

Evidence of Tom Nelson: SPSA Director of Forensic Services

It is probably not overstating the position to say that SPSA fingerprint and forensic personnel were anticipating the Inquiry evidence to be given by their Forensic Director Tom Nelson. The hope appears to have been that there would be a clear exposition of the problems they face at present and the solutions that their management believe can resolve these issues.

Mr Nelson had presided over the forensic services since the SPSA was created in April 2007 and it is fair to say they have been traumatic years. Infighting between the then Chief Executive David Mulhern and the Board and Chief Constables led to court action and unsettled the organisation at a time a period of stability was required. A settlement was reached with Mr Mulhern and he left creating a vacuum which Tom Nelson has since filled.

It is fair to say that during the Inquiry confidential information was being received that all was not well within the SPSA in terms of staff morale and that they were being discouraged from attending the Inquiry hearings. There was also concern among fingerprint experts outside of Glasgow that Mr Nelson had redesignated prints Y7 and Q12 as 'unsafe' as opposed to the previous position as 'mistakes'.

In the following extracts of his evidence to the Inquiry Mr Nelson addresses these issues and the reader will have to come to their own decision on whether his views represent the reality of life today within the SPSA.

Encouragement to Attend the Inquiry

<http://www.thefingerprintinquiryscotland.org.uk/inquiry/files/2009-11-13%20AM%20Transcript.pdf>

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*4 Q. It has been a fairly long Inquiry. I am not suggesting
5 you should be sitting every day as we have but, as far
6 as a learning experience, I take it from what you have*

7 said there's certainly been no discouragement from them
8 coming along to attend?

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

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

16 A. Sure, yes.'

.....
Morale

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

22 A. I am aware of that, yes.

*23 Q. Indeed, of course, the entire debate over Y7 is one
24 which I think Lothian & Borders had adopted a position
25 that a good number of individuals there, I think 13 of
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*1 them, had ascribed to an opinion that Y7 was wrongly
2 identified and, similarly, three individuals from the
3 Aberdeen Bureau had prepared a report similarly saying
4 that Y7 was incorrectly identified and I think even the
5 Dundee branch had indicated, whether officially or
6 unofficially, but there was certainly a very clear
7 statement they felt Y7 was wrongly identified.
8 I am trying to work out, there must be individuals
9 within these various bureaux who are still there who
10 still hold that opinion; whereas there are certain
11 individuals within the former SCRO, the Glasgow Bureau,
12 who hold the opposite view. That must happen. You must
13 be aware that is bound to be the position?*

14 A. Sure, yes.

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

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

25 move on. People want to work together. People see a

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1 better future out there and an opportunity, now that

2 SPSA Forensic Services is in place, to move forward and

3 certainly I know from speaking to my unit managers

4 that's the feeling I get. I've also visited the centres

5 on a number of occasions and spoke to staff. I also

6 hold breakfast meetings at the service centres and,

7 again, what I hear from the staff is that they want to

8 move on. They want to put the past behind them and they

9 see this as a real opportunity to move on to a brighter

10 future.....'

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

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1 more with the question of morale, if we can have another

2 document up, please, which is DB0755. I think this, we

3 can see, is a document which is a minute of a meeting,

4 we can see from the heading ourselves, in December 2007.

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

6 taking place --

7 A. I do, yes.

8 Q. -- in December 2007?

9 As far as this is concerned, we can see from the

10 heading, basically, what it is but we can see a section

11 on that page under "negative comments". Is this minute

12 one prepared by yourself?

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

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

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

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

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1 Going on:

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

8 The next bullet point:

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

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

17 A. Yes, I do recall the meeting itself and it was a series
18 of meetings where I had going round the different
19 service centres. I would say that I didn't arrange the

20 venue so I didn't ask staff to come to Fettes that was
 21 left to the local manager to organise for me.
 22 One of the reasons, I understand, why the lab were
 23 so disappointed was because the meeting happened at the
 24 same time that SPSA announced the business case that
 25 went to the Board regarding the Dundee laboratory and
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1 certainly staff were concerned about their future. I
 2 went back to the staff a number of weeks after this
 3 meeting and had a staff meeting with them and certainly
 4 at that was able to reassure them on certain things.

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

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

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

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

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

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

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*1 and involved Crown Office and we have had a full
2 communications plan around this modernisation project.
3 So I'm certainly more confident that the feelings of
4 staff will not be the same with this modernisation
5 project.*

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

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

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

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

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

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

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

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

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

8 MR SMITH: One more passage, sir. On page 5 of 11, the
9 first bullet point again we can see:
10 "The answers given [it is being suggested] were
11 evasive and superficial. I thought they were loaded
12 with corporate jargon, especially the HR answers."
13 Again, I just place that before you for comment.
14 It's quite clear, isn't it, that this is someone who is
15 very concerned about the communication structures that
16 are going on within SPSA. You'd agree with that?

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

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18 Cross-examined by MS JONES

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

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

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

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

3 Q. I think you said that there were subsequent meetings, I
4 think you said, that you sought to reassure staff on
5 certain matters.
6 Can you perhaps tell us when subsequent meetings
7 took place?

8 A. I believe that was in March that I arranged a meeting to
9 go back and speak to the staff.

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

12 A. Everyone, to my understanding, went away satisfied and
13 certainly there was no further communication regarding
14 anyone's unhappiness.

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3 Q. Can you tell us what your view on morale within --
4 because this Inquiry clearly is only concerned with

5 fingerprint matters -- what your view of morale within
 6 the fingerprint bureaux and staff within that is just
 7 now and what you base that on?

8 A. Certainly I have to take my lead from my unit managers
 9 and obviously from the staff that I meet at the
 10 breakfast mornings or when I am walking round and I
 11 think everyone has said what they want to do is they
 12 want to move on, they want to have that opportunity to
 13 move on and I'm not aware of any significant staff
 14 issues in terms of morale.

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Redefinition of Y7 and Q12 as 'unsafe'.

<http://www.thefingerprintinquiryScotland.org.uk/inquiry/files/2009-11-13%20AM%20Transcript.pdf>

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11 Q. I understand that is undoubtedly a desire and one that
 12 no-one would quarrel with but do you not understand,
 13 though, that one of the practical difficulties is by the
 14 organisation not taking a clear and official stance on
 15 the question of Y7 in particular and indeed Q12 to an
 16 extent as well?

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

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

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

22 Q. What happens, though, if the Inquiry in particular, the
23 Chairman, and I am sure he has not come to any
24 conclusion yet, but if he was to, for example, say, "I'm
25 faced with contradictory evidence on this. I cannot
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1 come to a conclusion on whether Y7 was correctly or
2 incorrectly identified", what does the SPSA do then?

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

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

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

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

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

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

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

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

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

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

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

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

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

22 Q. Why not?

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

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

4 mark.

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

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

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

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

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

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

*3 A. Those are certainly terms that the fingerprint community
4 would be using. I'm actually using more of a scientific*

5 term that I'm used to within Forensic Services.

*6 Q. Let us proceed from the assumption that I don't
7 understand anyone within this debate, none of the
8 experts who have given evidence on both sides of the
9 debate, and no-one else to suggest that Y7 falls into
10 the first of these I mentioned: insufficient detail to
11 carry out a comparison. So we will leave that aside.
12 We are left, dealing with Y7, with two options: one is
13 it's correct; the other is it's incorrect.
14 I think, as Mr Holmes pointed out, at the end of
15 this Inquiry, on the assumption the Chairman doesn't go
16 for the first, we're left with one of the other two.
17 What that will inevitably mean is there are certain
18 people within SPSA, certain experts, who are, according
19 to SPSA and the Chair's position, wrong. They've got it
20 wrong. Either they just simply -- they can't all be
21 right, if I put it that way.
22 I think you said you haven't actually taken this on
23 board but you must have considered what you will do
24 about the people who have got it wrong because it raises
25 serious question marks over their ability. It must do*

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1 so?

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

*6 Q. Have you not even considered what action might be
7 appropriate, whether it's retraining, whether it's
8 termination of their employment, whether it's moving*

9 them to other duties?

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

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

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

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1 do quickly.

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

10 A. That would be something our Communications Unit will

*11 have to look at and decide what is the best way to take
12 that forward, yes.*

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

19 A. I do, indeed, yes.

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

24 A. I totally agree, yes.

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Mr Nelson's full testimony can be found at:

<http://www.thefingerprintinquiryscotland.org.uk/inquiry/files/2009-11-13%20AM%20Transcript.pdf>