

**EXTRACT: Thursday, 24th September 2009**  
**(Morning session)**  
**(10.07 am)**  
**PAT ALEXANDER WERTHEIM (continued)**  
**Further examined by MR MOYNIHAN**

<http://www.thefingerprintinquiryscotland.org.uk/inquiry/files/2009-09-24%20AM%20Transcript.pdf>

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23 Q. The one point which I did ask you to comment on was in  
24 relation to an allegation from Mr Swann or Mr Russell,  
25 it matters not, about the International Association of

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1 Identification (IAI) investigation, most recently in  
2 relation to Mr Swann and Mr Leadbetter and you may  
3 recollect you gave some answers in relation to that in  
4 your witness statement.

5 Do you recollect dealing with that in your witness  
6 statement?

7 A. I don't have a specific recollection of what I said in  
8 my witness statement but --

9 Q. It's okay. Mr Wertheim, what I will do is stop you  
10 there because I want to be very, very careful about  
11 this. This is now entering a chapter that you can plead  
12 the Fifth on. When I close that window I will tell you.

13 A. Very good.

14 Q. I put to you in questions that you did answer my  
15 understanding of the allegation but now I have it in  
16 Mr Swann's own words so I want to put to you his words  
17 and then see if you are content to adhere to the answer  
18 you have given to the Inquiry, again, with your  
19 opportunity to take the Fifth.

20 So far as Mr Swann's allegation is concerned, if I  
21 bring it up it's FI0149.24 and 25. It is a  
22 two-page-section. The heart of it is paragraph 42,  
23 Mr Wertheim. I will give you a chance to read  
24 paragraph 42. (Pause)

25 A. I will waive any right to the avoidance of

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1 self-incrimination. I would adamantly deny the  
2 allegations made by Mr Swann in this paragraph and I  
3 would demand a polygraph examination if such is accepted  
4 in court in Scotland. This is an outright lie.

5 Q. Can I take you to the answer you have given me already  
6 in your witness statement to this which is FI0118.3.

7 MR SMITH: Sir, I wonder if I could ask for clarification  
8 before this is removed. Obviously a serious allegation  
9 has been put to Mr Wertheim. I am not sure I understand  
10 what is meant by Mr Swann -- and it may be Mr Moynihan  
11 has information on this -- towards the end of  
12 paragraph 42 after reference to the complaint. The last  
13 sentence says:

14 "The declared objective of the complainant was to  
15 bring pressure to bear upon me ..."

16 Can I understand that it is being suggested to  
17 Mr Wertheim that he actually said somewhere that he was  
18 trying to bring pressure, effectively, to suppress  
19 evidence to the Inquiry. If that is the allegation, I  
20 think that allegation should be made absolutely clear,  
21 and where it was declared by Mr Wertheim that that was  
22 so.

23 MR MOYNIHAN: Sir, I take entirely my learned friend's  
24 point. One of my reasons, if I can be quite candid  
25 about it, for pursuing it as a question is Mr Russell is

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1 absent from the hall and, therefore, unless I take it as  
2 it is presented here it will go without comment.

3 That was my reason for making the point to  
4 Mr Wertheim that this is not my allegation, it has come  
5 from others.

6 I would rather not add to what we see on the screen  
7 because I personally speaking for myself just now know  
8 no more than I can see on the screen. I accept that  
9 this question arises but I would prefer not to, myself,  
10 enter into it but simply put the point to Mr Wertheim  
11 for his comment.

12 I have no doubt others may pursue it but I don't  
13 believe it's responsible for me to go further than I am.

14 MR SMITH: I follow. I am quite content with that response.

15 THE WITNESS: Mr Moynihan, with that in mind I am not  
16 backing off one iota from my previous statement but I

17 would ask the permission of the Inquiry to go through  
18 several sub-allegations and address them each very  
19 quickly.

20 MR MOYNIHAN: Mr Wertheim, my opening to this was you have  
21 already given us some answer to the general allegation  
22 and I was just wanting to know if that answer was one to  
23 which you would adhere and then, if you wish to answer  
24 more fully than you have already answered in your  
25 witness statement, I will obviously give you the right

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1 and the opportunity to do so.

2 A. With the understanding that the general allegation in  
3 this is that there was a conspiracy between the McKies  
4 and myself, the Vice-President of the IAI, to plot  
5 against him and Mr Leadbetter. No such conspiracy ever  
6 existed: period.

7 Q. I am not going to make any attempt, for reasons really  
8 that were focused by my learned friend Mr Smith's  
9 question, to paraphrase what is in paragraph 42 because  
10 if I paraphrase it I may omit some essential detail. So  
11 paragraph 42 you can come back to in any of its  
12 subordinate parts.

13 Your existing answer to me was in FI0118.003 --  
14 page 9. You will see that the question put to you when  
15 you were asked to prepare a statement, a question I had  
16 formulated was this:

17 "One of the issues was in relation to the reference  
18 to the IAI. Mr Russell has alleged that this was done  
19 to influence the Inquiry outcome and could be construed  
20 as a breach of section 35 of the Inquiries Act."

21 That is simply the section that creates an offence  
22 interfere with the Inquiry.

23 The Inquiry team wondered if you wished to take  
24 advice on this aspect. So that was our indication you  
25 could take the Fifth.

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1 I will not read it out. You have given an answer to  
2 that paraphrasing the allegation that is now more fully  
3 stated by Mr Swann.

4 First of all, my first question would be if what you  
5 have set out in your answer you are prepared to accept  
6 as being true under oath and then, secondly, if you wish

7 to add to it in amplification now that we know what  
8 Mr Swann, within certain limits we know what he is  
9 saying, if you wish to add to your answer.

10 First of all, the first question is: are you  
11 prepared to say what you have written in your answer is  
12 in fact the truth?

13 A. It is.

14 Q. Secondly, and I have said I will give you the  
15 opportunity, if you want to go back to Mr Swann's  
16 allegation it is FI0149.24 and 5.

17 Mr Wertheim, I have brought it back up again. If  
18 there is anything you wish to add to what you had said  
19 in your written statement about this matter, please feel  
20 free to do so.

21 A. I'm going to use the yellow highlighter to highlight  
22 certain parts of Mr Swann's allegation. The  
23 attempts ... I remember how this works now. (Pause)  
24 I've highlighted three areas of text and I will  
25 address each of the three separately. I don't believe I

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1 need to reference these to the preceding sentences to  
2 which they refer because those are already part of the  
3 record.

4 The first highlighted area says:

5 "The complaint was pursued by one of the McKies'  
6 most vocal 'expert' supporters who had also worked and  
7 campaigned closely with their lead expert, Pat Wertheim.  
8 The 'case' against me was conceived, encouraged and  
9 pursued between Iain McKie, Shirley McKie and Pat  
10 Wertheim ..."

11 I cannot comment on whether or not the International  
12 Association for Identification was a part of any  
13 conspiracy because I know not what they do but I can  
14 comment that the word "complaint" at the first of this  
15 highlighted sentence appears to refer to the phrase  
16 "disciplinary case" in the preceding sentence and the  
17 idea expressed there is apparently that Mr McKie, with  
18 or on behalf of his daughter, Shirley, had filed a  
19 complaint against Mr Swann.

20 If that has indeed happened, today is the first I  
21 have heard of it. I was a part of no such operation.  
22 It says here March 14th of 2008. I was unaware that  
23 Mr McKie and Shirley -- I'm highlighting additional

24 little segments up here -- I was unaware that Mr McKie  
25 and Shirley were filing another complaint against

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1 Mr Swann. I was not a part of any such operation. I  
2 was not involved in the conception, encouragement or  
3 pursuit of any such complaint in conjunction with Iain  
4 McKie and Shirley McKie. My inclusion in that sentence  
5 is a lie.  
6 In the second area that I highlighted "was devised",  
7 and this refers to what Mr Swann refers to as a sham IAI  
8 disciplinary hearing. Mr Swann says that I was a party  
9 to devising and implementing such an operation with the  
10 Vice-President of IAI, subsequently the President of  
11 IAI. My affidavit, my statement, reflects that  
12 Mr Garrett approached me to ask what could be done.  
13 The affidavit which Mr Swann refers to here is  
14 that -- the affidavit of which Mr Swann refers to, I  
15 think was executed in September of last year. I have no  
16 independent recollection of the date of the execution of  
17 that affidavit. I was contacted by Mr Garrett after --  
18 okay, first, he approached me when he was a  
19 Vice-President of the IAI at a conference in Boston two  
20 or three or four years ago. It was a conference which  
21 Mr Andrew Smith also attended and I was approached at  
22 that conference by Mr Garrett and asked what could be  
23 done and my response to him was that Dave Grieve and I  
24 had tried aggressively to get the IAI to do something in  
25 year '99/2000, 2001 and were unable to do so and that,

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1 therefore, I had no hopes of him accomplishing anything.  
2 He asked if there wasn't anything that could be done and  
3 I said, "Absolutely, Mr Swann and Mr Leadbetter could  
4 file a complaint against me for making an erroneous  
5 exclusion with Y7 and Q12", and I would welcome such a  
6 complaint filed against me with the IAI, because my  
7 certification and my career would end if such a  
8 complaint against me were upheld by the IAI and I would  
9 encourage such a complaint to be filed.  
10 The problem with filing such a complaint is that the  
11 person filing it would have to go on the record as  
12 taking the opposite position of me, thus anyone who  
13 filed a complaint would be subject to disciplinary

14 action by the IAI if they were found to be wrong, just  
15 as I would be subject to disciplinary action if I were  
16 found to be wrong. Thus no-one has ever filed a  
17 complaint against me in regard to these issues.  
18 That was the conversation with Mr Garrett two or  
19 three to four years ago. Following his election as  
20 President in August one year ago, he instituted this Y7  
21 Committee apparently -- I don't know Mr Garrett's  
22 mind -- but apparently as a continuing thread of his  
23 thought processes from the conversation we had had  
24 several years earlier. He formed the Y7 Committee as  
25 a ... I don't know if the word secret is appropriate but

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1 he formed it as a more or less confidential committee to  
2 examine the mark Y7.  
3 I believe -- this is speculation on my part -- I  
4 believe the formation of the Y7 Committee resulted from  
5 a complaint filed by Les Bush in Australia over the  
6 erroneous identification of Y7 by SCRO. I am aware that  
7 Mr Bush filed a formal complaint with the IAI some six  
8 months or a year ago. I played no part in Mr Bush's  
9 decision to file that complaint. I have not seen that  
10 complaint. I have heard of it. I believe Mr Garrett's  
11 formal basis for the formation of Y7 Committee was the  
12 complaint filed by Les Bush. I believe the formation of  
13 that Committee resulted as well from a continuing thread  
14 of concern on Mr Garrett's part dating back to the  
15 conference several years ago at which Mr Smith was  
16 present.  
17 After this Committee was formed -- and by the way  
18 the Committee was formed with no input whatsoever from  
19 me and no consultation with me and with no knowledge on  
20 my part other than I had heard a rumour that such a  
21 committee was being formed. In, I believe, September of  
22 last year I was contacted by Mr Garrett and asked if the  
23 images of Q12 and Shirley McKie's left thumb which  
24 appear on Ed German's website ([www.onin.com/fp](http://www.onin.com/fp)) if those  
25 images were true and correct representations of the

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1 original Y7 and Shirley McKie's fingerprint and I told  
2 Mr Garrett they were.  
3 Mr Garrett then asked me for a sworn affidavit to

4 that fact alone, that the images on the Internet were  
5 true and accurate and I responded with an affidavit to  
6 Mr Garrett that both of those images were correct, that  
7 the image of Y7, which was posted on the Internet in  
8 1999 or 2000, that image was scanned by Mr German  
9 directly from the negative of my photograph when I  
10 photographed Y7 in place on the doorframe.  
11 The inked impression on Mr German's website was  
12 scanned directly from an inked impression of Shirley  
13 McKie that I myself took in March of 1999 as reflected  
14 in those earlier notes. My affidavit to Mr Garrett only  
15 attested to the authenticity of the two images on  
16 Mr German's website.  
17 It was not an affidavit and expert evidence. I made  
18 no comment in that affidavit about the authenticity or  
19 the erroneous identification. To the best of my  
20 knowledge there was nothing said in that. The entire  
21 affidavit simply attested to the legitimacy of those two  
22 images.  
23 "The McKie and Wertheim team moved instantly against  
24 me", the third allegation in this. I am not a team with  
25 McKie in any endeavour against Mr Swann. This paragraph

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1 alleges some massive conspiracy of Mr McKie, Shirley  
2 McKie, myself, Bob Garrett, the entire IAI, the Y7  
3 Committee, whoever sat on that Committee -- and I still  
4 don't know who was on that Committee -- in some immense  
5 conspiracy to attack him and Mr Leadbetter and I  
6 adamantly deny that I am a part of any such conspiracy.  
7 This is a bald faced lie.  
8 THE CHAIRMAN: I think we have got a clear position --  
9 Mr Wertheim's position on this is absolutely clear.  
10 A. Thank you.

**EXTRACT: Thursday, 24th September 2009**  
**(Afternoon session)**  
**(1.50 pm)**  
**PAT ALEXANDER WERTHEIM (continued)**

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MR HOLMES: Mr Chairman, the next question I am going to ask  
5 perhaps bears a warning from you on the witness' own  
6 position because what I am going to ask is if his  
7 evidence today is that during Ms McKie's trial he gave  
8 evidence on oath which he knew to be false.

9 THE CHAIRMAN: I think that does call for what we called  
10 before the Fifth Amendment, that you are not obliged to  
11 answer any question that may incriminate you in any way  
12 the suggestion being that, as I understand will be made  
13 in this question, that your evidence on oath on that  
14 occasion differs from your evidence on oath at this  
15 Inquiry and that, therefore, your evidence on a previous  
16 occasion is open to question in legal proceedings --  
17 could be, could be. So you are not obliged to answer  
18 the question if you do not want.

19 A. I have not perjured myself neither there nor here. If  
20 there is a discrepancy in my testimony which is  
21 irreconcilable, such as Mr Moynihan pointed out in my  
22 notes with regard to my observations related to Q12,  
23 I'll readily admit it. But I think we may be dealing  
24 with semantics and I'm perfectly happy to proceed and  
25 consider anything you want to put to me.

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1 THE CHAIRMAN: It is entirely a matter for you whether you  
2 wish to answer the question or not.

3 MR HOLMES: I will formally ask the question then.

4 Mr Wertheim, is your evidence today that during  
5 Ms McKie's trial you gave evidence on oath which you  
6 knew to be incorrect?

7 MR SMITH: I wonder if I can interject for a moment?

8 THE CHAIRMAN: Yes.

9 MR SMITH: I think if this is adopting a course of an  
10 accusation like this, if Mr Holmes' position is there is  
11 inconsistent evidence being given he should put to the  
12 witness what he said here today. We have the  
13 transcript. This is not something that is  
14 unavailable --

15 THE CHAIRMAN: What the witness said on the previous  
16 occasion.

17 MR SMITH: -- on a prior occasion. That is the proper way  
18 it should be done under the Evidence (Scotland) Act --

19 THE CHAIRMAN: In other words put the precise terms.

20 MR SMITH: Absolutely and, indeed, the context of that is  
21 required.

22 THE CHAIRMAN: I think that is --

23 A. Mr Chairman, with all due respect to the Inquiry, I have  
24 come here to appear without legal representation because  
25 I have nothing to hide.

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1 This is the second allegation of criminality made  
2 against me today in this courtroom. I wish now to  
3 exercise my right to appoint counsel to represent me at  
4 this Inquiry and I wish my appointed counsel to sit with  
5 me through any further questioning.

6 THE CHAIRMAN: I was going to say that did occur to me that  
7 you don't have separate legal advice and that I think if  
8 you wish to have it you certainly should.

9 A. I see my position here as a friend of the court and I  
10 resent the fact that I have to be represented by a  
11 lawyer to defend myself against spurious charges but I  
12 am exercising that right at this instant.

13 THE CHAIRMAN: I think that is perfectly legitimate.

14 A. I wish to appoint Mr Andrew Smith as my counsel.

15 THE CHAIRMAN: I think the first person you would need to  
16 speak to would be Digby Brown possibly but I'm not sure  
17 what the rules of the Faculty of Advocates are about  
18 direct appointment.

19 A. My apologies for not knowing the difference.

20 THE CHAIRMAN: Don't worry.

21 Maybe we should do is take the short adjournment now  
22 and give you an opportunity to discuss the matter.

23 Perhaps also we could proceed after it if they are not  
24 ready to deal with this point to another point and you  
25 could return to it if you wish to do so.

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1 MR HOLMES: Certainly, sir.

2 THE CHAIRMAN: We will rise now until you are ready but not  
3 before 3.30.

4 (3.22 pm)

5 (A short break)

6 (3.37 pm)

7 THE CHAIRMAN: I am not sure how far advanced you have  
8 become in this but I have formally, as you know,  
9 appointed Digby Brown and you to represent Mr Wertheim's  
10 interest but what occurs to me, and will hear what you  
11 have to say about it, is that it seems to me that,  
12 rather than have this dealt with now, that Mr Holmes  
13 should be asked to put in writing the allegation that is  
14 being made against Mr Wertheim and that he should then  
15 be given an opportunity to respond to that in writing if  
16 he chooses to do so.

17 MR SMITH: Sir, I wonder if I could say this at the outset:  
18 the first thing that is important is Mr Wertheim had,  
19 prior to a few minutes ago, made it very clear in  
20 correspondence with the Inquiry team that he was not  
21 legally represented and, in fact, chastised the Inquiry  
22 team for communicating with him or attempting to do so  
23 via Digby Brown. However, things have changed, as has  
24 been indicated.

25 I am very conscious, sir, that listening to the

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1 exchange more recently that Mr Wertheim, as he pointed  
2 out himself, has twice today been accused of two serious  
3 crimes without any prior notification that he is going  
4 to be so accused and there are undoubtedly significant  
5 Article 6 rights in play here.

6 I am still unaware of the precise nature of the  
7 allegations made, particularly regarding the question of  
8 perjury. You are right, sir, there has to be,  
9 effectively, a charge being made that he has prior  
10 notice of, he can give instructions on, he can think  
11 what his defence is, and I am sure there is one he  
12 wishes to present and explain the position fully. In  
13 the same way that if he was served with an indictment  
14 charging him with perjury. Sir, that is a practical  
15 issue.

16 I may say that I have been invited by him and I am  
17 happy to accept for present purposes the representation.  
18 There may be issues of conflict of interest here. I do  
19 not know and what I certainly do not know is whether --  
20 there clearly is no possibility of proceeding with that  
21 particular allegation at this time because I, although I

22 have read the transcript of his evidence when he gave it  
23 in the trial, I am not in a position to read it now,  
24 take instructions, then in denial of it, and it has to  
25 be dealt with now. Now it's now a public allegation.

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1 It has to be ruled on and disposed of in some way. I  
2 cannot do that and it may be Mr Wertheim, for all I  
3 know, or I may decide I cannot continue to act because  
4 of the theoretical appearance of conflict of interest.  
5 I also observe, sir, that it is a matter of regret  
6 that when Mr Holmes sought leave to cross-examine, and  
7 on being invited to say what the issues were, he did not  
8 mention anything that could responsibly be suggested  
9 would be within the question of making a specific  
10 allegation there was a prior inconsistent statement on  
11 oath. That is a matter of regret but we are where we  
12 are.

13 My suggestion, sir, is this: we cannot  
14 realistically, even without this problem we would not be  
15 finishing this this afternoon. I would hope to restrict  
16 my questioning to half-an-hour but I think with prior  
17 circumstances that would be optimistic.  
18 To deal with the allegations plural, I suppose, that  
19 have been made we are in a position where Mr Wertheim  
20 will have to give evidence on another occasion at some  
21 stage.  
22 I am not convinced that can be done by video link,  
23 something that can be discussed with him no doubt as to  
24 where we are. I also, frankly, feel it a little unfair  
25 for Mr Wertheim to be expected just to put everything

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1 behind him about what has been suggested and to then be  
2 questioned about things like bifurcations and ridge  
3 endings by Mr Holmes who has just made a very serious  
4 allegation against him that is going to be ringing in  
5 his ears and he clearly is very distressed and irritated  
6 about that allegation.  
7 THE CHAIRMAN: Yes, I understand that.  
8 MR SMITH: Sir, I regret to say it seems to me, in fairness  
9 and realism to all parties concerned we have to waken up  
10 to the fact Mr Wertheim is going to have to come back  
11 with perhaps separate legal representation in order that

12 he can be in a position to respond to any other  
13 allegations which may be made without prior notice.  
14 He has told me he is concerned what is going to  
15 happen next, "What I am going to be accused of?" Sir,  
16 we are where we are and I suggest we are realistic and  
17 make arrangements for him to come back at some stage in  
18 the future.

19 I agree with you, sir, that if allegations of this  
20 nature are going to be made, it is my submission they  
21 have to be made in advance, clearly, carefully and with  
22 sufficient notice in order that someone can decide  
23 whether they are going to have legal representation and  
24 what their response should be.  
25 I may say if other allegations are going to be made

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1 of a similar nature by any representative to any other  
2 witness, then I would suggest a ruling is made that  
3 advance notice is given of that to the party concerned  
4 so they know where they stand.

5 THE CHAIRMAN: I think I should say in fairness to Mr Holmes  
6 there was some indication given to me by Counsel for the  
7 Inquiry that I may at some stage have to give a warning  
8 to a witness. So to that extent I was aware that he was  
9 going to put some matter that might call for a warning  
10 but beyond that I can't say anything.

11 I still adhere to the view that it should be in  
12 writing, what is alleged against the witness, and then  
13 he should have an opportunity to be properly advised as  
14 to what answer, if any, he wishes to make to it.

15 On the second point that you make, which is that he  
16 does not, as I understand it through you, feel that he  
17 wishes to continue his evidence today, then I would have  
18 to accept that. I cannot ask him to do something that  
19 he does not feel able to do.

20 MR SMITH: I may say, sir, just to make it absolutely clear  
21 it wasn't entirely his decision. It seemed to me that  
22 looking at it as objectively as I can, that it is not a  
23 particularly attractive way of continuing when you know  
24 what has been said and then to engage in a technical  
25 discussion about fingerprints. So I don't think it's

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1 necessarily entirely his own view. It certainly is one

2 I share.

3 THE CHAIRMAN: Yes, I think your point about it being  
4 realistic that even sitting late and despite his  
5 accommodating us the way he has we are not going to  
6 finish his evidence today. I don't think it's  
7 profitable to have a debate about when he might be  
8 available or whether we can do it by link or what  
9 because I'm not whether on a link one could use the  
10 drawing system that you have been using. I think I must  
11 accede, in the circumstances, to your application.  
12 There was one other matter brought to my attention  
13 which is quite different and that is that I gather some  
14 people -- and I wasn't aware of it -- have been, as it  
15 were, demonstrating their own reaction to answers that  
16 have been given and to evidence. I really do not expect  
17 that sort of behaviour and I find it unbecoming. If  
18 you happen to disagree with what a witness is saying  
19 that is all right but you do not demonstrate your views.  
20 I am sorry about this when you have helped us,  
21 Mr Wertheim, but I think this is the fairest course that  
22 I can take for you at this time and so we will now  
23 proceed on Tuesday.

24 MR MOYNIHAN: We proceed on Tuesday with Mr Grigg. I think  
25 one of the matters that may be worth raising is that I

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1 certainly, picking up what my learned friend, Mr Smith,  
2 has just said, plainly from -- there is the  
3 straightforward technical question of whether the  
4 fingerprints have been correctly identified or not. In  
5 addition to that, there is the 12 years of history, to  
6 some extent, in relation to this, that will without  
7 question bring in some attacks on character from both  
8 sides and I have raised in conversation the extent to  
9 which attacks on character will assist the Inquiry.  
10 Above and beyond that, it has to be said, in  
11 fairness, that the allegation that is made against the  
12 Scottish Criminal Record Office is that some of their  
13 officers engaged in a criminal conspiracy at some stage.  
14 That is an allegation that is being supported by  
15 reference to some of the technical fingerprint evidence  
16 and, accordingly, even I can anticipate, sitting where I  
17 am, that those who are attacked in that manner will feel  
18 the need to defend themselves in a similar fashion and

19 though I have no reason myself to anticipate what may be  
20 asked of Mr Grigg, my concern is that we will encounter  
21 much the same difficulty with him and, indeed, with  
22 successive witnesses in relation to this matter.  
23 It is very much a question on which you, sir, would  
24 be asked to reflect because to give advance notice in  
25 writing of specific lines is something that may be just

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1 a degree impractical and that we have to acknowledge  
2 there is a limit to which attacks on character may be  
3 relevant.

4 However, the contradiction, as I have indicated, is  
5 that I apprehend that there will be those who will be  
6 seeking to take from the fingerprint evidence  
7 allegations against the Scottish Criminal Record Office  
8 staff that they engaged in some improper conduct and,  
9 accordingly, there will have to be some means in which  
10 they can defend themselves as they see fit.

11 THE CHAIRMAN: I think consistent with the ruling that I  
12 have made that where an allegation of criminality is  
13 going to be made against anyone on the Inquiry there  
14 will have to be written notice given to them by the  
15 party who is seeking to make that allegation.

16 I am not critical of the way it has been dealt with  
17 to date, Mr Holmes, but I am sure you will be able to  
18 formulate as soon as possible the allegation that is  
19 being made and I would be obliged if you give it to the  
20 Inquiry, then the Inquiry in turn will pass it on to the  
21 party or any party affected.

22 MR MOYNIHAN: Sir, sorry, trying to think this through  
23 myself. The procedure of course that we have to give  
24 consideration to is the technical procedure of a warning  
25 letter.

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1 THE CHAIRMAN: Oh, yes.

2 MR MOYNIHAN: Of course had a warning letter been  
3 appropriately framed then it could have given advance  
4 notice of this. As I've said, I assume that this is  
5 simply the first of a number of lines of  
6 cross-examination which for perfectly foreseeable  
7 reasons will raise these sorts of issue.

8 Perhaps Mr Holmes could reflect on the fact that we

9 may need to give witnesses a warning notice that they  
10 may be open to challenge on various lines and that would  
11 bring it within the rules of the Inquiry.

12 THE CHAIRMAN: Yes. I hope it is reasonably clear now what  
13 approach we're going to take.

14 Again, I am sorry, that having accommodated us we  
15 have not been able to use the time fully but that is no  
16 fault of yours whatever, and so we will adjourn now  
17 until 10.00 on Tuesday.

18 (3.50 pm)

19 (Adjourned until 10.00 am on Tuesday, 29th September 2009)