona McBride: In fingerprint analysis, it is necessary to take cognisance of all the information. I found it very strange that Mr Wertheim was able to do that in 60 to 90 seconds. In the decision-making process, it is normal that all information is taken into account and that sufficient time is allowed for each part of the process. Mr Wertheim says that he checked the print in 60 to 90 seconds, but I do not believe that that is possible without simplifying the decision down to a very narrow remit. That is when you are most likely to make a wrong decision.

Margaret Mitchell: Given that Lord Wheatley cannot find any statements of malice made by you, and given the opinion that Lord Hodge gave during the civil proceedings, do you think that the Scottish Executive has thrown in the towel far too early? Both judges said that, in their opinion, malice could not be proved.

Charles Stewart: On the malice and conspiracy claims, my feeling is that the normal due process was followed. The mark was identified; the report was prepared for the police; the police went to the fiscal; the fiscal came back looking for evidence; and the evidence was given to the defence lawyers, so that they could get their own expert to look at it. Independent experts agreed with us, so if you are saying that there is malice and a conspiracy, it must involve those independent experts. That is where the claims about malice and conspiracy fall down. The normal due process was followed.

Margaret Mitchell: So, in other words, £750,000 should not have been paid out when it was?

Charles Stewart: I would say so.

Stewart Stevenson: Twelve minutes ago, you described the 16-point standard as an artificial standard for court purposes. Will you explain?

Charles Stewart: For as long as I have worked in the fingerprint bureau, we have worked to the pre-determined standard for fingerprint identification for the United Kingdom. For many years, we have been trying to progress away from that to the non-numeric standard, but we have been held up in doing that. The rest of the UK has gone non-numeric; we understand that we will go non-numeric soon. The standard was laid down for many different reasons. It was recommended that, for normal purposes, a fingerprint used in evidence in court should show at least 16 characteristics in sequence and agreement. There were certain provisos, such as that in serious cases the fiscal might ask for evidence with fewer characteristics, if fewer characteristics were available. That was the normal guideline.

Stewart Stevenson: What is artificial about the standard? Any human-created standard will be artificial.

Charles Stewart: It is artificial—

Stewart Stevenson: Sorry to interrupt you. What are the implications of your describing it as artificial?

Charles Stewart: We could have two experts looking at a mark who both find 15 characteristics. Where would they stand in relation to the 16-point standard?

Stewart Stevenson: They would fail to meet it.

Charles Stewart: Yes. It is artificial from that point of view, because the experts would be happy that they had fully identified the mark. Under a non-numeric system, they would be willing to take that mark to court. The standard in itself is an artificial constraint.

Stewart Stevenson: If we were to stay with a marking system, rather than going to a non-numeric system, how many points do you think would be necessary?

Charles Stewart: I do not think that one can say how many points are necessary. Every mark is different. If we were comparing the rare marks that are almost the same quality as the fingerprint form, we would probably reach a decision early on. If we were dealing with a poor-quality mark with surface and movement distortion, we would look at it for hours before we reached a decision. I do not think that there is the necessity for a certain standard. I do not say to myself that I must find 10 points of comparison to satisfy myself that a mark is from a particular person. It all depends on the merits of the particular mark that is being compared.

Stewart Stevenson: But you believe that it is necessary that an expert be able to justify objectively how they have reached their conclusion and that the 16-point standard has

served a useful purpose in that regard, in that the 16 points can be highlighted and explained to lay people, such as me.

Charles Stewart: Yes.

The Convener: I want to spend 10 minutes or so at the end talking about your view on the way forward. I plan to close the meeting at half past 5, because we have items to deal with in private. I will allow brief final questions.

Des McNulty: I think that we established that 12 experts had looked at the mark and identified it. The 13th expert, Mr Wertheim, disagreed with the identification. Fiona McBride said that the mark appeared to be damaged, because there was a brush mark through it. Is it possible that the damage was deliberate?

Fiona McBride: It is possible.

17:15

Des McNulty: The identification that was made by the first 12 people was made on the basis of a mark that was not damaged. None of the experts who looked at it said that there was a line across it, but the mark that went on the internet did have that damaged element within it. Is that correct?

Fiona McBride: I have not seen every internet image. It might be the case that there is one that is not damaged, but I do not know.

Des McNulty: It just seems strange that the comparisons were so strong by the first 12 people to look at it and that, subsequently, the issue of a damaged element within the mark arose.

Will you comment on the difference between a rolled print and a plain print? What are the advantages of a rolled print for identification purposes?

Hugh Macpherson: Obviously, with a rolled print one has a bigger surface area to compare. A plain impression is made by simply placing the finger down and the information that it contains can be constrained. With a rolled impression, one has a bigger surface area on which to carry out one's comparison.

Des McNulty: I take Stewart Stevenson's point that we cannot blame the internet, but I am talking about the actual images that were put on the internet. If people are asked to make a comparison using an image that is of reduced quality because it is a plain print rather than a rolled print, because a mark has been made through the exhibit, and because there is angular distortion of 60° to 66° or whatever, is it possible that they will be confused or misled by what they are asked to look at?

Hugh Macpherson: It is possible. That is all that I can say.

Charles Stewart: A rolled impression shows perhaps 80 to 90 per cent of the surface area of the finger whereas a plain impression might show only 45 to 50 per cent. In some cases, a plain impression will give sufficient information to allow one to carry out a comparison and reach a conclusion, but on the whole one really requires the rolled impression because that shows much more of the finger. It shows the full picture.

Des McNulty: Let me put the question more directly. If you were asked to make a comparison between the exhibit that was put on the internet and the fingerprint in the name of Shirley McKie, would you agree to do that? Are those things in any sense similar, or would you agree with the international experts that you were being asked to compare two different things?

Charles Stewart: From what I have seen, the image on the internet is missing a lot of the detail that was on the original mark that we saw. It would be a lot harder to carry out a comparison because of the damage to the mark that appears on the internet.

Mr Kenneth Macintosh (Eastwood) (Lab): I am pleased for you that we are coming to the end of what has been a marathon session today. It is worth reiterating—as we did last week—that just as the inquiry is not putting Ms McKie back on trial, neither is it putting you on trial, although it might sometimes feel that way.

Last week, we heard allegations made against you. The allegations that have constantly surfaced over the years in this campaign are that you are either incompetent or corrupt or dishonest. You have rebutted some allegations today, but on the question of competence, has there been any court ruling that confirms that there was a misidentification, as people keep calling it? Has there been any court ruling on the fingerprint itself?

Charles Stewart: Not that we are aware of.

Mr Macintosh: On the question of your competence, have there been any tests that compare your standing as fingerprint experts with that of any of the other experts who are often quoted in the case?

Charles Stewart: The only major test of fingerprint variation was carried out by Evett and Williams in the 1980s. They used X amount of sample material, which was submitted to experts in the United Kingdom and the rest of the world, to find out the difference in opinion and interpretation. Most people were not shocked by the test results because they proved that there were major variations in interpretation and in what people see in fingerprints. The results were particularly damning for the Dutch because they identified only one mark out of nine. The marks in

the test were quite good quality. If that is the standard that the Dutch work to, I have doubts about their abilities.

Hugh Macpherson: The significance of the Evett and Williams report was that the Dutch worked to a 12-point standard and we worked to a 16-point standard. We identified nine out of the 10 sets, which was the prerequisite number to be identified. As Mr Stewart said, the Dutch identified one set, saying that the other eight were inconclusive. Some of that may be explained by the fact that within the 12-point standard that the Dutch have, they have to find 10 unusual characteristics such as lakes, islands and spurs. There has never been a European or worldwide standard. We in the Glasgow fingerprint bureau use a ridge ending and a bifurcation as a counting characteristic. That may explain part of the difference between the two. Since its inception in 1960, the SCRO has always used the modern interpretation that a ridge unit is unique; therefore you can use a ridge ending and a bifurcation. China used to use eight characteristics and people would say, "They must be more expert than you." When we consider the eight characteristics, however, they were all unusual: lakes, islands and spurs. We would be able to attain 16 points from those eight characteristics.

Mr Macintosh: There is a second accusation, which is constantly made. All your work has been checked and proven to be accurate, but if your competence is in question, the only conclusion that some people might draw is that you are in cahoots. For the record, am I right in thinking that you have never spoken publicly about this case until today and that the first time you ever did anything publicly was when you wrote a letter to the Lord President last year, which was when you found out that the Scottish Executive was going to settle and that you were never going to go to court with the matter? Did you have any influence over the fact that Ms McKie was taken to court for perjury in the first place or over the fact that the Executive settled out of court? On all those points, what was your role? Why did you not speak out? Why have you allowed one side completely to dominate the news agenda for seven years, clearly at huge expense to yourselves personally and to the unit? Why did you remain quiet? What does that say about your own behaviour or professionalism?

Charles Stewart: We were more or less told that everything was a matter of sub judice. We had been warned by Willie Rae, who is now the chief constable of Strathclyde police, to say nothing. We were told many times that, if we were to make public comment, that could interrupt the judicial process, so that was something that we should not get involved in. From that point of view, it has been a frustrating time; those on one side can say

what they want when it suits them, and we have been effectively gagged.

Fiona McBride: When the Scottish Executive's solicitors said that there was going to be a settlement, they said that the matter would no longer be sub judice. I said, "When it is not sub judice, I'll make my view clear." I was contacted by "Newsnight" and given various options. I chose to go live with Mr McKie on "Newsnight". The Executive's response was, "You can't—he said that he'll sue you." I said, "That's fine. I'll go live." The Executive said, "No. He said that he'll sue us as well." I said, "That's it. I'm no longer going to be gagged by Mr McKie or whoever." The Executive said, "Stick to the hurt to your family. You'll get away with that one, but that's it." I said no. After that, someone said to me that perhaps it was better to have something out there than nothing. So, I did a pre-recorded interview. However, a great deal of it was cut, because the people who interviewed me said that they had to be careful that it was not libellous. Mr McKie had said that there had been a finding in the court that the print was not Shirley McKie's and that anyone who said otherwise would be libelling her. Of course, the statement about the court finding was not true. In any case, although the interview was cut, at least I got to say something.

I have since been under investigation for my foray into the media, and I am still awaiting the result. Although the matter is no longer sub judice and despite the fact that I told Scottish Executive solicitors that I absolutely intended to speak out about it, I have been prevented from doing so. Because of Mr McKie's threats and because the matter was sub judice, this is the very first time I have been able to say anything meaningful about it.

The Convener: As I want to move on to discuss the way forward, I will take only minor points of clarification from members. Does Alex Neil want to raise a new point?

Alex Neil: I want to clarify this thing between the fingerprint bureau in Glasgow and the SCRO. Why has only the Glasgow bureau been accused of misidentification? We have not heard about any misidentifications from the other bureaux.

Fiona McBride: As I said earlier, people now think that if an SCRO ident is involved allegations are made about it.

Anthony McKenna: Mr Neil, how do you know that there have been no misidentifications in the other bureaux?

Alex Neil: To the best of our knowledge—

Anthony McKenna: But how do you know that?

Alex Neil: Five accusations of misidentification have now been made against the Glasgow

bureau, whereas no accusations have been made against Aberdeen, Edinburgh and Tayside. That suggests to me that there is a systematic failure in the Glasgow bureau.

Mr Macintosh: Those are just unproven allegations.

Alex Neil: They are not unproven.

Mr Macintosh: They are all unproven.

Alex Neil: They are not.

The Convener: Look—

Hugh Macpherson: With regard to the Mark Sinclair case, it was not a misidentification—

The Convener: Mr Macpherson, before you answer, I want to make it clear that this will be the last word on what happened in the past. I know that you have been asked the question time and time again, but I will give you the chance to say a couple of words about the allegation that there have been misidentifications at the Glasgow fingerprint bureau and none at the other bureaux.

Hugh Macpherson: With regard to the Mark Sinclair case, I believe that Mr McLean wrote back to Mr Neil, telling him that it was not a misidentification.

Alex Neil: No.

Hugh Macpherson: Is that not correct?

Alex Neil: I should point out that the Executive has also confirmed a misidentification made in 2000, which was raised in the committee. That means that the Executive has confirmed the misidentification of Shirley McKie's print, and there is still the question of the other misidentification—

Hugh Macpherson: Mr McLean wrote to the committee and told you—

The Convener: Hold it, everyone. *[Interruption.]* I said, "Hold it." Mr Macpherson, I said that you could have the last word on Mr Neil's question. If you want to answer it, please go ahead. That is my final word on the matter. Some members have to go soon, and I want to spend five minutes talking about the way forward.

Hugh Macpherson: I know that we are talking about Crown productions and that it is a matter for the management of the Glasgow fingerprint bureau, but I would be only too happy to take up Mr Neil's suggestion, put Mr Mulhern's great action plan into practice and ask Mr Bruce Grant to compare this latest misidentification.

Alex Neil: I suggest that we ask all the experts, not just one.

Hugh Macpherson: Well, I am afraid that Mr Zeelenberg would not be acceptable.

The Convener: Enough.

Marlyn Glen is struggling for time, but she would like to seek your views on the way forward.

Marlyn Glen: What are your views on the non-numeric standard that is to be introduced?

Hugh Macpherson: There was no misidentification in the Mark Sinclair case; the identification was based on 11 points of sequence and agreement. The case itself came under the dire and crucial rule of the 1953 guidelines, under which a case, if it is serious enough, can go forward without a set number of points of identification being made. That shows me that the Glasgow fingerprint bureau is ready, willing and able to move forward to the non-numeric standard. I repeat that the Mark Sinclair case was not a misidentification; the Crown Office would not lead the evidence in it.

Marlyn Glen: You mentioned the action plan for excellence. Have any of you seen or been consulted on it?

17:30

Fiona McBride: I have seen it. I believe that it is available on the internet. I notice that a great deal of the points that have been advanced by Mr Mulhern are already in practice—they have been for some time. The action plan is more of an inaction plan, I am afraid. When Mr Neil has his way—hopefully—and when all the misidentifications, as they have been referred to, are checked and we are proved correct, perhaps the action plan can be reviewed, so that the substance of it can be made clear and it can be established what, if anything, actually requires to be changed.

Mrs Mulligan: To take the process forward and build confidence in the service that you and your colleagues seek to deliver, what are your views, if any, on the amalgamation of the Scottish fingerprint service into the Scottish forensic science service?

Fiona McBride: I do not know. I do not know enough about the forensic science service.

Anthony McKenna: Any dynamic plan that takes things forward has to be a good thing, with the right consultative process, if it results in getting a good service in the end. It is necessary to be dynamic and involved.

Mrs Mulligan: I wanted to give you the opportunity to comment on that subject, as we wish to hear your views on it, too.

Hugh Macpherson: I believe that there is discussion about moving the scenes-of-crime branch in with the fingerprint department. We have always felt it to be a strength that we are not

associated with scenes-of-crime examinations. That is my only comment on the matter.

Mike Pringle: It is a shame that, having spent three and a half hours on the past, we are spending just five minutes on the way forward, when that is what the inquiry is all about.

I would like all the witnesses to comment on this. You state in your written evidence, Mr Stewart:

“The question of confidence in the way SCRO is managed and organised is rather difficult to answer. As experts within the bureau we have had concerns about our management for years.”

Could you explain that?

Charles Stewart: My comments essentially concerned the likes of Mr Ferry. He was not a fingerprint man. He did not fully understand it.

Mike Pringle: Neither did Mr McLean, nor Mr Innes.

Charles Stewart: That is the problem. When I started, all the directors or seniors at the SCRO were fingerprint experts; they were all qualified and knew the job. Then we started bringing in people for short-term contracts of two or three years, which always resulted in change—usually change for change's sake, rather than for any constructive purpose. Fingerprint work evolves and the processes change, with new technology coming in. I feel that the current management would be better served if the person making decisions about the fingerprint department was an expert.

Fiona McBride: I am not sure that it is entirely accurate to say that the management has been so dreadful or whatever. We have been much maligned; so has the management. We need to get back to some sort of status quo before any decision can be made about the future. This matter needs to be cleared up first. After that, decisions can be made—nothing hasty.

Mike Pringle: I will take up Mr Stewart's point. Do you think that it would be sensible for the fingerprint bureau in Glasgow to be separated entirely from the rest of the SCRO, meaning that you would become an independent group? If that was headed up by somebody with some experience in fingerprints, could that person run all four bureaux? Do you think that all four bureaux should, like the Glasgow one, be independent? Do you think that they should be kept separate, as four different bureaux, rather than being amalgamated into one?

Charles Stewart: However it is done, each of the bureaux, if they are to be separate entities, must be run and managed in the same way. That is part and parcel of forming a Scottish forensic science service, if that is the way in which things are taken forward. Whether there is a need for four

bureaux and whether we need eight police forces in Scotland are bigger questions than we can answer.

There will be change. I think that it would be far better if the fingerprint bureaux were managed by somebody with a grasp of how experts work. That would be a better way of doing things.

Hugh Macpherson: When I started in 1970, all the management, as Mr Stewart said, were fingerprint personnel. They were the most eminent fingerprint experts in Scotland. To me, that was a benefit, in relation to training and so on.

Mike Pringle: Fiona McBride, do you want to add anything? Does you agree with your colleagues?

Fiona McBride: I really do not know. I think that we would need to go back to the status quo and see how people react. The SCRO has been under remarkable pressure, given the attacks that it has sustained over a period of time. The only way to know how effective the management is would be to see how effective it could be without all this nonsense from the McKies.

Mike Pringle: The matter has been described as a rift between the Glasgow bureau and the other three bureaux. Obviously, it is vital that the rift is healed in some way. How will that be done? Is there a rift?

Fiona McBride: It might be useful to have more integration among the bureaux. I know that the logistics make that difficult because of the distance, but people would not cast these aspersions if they knew us as individuals and if they knew that we would not have done the same to them.

Anthony McKenna: When I was in charge of the automatic fingerprint recognition and Livescan systems, I contacted the other bureaux to ask them to supply their public holiday dates so that we could cover their TP to mark—that is something that is generated—so that they did not come back to a big queue. Therefore, I have no problem with any other bureau in Scotland.

Hugh Macpherson: When someone goes on national television and casts aspersions on your integrity, there is obviously a rift. However, all these issues, such as cropping and all the rest of it, have been looked into. We should be past those historical issues. As Mr Pringle said, we have spent three and a half hours on history. Those things will not change. We should look at the way forward. And, yes, there is a rift.

Mike Pringle: I could not agree more with that statement. As I said, we have spent three hours and 25 minutes on the past.

Fiona McBride: It is unfair to tar everyone with the same brush. I do not know all the individuals in

the other bureaux. I do not even know the people from those bureaux who have said things about us. I do not know them personally and I have never spoken to them. I certainly would not say that a particular bureau was full of a particular type of people who have particular problems. I am aware only that certain individuals have made statements, and it is unfair to tar everyone with the same brush.

Mike Pringle: Has Mr Stewart anything to add?

Charles Stewart: No.

Mike Pringle: Perhaps we can put those questions to the representatives of the three bureaux when they give evidence. Thank you for your honesty.

The Convener: Believe it or not, that brings us to the end of today's evidence session.

One thing that I ask you to think about is that it seems to be unclear what process should be followed when a fingerprint officer clearly does not want to identify a print. I know that you have said that that was not the position in the McKie case, but I am not altogether clear what the process is for that. That is an important process that needs to be changed.

Hugh Macpherson: We now have quality assurance procedures in place. If someone discovers a misidentification, they produce the correct form and take it straight to the quality assurance officer and it is recorded in the diary pages.

Fiona McBride: Also, if someone does not want to sign an identification—for whatever reason; it is entirely their decision—the fiscal is made aware of that. I do not believe that—

The Convener: This is what I am getting at. We have just had two different answers, which is fine—

Fiona McBride: No—

The Convener: Let me just finish. For what it is worth, my observation is that both of those are good suggestions. However, if we are to change the process and learn from the past—Mike Pringle is right to say that we have spent three and a half hours talking about the past; we could not inform ourselves about the future otherwise—we need to ensure that the process is absolutely clear and that everyone thinks that it is the way forward. That is just my observation.

Fiona McBride: I just want to point out that Mr Macpherson was referring to misidentification and I was referring to someone who does not want to sign a particular mark. Both of us are correct.

The Convener: That is true. However, I ask you to think about that issue, although that is up to

you. Obviously, our inquiry is still on-going, but it seems to me that that issue needs to be addressed.

One of the main issues for you along the way has been that you have not had the opportunity to have your say. In the three-plus hours that we have had today, I hope that you feel that you have had that opportunity.

Fiona McBride: I have enjoyed it, thank you.

The Convener: I thank the four of you for your written submissions and for answering all our questions in oral evidence.

I suspend the meeting for five minutes; we will reconvene in private.

17:39

Meeting suspended until 17:50 and thereafter continued in private until 18:11.

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