

Report on the eyewitness evidence in the case of al Megrahi v HMA

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al Megrahi v HMA**

**Professor Timothy Valentine
Valentine Moore Associates Ltd.**

1. I am instructed to prepare a report on the identification evidence in the above case by Tony Kelly of Taylor & Kelly, Court Solicitors, 3 Main Street, Coatbridge, Lanarkshire ML5 3AJ. I have previously prepared a report for this case on the instructions of Robin Johnston, Senior Legal Officer, Scottish Criminal Cases Review Commission.

Qualifications and experience

2. My qualifications and experience are set out in Annex B.

Documentation

3. I have consulted the following documents, which were first supplied by Robin Johnston of SCCRC. Unless stated otherwise all statements were the typed version from HOLMES.
 - 3.1. Statement of Anthony Gauci dated 1 September 1989
 - 3.2. Statement of Anthony Gauci dated 13 September 1989
 - 3.2.1. Production no 430 Police ref. DC119 Photo-fit
 - 3.3. Statement of Anthony Gauci dated 13 September 1989
 - 3.3.1. Production no 427 Police ref. CS277 Artist's drawing of face
 - 3.4. Statement of Anthony Gauci dated 13 September 1989
 - 3.5. Statement of Anthony Gauci dated 14 September 1989
 - 3.5.1. Production no 425 Police ref. DC113 Photographs of 10 faces
 - 3.5.2. Production no 426 Police ref. DC114 Photographs of 9 faces
 - 3.6. Statement of Anthony Gauci dated 19 September 1989
 - 3.7. Statement of Anthony Gauci dated 26 September 1989

- 3.8. Statement of Anthony Gauci dated 26 September 1989
- 3.9. Statement of Anthony Gauci, dated 26 September 1989
 - 3.9.1. Production no 431 Police ref. DC156 Photographs of 12 faces
- 3.10. Statement of Anthony Gauci dated 4 October 1989
- 3.11. Statement of Anthony Gauci, undated, about viewing a freeze-frame of Abu Talb on 2 October 1989
- 3.12. Statement of Anthony Gauci dated 8 October 1991
 - 3.12.1. Production no 1246/432 Police ref. DC315 Photographs of 12 faces including Abu Talb
- 3.13. Statement of Anthony Gauci dated 30 January 1990
- 3.14. Statement of Anthony Gauci dated 31 January 1990
- 3.15. Statement of Anthony Gauci dated 21 February 1990
- 3.16. Statement of Anthony Gauci dated 5 March 1990
 - 3.16.1. Production no 1833 Police ref. CS348 Sunday Times article 5th November 1989 with photograph of Abu Talb
- 3.17. Statement of Anthony Gauci dated 31 August 1990
 - 3.17.1. Production no 438 Police ref. DP61 Photographs of 12 faces
 - 3.17.2. Production no 437 Police ref. DP57 Photographs of 12 faces
- 3.18. Statement of Anthony Gauci dated 10 September 1990
 - 3.18.1. Document record print D6567 Listing names of 333 people whose photograph was shown to Anthony Gauci
 - 3.18.2. Production no 439 Police ref. DP613 Photographs of 4 faces with identifying names on a separate sheet and Photograph Album No. 1 Dumfries and Galloway Police
- 3.19. Statement of Anthony Gauci dated 15 February 1991
 - 3.19.1. Statement of DCI Henry Bell undated

- 3.19.2. Statement of DC John Crawford dated 15 February 1991
- 3.19.3. Statement of FBI Special Agent Philip Reid undated
- 3.19.4. Statement of Insp. Godfrey Scicluna dated 25 February 1991
- 3.19.5. Production no 436 Police ref. DC839 Photographs of 12 faces including Abdelbaset Ali Mohamed al Megrahi
- 3.20. Statement of Anthony Gauci dated 4 November 1991
- 3.21. Production no 1324 Police ref. DN33 Identification Parade Report dated 13 April 1999
- 3.22. Statement of Anthony Gauci dated 13 April 1999
 - 3.22.1. Statement of Insp. Godfrey Scicluna undated (but 1 April 1999 or later) referring to a copy of Focus magazine in which the witness had seen a picture of the accused in December 1998
 - 3.22.2. Production no 451 Police ref. DC 1626 Focus Magazine December 1998
- 3.23. Crown Precognition of Anthony Gauci dated 18 March and 25 August 1999
- 3.24. Defence Precognition of Anthony Gauci dated 8 October 1999
- 3.25. Evidence of Anthony Gauci dated 11 July 2000
- 3.26. Opinion of the Trial Court dated 31 January 2001
- 3.27. DVD recording of interview between Pierre Salinger with Abdelbaset Ali Mohamed al Megrahi
- 3.28. DVD recording of 'Panorama' programme including a photograph from an identification document of Abu Talb shown to Anthony Gauci
- 3.29. Letter of instruction from Robin Johnson dated 11 February 2005
- 3.30. I have consulted the following additional documents, which were supplied by Tony Kelly of Taylor & Kelly.
 - 3.30.1. Statement of DC Crawford 19 September 1989

- 3.30.2. Statement of DCI Bell 21 February 1990
- 3.30.3. Statement of DC Crawford 23 January 1990
- 3.30.4. Statement of DC Crawford 30 January 1990
- 3.30.5. Copy of It Torca, 28 February 1999
- 3.30.6. Translated copy of It Torca, 28 February 1999
- 3.30.7. Copy of It Torca, 7 March 1999
- 3.30.8. Translated copy of It Torca, 7 March 1999
- 3.30.9. SCCRC interview of Paul Gauci, 2 and 3 August 2006
- 3.30.10. Statement of PC Mario Busuttil, s5725 undated (HOLMES)
- 3.30.11. Statement of PC Mario Busuttil, s5725 undated (handwritten)
- 3.30.12. Statement of Inspector Godfrey Scicluna, 1 April 1999 (handwritten)
- 3.30.13. Copy photospread and fax 8 September 1989
- 3.30.14. SCCRC interview of Inspector Scicluna 1 December 2004
- 3.30.15. SCCRC interview of DCI Bell 25 and 26 July 2006
- 3.30.16. SCCRC interview of Mario Busuttil 1 August 2006
- 3.30.17. SCCRC interview of DCI Bell 24 October 2006
- 3.30.18. SCCRC interview of Paul Gauci 31 January 2007
- 3.30.19. Guidelines on the conduct of identification parades, Scottish Home and Health Department, 1982
- 3.30.20. SCCRC interview with Anthony Gauci 2 and 3 August 2006
- 3.30.21. Fax 1438 5 March 1991
- 3.30.22. Defence notes on productions
- 3.30.23. Transcript of DCI Bell's evidence day 32.
- 3.30.24. Statement by David Wright undated (s5114)
- 3.30.25. Statement by DC Cairns of 2 October 1989

- 3.30.26. Statement by DCI Bell 1 October 1989
- 3.30.27. HOLMES memorandum form DCI Bell to DCI Henderson no D5659
- 3.30.28. DP340 – photograph of Mr Megrahi available at 15 February 1991
- 3.30.29. Statement of DC Crawford, 15 February 1991
- 3.30.30. L'orizzont newspaper article – 15 November 1991
- 3.30.31. The Times (of Malta) newspaper article – 15 November 1991
- 3.30.32. The Times (of Malta) newspaper article – 19 February 1992
- 3.30.33. The Times (of Malta) newspaper article – 26 March 1992
- 3.30.34. The Times (of Malta) newspaper article – 11 October 1993
- 3.30.35. The Times (of Malta) newspaper article – 17 January 1994
- 3.30.36. L'orizzont newspaper article – 3 February 1995
- 3.30.37. In Nazzjon newspaper article – 13 October 1997
- 3.30.38. Kull Hadd newspaper article – 19 October 1997
- 3.30.39. It Torca newspaper article – 1 March 1998
- 3.30.40. The Malta Independent newspaper article – 23 July 1998
- 3.30.41. The Times (of Malta) newspaper article – 24 July 1998
- 3.30.42. The Times (of Malta) newspaper article – 27 July 1998
- 3.30.43. In Nazzjon newspaper article – 25 August 1998
- 3.30.44. The Times (of Malta) newspaper article – 25 August 1998
- 3.30.45. L'orizzont newspaper article – 25 August 1998
- 3.30.46. Malta TV clip – 29 August 1998
- 3.30.47. Kull Hadd newspaper article – 4 April 1999
- 3.30.48. Net TV clip – 5 April 1999
- 3.30.49. Malta TV clip - 5 April 1999
- 3.30.50. The Times (of Malta) newspaper article – 6 April 1999

- 3.30.51. Malta TV clip - 6 April 1999
- 3.30.52. Net TV clip – 14 April 1999
- 3.30.53. Kull Hadd newspaper article – 9 May 1999
- 3.30.54. L’orrizont newspaper article – 25 August 1999
- 3.30.55. Kull Hadd newspaper article – 31 October 1999
- 3.30.56. The Malta Independent on Sunday newspaper article – 31 October 1999
- 3.30.57. In Nazzjon newspaper article – 6 November 1999
- 3.30.58. The Malta Independent on Sunday newspaper article – 7 November 1999
- 3.30.59. Net TV clip – 23 November 1999
- 3.30.60. Net TV clip – 7 December 1999
- 3.30.61. BBC online articles (x2) – 7 December 1999
- 3.30.62. Business Times – 8 December 1999
- 3.30.63. BBC online articles (x3) – 8 December 1999
- 3.30.64. L’orrizont newspaper article – 17 December 1999
- 3.30.65. Kull Hadd newspaper article – 26 December 1999
- 3.30.66. The Malta Independent on Sunday newspaper article – 16 January 2000
- 3.30.67. BBC online article – 4 Feb 2000
- 3.30.68. BBC online article – 30 March 2000
- 3.30.69. Net TV clip – 17 April 2000
- 3.30.70. BBC online article – 20 April 2000
- 3.30.71. BBC online article – 21 April 2000
- 3.30.72. The Times (of Malta) newspaper article – 2 May 2000
- 3.30.73. Net TV clip – 3 May 2000
- 3.30.74. BBC online articles (x2) – 3 May 2000
- 3.30.75. In Nazzjon newspaper article – 4 may 2000

- 3.30.76. The Times (of Malta) newspaper article – 4 May 2000
- 3.30.77. L'orrizont newspaper article – 4 May 2000
- 3.30.78. BBC online article – 4 May 2000
- 3.30.79. L'orrizont newspaper article – 5 May 2000
- 3.30.80. L'orrizont newspaper article – 9 May 2000
- 3.30.81. The Malta Independent newspaper article - 11 May 2000
- 3.30.82. Kull Hadd newspaper article – 21 May 2000

Structure of the report

4. The purpose of this report is to advise the Court of relevant research findings, which may assist in identifying circumstances and procedures which are likely to promote or reduce the potential for eyewitness error. The report is structured as follows. The principal psychological properties of human memory are described in Section 5. In Section 6 the testimony of Anthony Gauci relating to his recollection of the relevant sale of clothing in the winter of 1988 is evaluated, drawing on the principles of psychological science. This section deals with all aspects of eyewitness testimony about the transaction with the exception of facial identification. In Section 7 psychological research on eyewitness identification procedures is reviewed. In Section 8 Anthony Gauci's identification evidence is evaluated in the light of this research. Finally, my conclusions are summarised in Section 9. Where I express an opinion I have used underlining to distinguish my opinion of the evidence from other material.

Psychology of human memory

5. It is a mistake to think of human memory as similar to a mental video recorder that can be re-played and re-examined at will. Instead human memory is a dynamic, active process during which an interpretation of one's experience is reconstructed from cues that may be internally generated or externally provided (e.g. by questioning or other information provided). Our memories fill gaps in recollection to organise events into a semantically plausible interpretation. It is not possible to

distinguish what we genuinely remember from what we assume happened. These issues are reviewed in a recent report by the British Psychological Society entitled “Guidelines on Memory and the Law” (BPS, 2008). The key points from the report are reproduced in Box 1.

- 5.1. When recalling everyday events, our memory is strongly influenced by structures of general schematic knowledge or ‘scripts’ (e.g. Abelson, 1981, Klieder, Pezdek, Goldfinger & Kirk, 2008). Thus, a memory of purchasing clothes in a shop will be influenced by knowledge of the typical events of such an interaction. (e.g. browsing, asking a sales assistant about sizes, trying a garment on, wrapping the goods, paying etc). A script such as this will influence recollection when a relevant episode is recalled.
- 5.2. Episodic memory has been distinguished from semantic memory (e.g. Wheeler, Stuss & Tulving, 1997). Semantic memory refers to our general knowledge of facts. (For example, knowing that Edinburgh is the capital city of Scotland.) Episodic memory refers to memory for specific events. For example, remembering a visit to Edinburgh on a rainy day. Eyewitnesses provide testimony about something they saw or heard, that must be attributed to the correct time and place (i.e. episode).
- 5.3. Memory for one’s own life events is more specifically referred to as autobiographical memory. Eyewitness testimony requires recall of an autobiographical memory within a forensic setting. Studies of autobiographical memory show that we have difficulty remembering specific events in which we participate frequently, for example eating breakfast, attending committee meetings, or driving to work (e.g. Wagenaar, 1986). Our memories tend to be more general, so that we have a generic memory of a typical repeated event. Recall of a specific event will be difficult unless there is a particular reason to remember it at the time the event occurs.

BOX 1: Guidelines on Memory and the Law (BPS, 2008)

Key Points:-

- i. Memories are records of people's experiences of events and are not a record of the events themselves.** In this respect, they are unlike other recording media such as videos or audio recordings, to which they should not be compared.
- ii. Memory is not only of experienced events but it is also of the knowledge of a person's life, i.e. schools, occupations, holidays, friends, homes, achievements, failures, etc.** As a general rule memory is more likely to be accurate when it is of the knowledge of a person's life than when it is of specific experienced events.
- iii. Remembering is a constructive process.** Memories are mental constructions that bring together different types of knowledge in an act of remembering. As a consequence, memory is prone to error and is easily influenced by the recall environment, including police interviews and cross-examination in court.
- iv. Memories for experienced events are always incomplete.** Memories are time compressed fragmentary records of experience. Any account of a memory will feature forgotten details and gaps, and this must not be taken as any sort of indicator of accuracy. Accounts of memories that do not feature forgetting and gaps are highly unusual.
- v. Memories typically contain only a few highly specific details.** Detailed recollection of the specific time and date of experiences is normally poor, as is highly specific information such as the precise recall of spoken conversations. As a general rule, a high degree of very specific detail in a long-term memory is unusual.
- vi. Recall of a single or several highly specific details does not guarantee that a memory is accurate or even that it actually occurred.** In general, the only way to establish the truth of a memory is with independent corroborating evidence.
- vii. The content of memories arises from an individual's comprehension of an experience, both conscious and non-conscious.** This content can be further modified and changed by subsequent recall.
- viii. People can remember events that they have not in reality experienced.** This does not necessarily entail deliberate deception. For example, an event that was imagined, was a blend of a number of different events, or that makes personal sense for some other reason, can come to be genuinely experienced as a memory, **(these are often referred to as 'confabulations')**.
- ix. Memories for traumatic experiences, childhood events, interview and identification practices, memory in younger children and older adults and other vulnerable groups all have special features.** These are features that are unlikely to be commonly known by a non-expert, but about which an appropriate memory expert will be able to advise a court.
- x. A memory expert is a person who is recognised by the memory research community to be a memory researcher.** It is recommended that, in addition to current requirements, those acting as memory expert witnesses be required to submit their full curriculum vitae to the court as evidence of their expertise.

- 5.4. Details recalled may migrate from one memory of a repeated event to become associated with a similar event that occurred on a different occasion. A common memory error is to misattribute the source of a memory, known as a source attribution error (Johnson, 2006). An example of a source attribution error may be the belief that one read about a news story in the paper when it was actually heard on the radio, or attributing an action to the wrong person (e.g. Kleider *et al.* 2008). Such errors in source attribution tend to occur more commonly in older rather than young adults (Cohen & Faulkener, 1989; Multhaup, De Leonardis & Johnson, 1999).
- 5.5. Two modes of recognition memory can be distinguished. Somebody may recognise an object because they *recollect* the specific episode when they encountered it previously (e.g. Jacoby & Dallas, 1981). Alternatively they may just *know* that they've seen the object before because it seems familiar. For example, we may 'recognise' a face or object because it seems familiar, but be unable to 'place' why it is familiar. Thus, the source of a feeling of familiarity may be misattributed to the wrong source.
- 5.6. Psychologists distinguish *explicit* memory, of which we are aware, from *implicit* memory of which we are not aware (e.g. Graf & Schacter, 1985). Memory may influence our behaviour (or response), even when we are unaware of its influence. Therefore, asking a witness whether their recall has been influenced by a prior event is not an appropriate method to determine the influences on a witness's memory.
- 5.7. Many experiments have demonstrated that being exposed to misleading (i.e. incorrect) information can distort an eyewitness's memory (e.g. Loftus, 2003; Loftus & Hoffman, 1989; Wright & Loftus, 1998). Misleading information may be acquired from leading questions, other witnesses or other information acquired after an event. For example, consider a witness who saw a traffic accident at a road junction at which there was a 'Stop' sign. The witness is then exposed to misleading information from a leading question – "Did you notice the 'Give Way' sign?" When subsequently questioned about the accident a

proportion of witnesses reported the misleading information, which was acquired after the event. That is, witnesses incorrectly reported seeing a 'Give Way' sign. The proportion of witnesses who are misled will depend upon the circumstances but it has been found that more witnesses who were exposed to the misleading information made this error than did witnesses who were not exposed to any misleading information (e.g. 75% vs. 41%). The participant 'witnesses' in such experiments may confuse the source of the information to which they have been exposed.

- 5.8. A number of factors have been found to affect the magnitude of the misleading information. Suggestibility is affected by witness age (e.g. Coxon & Valentine, 1997). Witnesses are more likely to be misled on peripheral than on central details (e.g. Coxon & Valentine, 1997, Wright & Stroud, 1998) and are less likely to be misled about events that they participated in rather than merely observed (e.g. Rudy & Goodman, 1991). An authoritative source of misleading information, that is somebody who is believed to be knowledgeable about the crime, is more likely to distort witness memory (e.g. Smith & Ellsworth, 1987). The effect of misleading information is greater when there is a long delay between the original event and the acquisition of misleading information (Belli, Windschitl, McCarthy & Winfrey, 1992). See McAuliff and Kovea (2007) for a summary of this literature.
- 5.9. Misleading information can also come from somebody else who witnessed an event. For example, in one study two participants watched a video of a theft. They were led to believe that they had seen the same video. In fact, they had seen the same events filmed from a different angle; only one participant actually saw the theft. Very few participants who did not see the theft, and did not talk to anybody else about the video, spontaneously reported incorrectly they did see a theft. However, after discussing the video with a co-witness who did see the theft, *70% of participants who did not see the theft themselves reported seeing the actor steal some money* (Gabbert, Memon & Allen, 2003). This phenomenon is believed to have occurred in the investigation of the Oklahoma bomb. A witness reported hiring a van to

two men. Other witnesses initially only mentioned one man, but subsequently changed their testimony to include a second man. Although Timothy McVeigh was identified, a second man was never traced (Memon & Wright, 1999).

Anthony Gauci's recollection of the relevant events.

6. Mary's House is a clothes shop in Sliema, Malta. The business is owned by the Gauci family. Anthony Gauci worked in the shop and was responsible for sales. On 1st September 1989 two Scottish Police officers and one Maltese Police officer visited the shop and interviewed Anthony Gauci. During the course of the interview Anthony Gauci was shown a sample of cloth, photographs of "blast damaged" clothing, and a copy of a delivery note from the 'Yorkie' clothing factory by the police. In his first statement, Mr Gauci recalled a customer in the winter of 1988 who bought some clothing. He gave the following details. It was 6.30pm, just before closing time at 7pm. The man did not seem to care what he bought. He wasn't bothered much about the sizes and said the clothing was not for himself. The man's behaviour was strange, "that is why I can now remember. It was as if anything I suggested he buy he would take it." In his initial account Mr Gauci states that he sold the following items to the man: Three sets of pyjamas, an imitation 'Harris Tweed' type jacket which had been in the shop for about 5 years, brown trousers, a lighter pair of trousers, a blue baby-gro with a sheep's face on the front with material covering the feet, a tartan cardigan in red and black and a black umbrella. The man paid cash. Mr Gauci wrapped up the goods in two parcels with brown paper and string. The man paid 56 Maltese pounds in cash. He said he had other shops to visit and would be back later. He took the umbrella and opened it because it was raining. Mr Gauci continued making up the parcels. The customer returned 15 minutes later. He said he had a taxi, took the parcels and walked out of the shop, turned left and walked up the street. A white Mercedes taxi was waiting. Mr Gauci provided more details of the goods sold. The jacket was an 'Anglia' brand. There was at least one pair of dark brown check 'Yorkie' trousers size 36. The baby-gro had a sheep's face on the front. Mr Gauci could not recall the day or date. "I would think it was a week day as I was alone in the

shop. My brother Paul had gone home to watch a football match on television.” Mr Gauci worked out the bill, which now comes to 76.50 Maltese pounds. He says that he is sure he gave him 4 pounds change, and could have given him 50 cents off the bill. He then recalls the man was wearing a watch.

6.1. Mr Gauci went on to make twenty statements to the police over a period of 26 months and gave evidence in July 2000, approximately 11½ years after the events he described. There are many inconsistencies in the statements he made. The description of items sold changed and further items were included. Some of the discrepancies in the items sold are analysed below. There are, however, other examples of discrepancies. According to his first statement, the customer carried his purchases to the taxi himself. Mr Gauci followed him to the door and saw a taxi waiting. In his evidence (Day 31, page 4752, line 15) Mr Gauci stated that “I took the things myself to the taxi”. In his first statement, Anthony Gauci stated that he had been working alone in the shop. In the Crown precognition (dated 18th March 1999 & 25th August 1999) he stated his brother Paul returned to the shop “just at the point where the Libyan came back”. The first recorded mention of Christmas decorations is a statement taken on 19th September 1989. At this time it is noted that Mr Gauci stated that the Christmas lights were not up when he sold clothes to the Libyan man. In evidence at the trial he stated: “...but I remember there were Christmas lights. They were on already. I’m sure. I can’t say exactly.” In response to a further question he stated: “Yes, they were putting them up.” (Day 31, page 4739).

6.2. Selling clothes to customers must be a very common event for Mr Gauci. He has served customers every working day. A study relevant to the current context was reported by Wagenaar (1986) who kept records of daily events and attempted to recall them after delays of between 1 year and 5 years. Approximately 70% of event details were recalled after one year, declining with a power function to about 30% after five years. However, recall of aspects of events which had low saliency (i.e. occurred approximately once a day) ranged

from approximately 50% after a year to about 25% after five years. Although this is a study of one man's memory (a psychology professor), and the results may be difficult to generalise for this reason, it does give some guidance to the limits of recall of events of relatively low saliency after long periods. When recalling repeated events, the specific details of individual events may tend to become difficult to distinguish, and memories tend to merge into a generic memory of the event-type.

6.3. Mr Gauci first recalled a specific sale after approximately nine months. A transaction in his shop is likely to be an event of low saliency to Mr Gauci because he sells clothes everyday, and often to Libyan customers. The salience of a particular transaction will be affected by its distinctiveness. For example, a large sale of many items is likely to be more memorable than a routine sale of a single item. Mr Gauci had a reason to remember the sale in question because the man didn't seem to care what he bought and purchased a number of items. When recalling the specific sale, Mr Gauci is likely to experience interference from the memory of other sales made in his shop. This effect is likely to be particularly significant because he was recalling the event after a long delay. Recall of everyday events after a long delay is difficult. Many details will be forgotten and similar details from other occasions may come to mind. Therefore, the task is likely to lead to confusion between details of other sales to different customers. That is to say, the nature of the task would make a source attribution error likely to occur.

6.4. A statement by David Wright (s5114) described a similar sale of clothing to two Arab customers, towards the end of November 1988 which shares some characteristics of the sale recounted by Anthony Gauci. When Mr Wright mentioned the two Arab customers to Mr Gauci the following year "he did not seem to remember them particularly". The statement illustrates that episodes with some similar aspects to one recalled, may be relatively frequent and of low salience to Mr Gauci.

6.5. Mr Gauci gave evidence in court over eleven years after the event. He first recalled the event after approximately 9 months. He went on to make twenty statements to police. It is a matter of record that he spoke to police on other occasions when a formal statement was not taken. Other people spoke with Mr Gauci about the event during the intervening period (friends, family, customers). He also read or learnt of accounts of the event from the many reports in the media. Mr Gauci has continued to work as a salesman in the same shop throughout this period. The original event will be very remote in memory. When giving testimony his recollection of the many statements he has given to the police, discussion of the case with other people, and media reports will tend to interfere with recall of the original event.

6.5.1. For example, from Anthony Gauci's evidence (Day 31, page 4740, line 17 – 18),

“That is 12 years – 11 years after. I mean 11 years are a long time for me, but in those days I told them everything exactly didn't I?”

6.6. Mr Gauci was interviewed on many occasions. Repeated questioning has an effect on recall. Repeated questioning increases the confidence of responses without a corresponding increase in the accuracy of the answers. Repeated questioning increased the confidence of *incorrect* answers as well as of correct answers (Odinot, Wolters & Lavender, 2008; Shaw, 1996; Shaw and McClure, 1996). Participants in an experiment who answered questions about a live staged incident in Shaw and McClure's study were consistently over-confident in their answers.

6.7. In the context of a police investigation a number of additional factors are likely to apply. First, the police will inevitably give new information to the witness. For example, the police showed Mr Gauci a sample of material and photographs of 'blast-damaged' material prior to his first statement being recorded. We do not know exactly when Mr Gauci first realised that the enquiry was connected to the Lockerbie disaster, but this knowledge is recorded as early as 26th September 1989.

6.7.1. “I realise the clothing you have shown me in the photographs are the same as I sold to this man. I can see that the clothing is ‘blast’ damaged and I think there was a bomb on a plane. I remember seeing on the television about a Jumbo plane blowing up in Scotland.” (Statement by Anthony Gauci, dated 26/9/1989.)

6.8. Mr Gauci’s recall of the events could be assessed in the light of the possible effects arising from his acquisition of post-event information. First, the information may be misleading. For example, the samples of clothing shown may not have been sold in his shop or not to the Libyan customer. Misleading post-event information can distort witness memory. Second, the deleterious effect of misleading information will be increased if it is presented by a source who is perceived to be knowledgeable. Mr Gauci was often questioned by two or three police officers from Maltese and British Police. On occasions he was also questioned by American and German Police (SCCRC interview with Henry Woods Bell 25-26th July 2006 page 16). Officers from several national police forces are likely to be perceived as credible, authoritative sources, therefore any post-event information acquired may have been perceived as highly credible. Repeated questioning from authoritative figures may exert social influence to suggest that a previous answer was ‘incorrect’ or unhelpful, and encourage the witness to change his answer. This approach may increase the amount of information obtained, but it may do so at a cost of increased errors. Instructions given to witnesses undergoing a cognitive interview are that if they are unsure of an answer to say so and not guess (e.g. Wells, Memon & Penrod, 2006).

6.9. For all of the reasons outlined in the paragraph above, Mr Gauci’s initial recall (1st September 1989) is likely to be the most reliable of his statements, because at this point there has been fewest opportunities for post-event information and suggestion to distort his memory.

6.10. A witness’ testimony may be examined to determine whether changes in the testimony are consistent with suggestion from post-event information. If it is known that the

witness was exposed post-event information and he subsequently changes his testimony in a manner that is consistent with the post-event information acquired, memory distortion provide a plausible interpretation of the change in testimony. In such circumstances, it cannot be concluded that the change was a result of memory distortion, but it can be concluded that memory distortion provides a plausible interpretation of the change in testimony.

6.11. *The items purchased.* In his initial account Mr Gauci stated that he sold the following items to the man: Three sets of pyjamas, an imitation ‘Harris Tweed’ type jacket which had been in the shop for about 5 years, brown trousers, a lighter pair of trousers, a blue baby-gro with a sheep’s face on the front with material covering the feet, a black umbrella, a tartan cardigan in red and black. Of all the subsequent descriptions of the items sold, it is my opinion that this first account is the most likely to be accurate. Recollection at this stage is least likely to be influenced by leading questions and suggestive knowledge of the blast damaged items, or source confusion with memories of items subsequently sold to the police. Recognition of blast-damaged material as coming from an item which has been stocked in the shop is likely to be a powerfully suggestive piece of information.

6.12. By way of illustration, Mr Gauci’s testimony in relation to his recollection of selling the cardigan and the shirts to the Libyan gentleman will be analysed for the potential of memory distortion and source attribution errors.

6.12.1. *Shirts.* In his first account (1st September 1989) Mr Gauci did not mention selling any shirts to the Libyan gentleman.

6.12.2. On 13th September 1989 Mr Gauci said “I cannot remember anything else that this man bought in my shop.”

6.12.3. On 30th January 1990, Mr Gauci was shown a fragment of blast damaged material from shirts. “I was shown a piece of grey shirt (PK1978) which had a SLALOM label on the pocket and a complete grey SLALOM shirt. I got this make at the shop ... That time when the man came, I am sure I did not sell him a shirt. ... I have now been shown

the piece of blue and white striped cloth (Label No. PH999). I got a small stripe like that, it is on a gents shirt, a SLALOM one I think. That man didn't buy any shirts for sure."

6.12.4. The following day DC Crawford, DCI Bell, DS Byrne and Insp. Scicluna visit Mary's House and buy, amongst other items, a blue and white striped SLALOM gent's shirt. (See statement of DC Crawford, 31st January 1990).

6.12.5. Mr Gauci first recalled selling shirts to the man when his previous statements are reviewed on 10th September 1990, over 7 months after selling the blue and white shirt to the police. This statement is not signed by Mr Gauci (Evidence Day 31, p 4817). The statement reads as follows: "About three weeks ago I was cleaning boxes out in the shop and I remember that they contained a 'SLALOM' shirt and a blue and white light denim (texture) material shirt. I know I sold you shirts like these and I now remember that the man who bought the clothing also bought a 'SLALOM' shirt and a blue and white striped shirt. They were LM3.75 or LM5.75 for the 'SLALOM' one but the blue and white one was LM5.25."

6.12.6. In evidence Mr Gauci's initial certainty that he did not sell shirts to the man is not mentioned. The recollection of selling shirts is discussed in some detail:

Q You also mentioned shirts. How many shirts did the Libyan gentleman buy?

A Two.

Q What type of shirts were they? What make of shirts?

A Slalom, something Slalom. The size was sixteen and a half, 42.

Q And what colour were the shirts?

A Brown, Blueish. One was blue I think, checked, I think, the other was greenish. If I see them, I will recognise.

(Evidence day 31, page 4748)

6.12.7. Mr Gauci was initially very firm that he did not sell the Libyan gentleman any shirts.

Some months later he acquired information that shirts similar to ones that he stocked were found at the crash site. He still says he did not sell shirts to the Libyan. At this time he did sell similar shirts to the police. Over seven months later he recalled that he did sell the shirts to the Libyan customer. Since his initial recall Mr Gauci had acquired post-event information which suggested he may have sold shirts to the Libyan. He also participated in a sale of shirts that were connected to the case (i.e. sale of the shirts to the police). There is a further long delay before he is questioned again. His final recall is consistent with memory distortion from post-event information - a normal property of human memory. The long delays between events are likely to enhance the distorting effect of suggestion from post-event information.

6.12.8. *Cardigan*. On 1st September 1989 Mr Gauci described a cardigan that he recalled selling to the Libyan gentleman as “a tartan cardigan, a large size, we do not have any left, it had colours red/black. I cannot recall exactly”.

6.12.9. On 13th September 1989, Mr Gauci added “ .. a woollen cardigan. A gent’s cardigan, a large size. The cardigan would have fitted this man. It was a two colour cardigan with big imitation leather, brown coloured buttons. I think six buttons. I think my brother Paul got the cardigan from a shop in ‘Paola’ in Malta. I cannot remember the shop name.”

6.12.10. DC Crawford stated on 19th September 1989: “About 12.50 whilst in the shop premises I saw a blue coloured cardigan which was, in all respects except colour, identical to a brown coloured cardigan which I had viewed at RARDE and which was blast damaged.” On the same day Mr Gauci changes the description of the cardigan in a further statement “One of them he bought was a cardigan, different from the one I have already described but was a beige or maybe darker colour. It is the same as the one

which you now have except that it is not blue. It is exactly the same as this blue one with the same buttons.”

6.12.11. On 26th September 1989 Mr Gauci stated: “I was shown two photographs of pieces of a brown coloured woollen article (cardigan) with a Puccini label. [Photograph of PI594 (1) and (20).] I can identify the cardigan as being the same as the one I sold to the man. It is also the same as the blue one which Mr Bell bought that week.”

6.12.12. On 30th January 1990 Mr Gauci stated: “I have been shown the piece of material (PI1111). This is very like the material that the cardigan was made of, the same cardigan that I sold to the man I told you about. I bought 3 of these cardigans from a man who came round with a suitcase, he was an ex-policeman, he lives in MSIDA and is a pigeon fancier like me. I don’t remember his name. He signed the chit HAMMET but that is not his name, that is the name of the company where he got them (HAMMET Bros of POALA). One of the 3 cardigans was damaged and I sold one to the man, they were Italian make with big checks. It’s the same sort of stuff as this. “

6.12.13. On 18th February 1991, DC Crawford made a statement saying that he spoke to Tony Gauci on Friday 15th February 1991 during a break when he was being shown photographs and making a statement. DC Crawford stated that Mr Gauci “now realises that the Puccini cardigan was bought from Eagle Knitwear and not from the ex-policeman.”

6.12.14. The cardigan that Mr Gauci finally described is different from the one he initially recalled. It is a different colour (brown vs. tartan with red and black in it), and obtained from a different source. The statements record that Mr Gauci was exposed to suggestion from the police. An officer selected the cardigan from his shop and he was shown a piece of blast-damaged material. Mr Gauci changed his testimony in line with the suggestion. Research shows that exposure to misleading post-event information can cause a change in recollection, especially after a long delay or when the memory is

weak. After further questioning it appears that Mr Gauci came to realise that he was mistaken about the source of the cardigan, which is a detail that he, the witness, had provided spontaneously. He realises the cardigan in question was from a third source, which was suggested by the police.

6.13. In summary, Anthony Gauci recalled selling some articles of clothing to a customer in winter 1988. He was first questioned approximately 9 months after the event. He had some reason to remember the sale because the man didn't seem to care what he bought and purchased a number of items. Selling clothes was a very common everyday event for Mr Gauci. He had many Libyan customers. He would have made many sales and dealt with many customers in the intervening period. Mr Gauci went on to make twenty statements to police. He learnt at an early stage that the investigation was about the Lockerbie disaster. He was shown samples of clothing described as 'blast-damaged' from his first encounter with police. The statements record how police on at least two occasions selected items from his shop, which the police officer believed were identical to the damaged samples of clothing. Mr Gauci made many changes to his testimony over time. In the case of his recollection of selling shirts and cardigans, his new testimony became more consistent with the account suggested to him in questioning than was his original testimony. By applying the psychological scientific evidence to this situation, I reach the view that Mr Gauci's first statement is likely to be the most accurate of his accounts of the sale of clothing to the Libyan man. This is the point at which the witness has been exposed to the least post-event information and social influence. Research demonstrates that memory distortion due to misleading post-event information and social influence can provide a plausible account for the changes witness memory. The conditions under which the testimony was obtained are those that have been found to increase the effect of memory distortion. First, the original memory would have been relatively weak because the details of the event are of relatively low salience recalled after a long delay. Second, repeated questioning was extended over a

very long period of time. These factors provide the opportunity for misattribution of the source of recollection and the feeling of familiarity of items and events. Repeated questioning has the effect of increasing the confidence of both correctly and incorrectly recalled detail.

Psychology of facial identification

7. Mistaken eyewitness identification is the leading cause of wrongful conviction. In the USA mistaken eyewitness identification was a factor in 75% of 225 wrongful convictions that has been overturned on the basis of DNA evidence that was not available at the original trial.¹ Identifications made by multiple eyewitnesses may be mistaken. Analysis of mistaken eyewitness identification in the first 40 DNA exonerations found that 17.5% involved identification by more than one eyewitness. One case involved mistaken identification by 5 witnesses (Wells, Small, Penrod, Malpass, Fulero, and Brimacombe, 1998). Very confident eyewitnesses can be mistaken. Jennifer Thompson was raped in 1984 and mistakenly identified Ronald Cotton, who served 11 years in prison in Texas before being exonerated by DNA evidence. Jennifer Thompson stated: “I was completely confident. I was sure.” Referring to another eyewitness in a capital case, Jennifer Thompson stated: “she cannot possibly be any more positive than I was about Ronald Cotton” (Thompson, 2000). These issues have been well known in England and Wales since the publication of a Home Office report into eyewitness identification in criminal cases (Devlin, 1976). The report analysed the case of Mr Virag, in which eight witnesses made the same mistaken identification. Five of the witnesses were police officers (Devlin, 1976, appendix D). Devlin concluded: “the witness who has sincerely convinced himself and whose sincerity carries conviction is not infrequently mistaken” (Devlin, 1976, p.149). The Devlin report inspired a judgment of the Court of Appeal which laid down an obligatory set of standard warnings to the jury on the dangers of eyewitness identification (R v Turnbull and others, 1977). Notwithstanding

¹ For the number exonerated see: <http://www.innocenceproject.org/>. For analysis of the role of mistaken eyewitness identification see <http://www.innocenceproject.org/understand/>

the legal reforms in England and Wales since 1976, it remains the case that 20% of all witnesses make a known mistaken identification when attending a police identification procedure (Valentine, Pickering & Darling, 2003; Wright & McDaid, 1996).

7.1. *Accuracy-confidence relationship*: The relationship between the accuracy of a witness' identification and the confidence expressed in their identification has been the subject of intensive scientific study over many years. Wells, Olson and Charman (2002) and Brewer (2006) provide recent reviews of the literature. Many studies have reported little or no relationship between accuracy and confidence, suggesting that the confidence expressed by a witness provides no probative value. (i.e. A confident witness is as likely to be mistaken as a witness expressing little confidence.) More recently, under specific circumstances, a stronger association between accuracy and confidence has been found. A perfect relationship would yield a correlation of 1. No relationship would yield a correlation of 0. The correlation between accuracy and confidence can be as high as .4 or .5, when analysis is restricted only to witnesses who make an identification (i.e. data from witnesses who decline to identify anybody are excluded), and confidence is measured immediately after the identification has been made. There are two important points to note about this relationship. First, even a correlation of .5 means that the witness' confidence accounts for only 25% of the variability in the relationship between confidence and accuracy. Therefore, 75% of variability is not explained by the confidence rating. When attempting to interpret a single identification by a single witness, the confidence expressed is not a reliable indicator of accuracy. It will be a common experience to encounter a confident witness who is mistaken as noted by Devlin (1976) and observed in the wrongful conviction of Ronald Cotton. Second, the confidence expressed in court is not the same as the confidence of a witness at the identification procedure. There are many events that occur after an identification that can affect the confidence of a witness. The most important of these factors is feedback on the witness' identification. This issue is discussed in more detail below.

7.2. Identification procedures should be designed to be *sensitive* (i.e. allow a reliable witness to make an accurate identification); *fair* (i.e. include safeguards for an innocent suspect against being mistakenly identified); and avoid sources of memory *distortion* (i.e. minimise suggestibility from post-event information, social influence or source misattribution). The effects of suggestion and misleading information on eyewitness testimony reviewed in Section 5 apply equally to eyewitness identification. Suggestion may arise from prior exposure to photographs of the suspect, non-verbal cues from police during identification procedures or information acquired from police or from media reports. Research in this area is typically derived from experiments involving young student participants, who watch a staged crime either live, but more usually on video, and their recollection is tested after a delay of a few minutes to a few days. These factors will tend to result in laboratory studies that over-estimate the proficiency of eyewitnesses. The circumstances of the present case that are most likely to have a substantial effect on the reliability of eyewitness identification in the present case are: the age of the witness; the long delay prior to identification; the influence of prior identification attempts and the influence of feedback on prior identification attempts.

7.3. *The age of the witness*: Face processing is very sensitive to the effects of cognitive aging. Deleterious effects of age have been reported in many studies of face recognition. For example, data reported by Searcy, Bartlett, Memon, and Swanson (2001) showed that identification by older witnesses is less likely to be accurate than identification by young adults. Laboratory studies have found a deleterious effect of age in witnesses aged over approximately 50 years of age. In a study of identity parades run by the Metropolitan Police Valentine *et al.* (2003) found that the police suspect was less likely to be identified by witnesses aged over 40 than by younger adults. When interpreting field data, such as these, one should bear in mind that the police suspect may not always be the culprit.

7.4. *Prior identification attempts*: The effect of prior identification attempts on the occurrence of mistaken identification was evaluated recently by Deffenbacher, Bornstein, and Penrod, (2006) in a systematic quantitative analysis of the empirical evidence. The scientific literature shows that a witness' exposure to mugshots does not have an adverse effect on subsequent identification providing the suspect's picture was not included amongst the mugshots. However, problems arise if a subsequent identification procedure contains a suspect whose photograph has previously been shown to the witness. If an innocent suspect has been seen previously in a witness album, the suspect is more likely to be mistakenly identified as the culprit. This factor has a moderate effect size on mistaken identification. If the witness has previously identified a photograph of a suspect, and that individual is shown in a subsequent identification procedure or a photo-spread, the witness is likely to repeat the same misidentification. In these circumstances participants tend to remain committed to their initial identification and the effect has a large effect size on mistaken identification.

7.5. *Delay*: Deffenbacher, Bornstein McGorty and Penrod (2008) provide a detailed theoretical integration and meta-analysis of the effect of delay on recognising a once-seen face. A meta-analysis of 53 studies showed a highly reliable effect of delay on recognition accuracy. There are few data available on identification over delays as long as 9 months or longer. For example, Shepherd (1983) found a clear decline in correct identification rates from 65% to 10% over delays ranging from 1 week to 11 months, but no effect on the rate of false identification, which was approximately 15-20% for all of the delays tested. Malpass and Devine (1981) found that a delay of 5 months reduced the rate of correct identification of a perpetrator to 36% (compared to 83% after 3 days) and increased the rate of false identifications to 35% (compared to 0% after 3 days).

7.6. *Feedback*: A very common distortion of memory arises from feedback given to, or acquired by, the witness. It has been shown that witness confidence is changeable and is influenced by information that the witness acquired after attending an identification procedure. If a witness

received feedback that they have identified the police suspect, or that somebody else made the same identification, the witness' confidence in their identification is likely to increase. Not only does confirming feedback tend to make the witness subsequently more confident in their identification, but it also tends to inflate estimates of a range of subsequent testimony including how long the culprit was seen for, how close they were, how much attention the witness paid, and their own willingness to testify (Wells & Bradfield, 1998). Furthermore, confirming post-identification feedback tends to make eyewitnesses over-confident. That is, after confirming feedback witnesses expressed more confidence in their identification than is justified by their accuracy (Semmler, Brewer, & Wells, 2004). Wright and Skagerberg (2007) showed that feedback affected the confidence of witnesses and victims of real crimes.

7.7. Wells *et al.*, (1998) recommend four rules of best practice on behalf of the American Psychology – Law Society. These rules are intended to apply to identification from photospreads and live line-ups (identity parades). A photo-spread is an analogue of a live lineup, in which photographs rather than people are presented to the witness. There is only one suspect amongst a number of foils. Typically 5 foils are used in the USA. The four rules are:

7.7.1. Rule 1: The person who conducts the lineup or photospread should not be aware of which member of the lineup or photospread is the suspect.

7.7.2. Rule 2: Eyewitnesses should be told explicitly that the person in question might not be in the lineup or photospread and therefore they should not feel that they must make an identification. They should be told that the person administering the lineup does not know which person is the suspect in the case.

7.7.3. Rule 3: The suspect should not stand out in the lineup or photospread as being different from the distractors based on the eyewitness' previous description of the culprit or based on other factors that would draw extra attention to the suspect.

7.7.4. Rule 4: A clear statement should be taken from the eyewitness at the time of the identification and prior to any feedback as to his or her confidence that the identified person is the actual culprit.

7.8. These rules are designed to ensure the following conditions are met.

7.8.1. The administrator (or identification officer) does not give any cues that might lead the witness (i.e. to prevent suggestion).

7.8.2. The witness understands that they do not have to make an identification and that making no identification might be the 'correct' response. The purpose is to reduce the demand characteristic that the witness should pick the person in the lineup who looks most like the culprit.

7.8.3. The lineup is fair and that nothing draws attention to the suspect.

7.8.4. The confidence that the witness expresses is not distorted by performance feedback.

7.9. Subsequently, a guide to best practice based broadly upon these four rules has been drawn up by the US Department of Justice (Technical Working Group for Eyewitness Evidence, 1999).

Blind administration of lineups.

7.9.1. It is very well established that a person's expectations can act as a self-fulfilling prophecy in behavioural research. For a review see Harris and Rosenthal (1985). The principle for blind administration is exactly the same as the principle for drug trials being run blind. Neither the doctor nor the patient should know whether the patient received the drug or a placebo. Knowledge of the experimental condition may affect the reporting of benefits or side-effects by either the patient or the doctor. The effect may be entirely unconscious. There is limited evidence that the expectations of a lineup administrator can influence the outcome of an identification procedure and confidence of witness' identification (Garrioch & Brimacombe, 2001; Haw & Fisher, 2004; Phillips, McAuliff, Bull Kovera & Cutler, 1999). For further discussion of blind administration of lineups see Wells *et al.*, (1998).

Regulation of identification procedures in England and Wales.

7.10. The conduct of identification procedures in England and Wales is governed by Code D of the Police and Criminal Evidence Act (1984) Codes of Practice. The current code, which came into force in 2008, covers a wide range of circumstances. The major provisions are as follows.

7.10.1. If identification is disputed, a video identification procedure containing moving images must be offered unless it is not practicable or 'live' identity parade is more suitable.

7.10.2. All lineups should consist of a minimum of eight foils and one suspect. The foils should "resemble the suspect in age, general appearance and position in life."

7.10.3. Witnesses must be advised that the person they saw may not be present that if they cannot make a positive identification they should say so. The witness must view the entire lineup at least twice before making an identification.

7.10.4. The person who runs the procedure should not be involved in the investigation of the case. No investigating officer can take any part in the procedure.

7.10.5. The suspect has the right for his or her legal representative to be present. If the suspect is not represented, a video recording of the entire identification procedure must be made.

7.10.6. The suspect and the legal representative may object to the procedure (e.g. the selection of foils) and their reason for objection must be recorded.

7.10.7. If the witness has previously been shown photographs, details of the photographs shown should be recorded. The witness should be asked if they have seen any images released to the media.

7.10.8. Anything the witness says should be written down before he or she leaves the identification room.

7.10.9. If the suspect is not available (i.e. has not been apprehended) the video identification procedure can be conducted using available images, including still images.

Anthony Gauci's identification evidence.

8. The following events in chronological order should be considered the key events in evaluating Anthony Gauci's identification of the accused. i) The first description given of the man (1/9/1989). ii) A photospread shown to Anthony Gauci (JIG Fax 731, 8/9/1989). iii) Extra detail added to description (13/9/1989). iv) Construction of a composite image and artist's impression (13/9/89). v) A report that he saw the man in Tony's Bar about 3 months previously (statement 13/9/1989). vi) A statement that the man came into the shop on 25 September 1989 (statement 26/9/1989). vii) Viewing a freeze-frame of Abu Talb (2/10/1989) who was 'similar' to the man (statement dated 2/10/1989). viii) Non-identification of Abu Talb amongst photographs viewed (6/12/1989, statement of 8/10/1991). ix) Identification of Abu Talb from the Sunday Times article (dated 5/11/1989; statement dated 5/3/1990). x) A recollection that Mr Gauci sold blankets to a similar man in May 1987 (statement dated 21/2/1990). xi) Non-identification of Abu Talb amongst photographs viewed (10/9/1990, statement dated 10/9/1990, Album Production 1244, DC717, Evidence DCI Bell Day 32 page 4861). xii) Identification of the accused from photographs (statement dated 15/2/1991). xiii) Seeing the accused in Focus Magazine published December 1998 (statement dated 13/4/1999). xiv) Other media coverage in February – March 1999 (It Torca, Panorama). xv) Paul Gauci's collection of press cuttings. xvi) Identification of the accused at an identity parade (statement dated 13/4/1999). xvii) Further extensive media coverage of the trial including photographs of the accused prior to Mr Gauci giving evidence. xviii) Being shown a photograph of the accused immediately prior to the dock identification. xix) Dock identification.

8.1. The first description given by the witness should be considered the most likely to be accurate because there has been least opportunity for the description to be influenced by repeated or leading questioning or other post-event information. The statement given on 1 September

1989 was the first occasion that the witness learnt the police were interested in his customer of the previous year. In this statement the man is described as:

8.1.1. 6' or more in height.

8.1.2. He had a big chest and a large head. Well built but not fat or with a big stomach. A 42" jacket would be too small for him.

8.1.3. Very black hair

8.1.4. An Arab appearance. A Libyan. He was speaking Libyan.

8.1.5. Clean Shaven with no facial hair.

8.1.6. Dark coloured skin.

8.1.7. He had not been in the shop before or since.

8.2. In his first description, Mr Gauci did not mention the age of the man. Some aspects of this first description change in later description. Subsequently he is described as under 6'. 'Dark coloured skin' becomes 'not the dark one' in a dock identification. The following characteristics appear in the first description and remain unchanged throughout his testimony: Well-built. An Arab appearance. A Libyan. Black hair. Clean shaven with no facial hair. Consistency does not necessarily imply accuracy of description. There is little, if any, evidence that witnesses who are consistent in their description of a person are more likely to be accurate. Descriptors mentioned spontaneously in an unprompted free recall are most likely to be accurate when witnesses are instructed to only report information of which they are confident and not to guess. Further questioning about other features is likely to yield both accurate and inaccurate information. Consistency may simply reflect the fact that the witness was not challenged, or did not encounter contradictory post-event information, on the relevant feature of their description.

8.3. Anthony Gauci was shown a photospread on 8th September 1989, which contained 23 photographs. Inspector Scicluna believed he recognised the description given by Mr Gauci on 1st September 1989. This 'suspect' was at number 1 in the photospread and was not

recognised. The suspect appears to be of African - Caribbean appearance in the fax of the photospread (JIG fax 8th September 1989). The images in the photocopy of the fax are of very low quality. Mr Gauci is recorded as having said that the suspect had a hairstyle identical to no 2 (afro-style) and the facial features of No 20. Mr Gauci did not make an identification from this lineup and to the best of my knowledge none of the faces were included in later identification procedures. Therefore, this procedure is unlikely to have affected subsequent identification procedures.

8.4. On 13th September 1989 Mr Gauci participated in the construction a facial composite and an artist's impression of the man he saw. Production of such images is difficult. Research shows that artist's drawings produced under the guidance of a witness are only named by fewer than 8% of people who are familiar with the person depicted. Photofit images fare less well (Davies & Valentine, 2007). The research is based on composites or drawings produced shortly after a witness viewed the perpetrator. In this case the images were not produced until 9 months later. In my view it is likely that such a long delay would adversely affect the reliability of the likeness.

8.5. In a further statement made on 13th September 1989, after the facial composite and the artist's impression of the man had been produced (see Annex A.), Mr Gauci stated that he now recalls that he saw the man about three months previously in Tony's Bar (i.e. before the first visit from the police). He stated that the man is 50 years of age but doesn't in any other way add any detail to his description or repeat any description of the customer. He did describe one of the other men at the table. It has not been possible to establish whether the man in Tony's bar and the customer are the same person. It seems unlikely that Mr Gauci recognised the customer at the time he saw him in Tony's Bar, because he did not mention that he had seen the customer since in his statement of 1st September 1989. He did state clearly, however, that the man had not been in the shop before or since. The later recollection of seeing the man in Tony's Bar may be influenced by the police interest in the customer.

- 8.6. It is difficult to describe people. It is not unusual for there to be some discrepancy between a first description and the characteristics of a man subsequently identified. In this case there is a major discrepancy in height compared to the accused (more than 6' vs. 5'8"). For an estimate of age we have to rely upon a later description. There is also a substantial difference in age compared to the accused (50 years vs. 36 years). Estimates of height and age can show considerable error. People tend to be most accurate in describing the age and height of people who are similar to themselves (e.g. Kebbell & Wagstaff, 1999). We can describe with reasonable accuracy whether somebody is older, younger or about the same age as ourselves. In the winter of 1988 Mr Gauci was 44 years old. The accused was 8 years younger, but Mr Gauci estimated the man he saw to be 6 years older than himself. This is a significant error as it crosses from older than the witness to younger than the witness. I understand that Mr Gauci is approximately 5' 3" tall. In estimating that the man he saw is over 6', Mr Gauci is estimating that he is more than 9" taller than himself. The accused is 5'8", only 5" taller than Mr Gauci. Therefore, Mr Megrahi fits the description of being taller than Mr Gauci, but only by about half the estimated difference. People can make substantial errors in estimating height and this might be expected to be most likely to occur when estimating height of people very different from their own (5' 3" vs. more than 6').
- 8.7. Mr Gauci's occupation involves selling clothing, therefore it would be reasonable to believe that he may have expertise in judging the size of clothing that would fit his customers. In his statements he did estimate clothing sizes. For example, in his statement of 1st September 1989 (his first description) he said that a 42" jacket would be too small for the man. He estimated the man's collar size as 16½-17" in his statement of 13th September 1989. Mr Gauci made a statement on 26th September 1989 in which he described a customer who came into the shop the day before, whom he identified at the time as the man who had bought the clothing. In describing the customer he stated: "I would say he had a 36" waist". In evidence

Mr Gauci repeatedly stresses he is not an expert in judging build, age and height. For example:

Q: What sort of build was he?

A: I'm not expert on these things. (Evidence Day 31, 4752)

Subsequently: "I don't have experience on height or age." (Evidence Day 31, 4753).

It is possible that that Mr Gauci has learnt from press reports that the defendant did not match the estimates of age and height that he had given previously (e.g. It Torca, 28/2/1999; Focus, December 1998), and that this post-event information had reduced his confidence in these descriptions. Such an effect would be entirely consistent with scientific evidence on the suggestibility of human memory.

8.8. In a statement made on 14th September 1989 Mr Gauci made a qualified identification of a man from photographs. His statement reads: "I was then shown two cards of photographs which had a total of 19 photographs thereon. I identified a photograph of a man on one of the cards. This photograph is similar to the man who bought the clothing. The man in the photograph I identified is too young to be the man who bought the clothing. If the man in photograph was older by about 20 years he would look like the man who bought the clothing. I signed the front of the photograph of the man I identified as similar. I also signed the 2 cards containing the photographs I was shown. I have been asked in what way the photograph is similar to the man who bought the clothing. The photograph looks like the man's features at the eyes, nose mouth and shape of face. The hair of the customer was similar but shorter to that in the photograph." The following note was added: "Although the witness identified as similar the photograph of MOHAMED H SALAM b. 1956, he was positive that this was not the suspect who purchased the clothing referred to." Notwithstanding the note added, the identification Mr Gauci made on the occasion bears a striking resemblance to the identification he subsequently makes of Mr al Megrahi on 15th

February 1991 (see paragraphs 8.16.1 and 8.16.4 below). A photograph of Mohamed Salam is reproduced in Annex A.

8.9. Subsequently Mr Gauci recalled selling blankets to a similar man in May 1987 (statement of 21st February 1990). This recollection may also be influenced by suggestion or simply a strong motivation to assist the enquiry. Both this previous sale of blankets and the encounter in Tony's Bar should be treated with some considerable caution, because the recognition of the man did not occur spontaneously at the relevant occasion. Mr Gauci did not recognise the man as a customer who had previously bought the blankets, when he came into the shop to buy the articles of clothing in winter 1988. To the contrary, in his first statement Mr Gauci stated "He has not been in the shop before or since" (1/09/89). However, after 13th September 1989 (see paragraph 8.5 above) any description of the man's appearance and/or attempts to recognise him may be influenced by recall of the man in Tony's bar, and in addition after 21st February 1990, to recollection of the sale of blankets. Blending or interference between memories or confusion about the source of memories may occur.

Seeing the man in his shop on 25th September 1989

8.10. Mr Gauci reports that the man came into his shop on Monday 25th September 1989 and bought four elasticated child's dresses in a statement taken in Insp. Scicluna's car at 19.20 on the following day - 26th September 1989. The statement is detailed and the description of the event is embedded in the context of other events that morning.

8.10.1. "On Monday, 25th September 1989, I opened my father's shop at 63 Tower Road, Sliema, at 9.30am. I was alone at this time. About half past ten, my father came into the shop. He travels to the shop in Paul, my brother's car. Paul parks and he came into the shop shortly after my father. About 11.00am, my father left the shop to visit my other brother's shop, that is Edward's shop also in Tower Road. About 11.30am, Paul left the shop to go to the bank. I was now alone in the shop"

8.11. It appears that Mr Gauci genuinely believed he had recognised the man in question.

This is the only positive identification of the man Mr Gauci ever made. (“I immediately got startled as I believe that this man was the same man I have described in my previous statement.”) This report differs from the ‘recognition’ of the man in Tony’s Bar or the ‘recognition’ of the man who bought blankets in May 1987 because it was not based on a previously forgotten encounter and subsequent ‘recognition’ recalled after questioning Therefore, in my view the recognition of the man on 25th September 1989 is less problematic and has fewer risks associated with a likely error.

8.12. A curious point is that a statement was taken from Tony Gauci in his shop at 12.10 on Tuesday 26th September 1989 (earlier the same day). However the previous day’s events are not mentioned in this statement. A document attached to JIG Fax 1438 (5th March 1991) notes that when seen earlier in the day Tony Gauci had said, whilst out of hearing of his father and brother, that the man had come into his shop “last week Thursday 21 or Friday 22 September 1989”. An arrangement had been made to meet Tony Gauci at 7pm to take a statement. A note to this effect was added to the HOLMES version of his statement taken later that day. Subsequently a query is raised about the date, because the accused left Malta on 24th September 1989. The evidence suggests that Mr Gauci is not confused about the date because he refers to selling a child’s elasticated dress to the man “last Monday” in his statement of 4th October 1989. Mr Gauci is not questioned about the date of this event when his statements are reviewed on 10th Sept 1990, although the episode is discussed. At this point Mr Gauci says that the man who bought the four child’s dresses “is similar in appearance to the man who bought the clothing in November/December 1988, but I cannot say definitely that it was the same person”. Unfortunately Mr Gauci was not re-interviewed about the *date* of this sale until 4th November 1991, by which time he could not clarify the matter. However, by this point Mr Gauci is now once again much more definite about the identification. He stated: “I can recall this incident. I can say that the man who bought the

damaged clothing you brought to me at first must have been a twin because if he was killed in the plane, then it must be his twin that bought the four dresses, they really look like the same men”. The changes in Mr Gauci’s confidence over time serve to demonstrate the malleability of witness confidence reported in the research literature. It is my view that the following factors in the statement of 26th September 1989 are strengths of the testimony:

- There is rich context of other events in the shop on the morning in question which were included in the statement.
- Mr Gauci stated that he was immediately startled by recognising the man.
- The statement was recorded the following day.
- Mr Gauci is consistent about the day of the week in the statement made the following week.

Identification of Abu Talb.

8.13. On 2nd October 1989, Mr Gauci viewed a freeze frame of Abu Talb taken from a Panorama programme on the Lockerbie Air Disaster. The image is a close up of an identification document and is not of good quality. Mr Gauci describes the photograph as “similar to the man that came in to my shop although I am unable to say that it is definitely the same person.”

8.14. On 6th December 1989 Mr Gauci viewed 12 photographs which included a picture of Abu Talb. A statement dated 8th October 1991 reads: “I could not identify any photograph present as being the man who bought the clothing from my shop”. A note reads: “Statement submitted by DS Byrne as continuity for final report, no statement having been submitted from Gauci. Gauci has not been re-interviewed for this additional statement.” I am not clear whether Mr Gauci signed this statement. If not, I do not understand in what sense it is a statement from the witness, rather than a statement from DS Byrne. DS Byrne’s note implies that Mr Gauci was not asked about this set of photographs in 1991. If Mr Gauci had been re-interviewed in October 1991, would he have identified the picture of Abu Talb? By that time

Abu Talb was no longer a suspect. In view of the fact that Mr Gauci did identify a picture of Abu Talb in the intervening period (see paragraph 8.15 below), there would have been a possibility that he might have identified Abu Talb in October 1991 had he been interviewed at that time.

8.15. In a statement made on 5th March 1990, Mr Gauci reports having seen an article in the Sunday Times (dated 5th November 1989) which included a picture of Abu Talb (reproduced in Annex A). It is likely that he saw the article in January 1990. He states “I think the photograph printed in the newspaper may have been the man who bought the clothing. He looks like him.” Mr Gauci had previously seen Abu Talb in a freeze-frame at the police station and described him as similar to the man (paragraph 8.13). He’d also seen Abu Talb’s picture amongst photographs on 6th December 1989 but not identified him (paragraph 8.14). It is possible that Abu Talb’s picture in the Sunday Times looked familiar to Mr Gauci because of his prior exposure to it. He may have misattributed a feeling of familiarity with the picture arising from the incident when he sold clothing to the man in his shop in winter 1988. The article in the Sunday Times clearly attributed blame for the Lockerbie disaster to Abu Talb. The word ‘bomber’ was written across a corner of the picture. Therefore, his qualified identification may have been strongly influenced by the highly leading press report.

8.16. On 10th September 1990 Tony Gauci was shown many photographs which included an album (Production number 1244; DC717). Mr Gauci’s statement taken on this date does not record exactly which photograph albums were shown, but DCI Bell testifies that this album was shown (Evidence day 32, page 4861). Album DC717 contains a picture of Abu Talb. DCI Bell’s testimony is that Mr Gauci did not identify this picture of Abu Talb, although the video freeze-frame of Abu Talb shown previously was discussed. In his statement of 10th September 1990, Mr Gauci stated that: “Although this man was similar in his hair style and appearance I could not identify his face.” Nevertheless, on 10th September

1990 Mr Gauci did identify three men from photographs shown who were “similar in appearance to the man who bought the clothing” as follows:

8.16.1. SALEM MOHD ABDEL HADY TAHA: Similar in facial features but not old enough

8.16.2. KHALIL: Similar style of hair but not as bushy.

8.16.3. AYAD SALAMA HUSSEIN MUSTAFA ABUEWEINER: Similar in style of hair cut only.

8.16.4. The photographs of these men shown on this occasion are not available to me.

Identification of Mr al Megrahi from a photospread on 15th February 1991

8.17. On 15th February 1991 Mr Gauci made a qualified identification of Mr al Megrahi from an array of twelve photographs. This is described in his witness statement dated 15th February 1991. There are also statements from DCI Bell (undated), DC Crawford (15/2/1991), Special Agent Reid (undated) and Insp Scicluna (25/2/91).

8.17.1. Mr Gauci’s witness statement records that he was asked to picture the man in his mind and that he was told that the man may not be amongst the photographs. He then inspected a set of twelve photographs. Mr Gauci told DCI Bell that all of the men were younger than the man who bought the clothes. DCI Bell instructed him to look at the photographs carefully and try to allow for any age difference. Mr Gauci then pointed to the picture of Mr al Megrahi, and said that this picture was similar to the man. He judged Mr al Megrahi’s picture to be of a man of about 30 years old and said he would need to be at least ten years older. He went on to say “Its been a long time now and I can only say that this photograph No. 8 (eight) resembles the man”. Subsequently he added: “I can only say that of all the photographs I have been shown this photograph is the only one really similar to the man who bought the clothing if he was a bit older other than the one my brother showed me” (referring to the picture of Abu Talb in the Sunday Times article).

8.17.2. DCI Bell records in his statement that the picture of Mr al Megrahi, which had been obtained from FBI Special Agent Reid, was “dull and grey in colour”. He selected photographs of 8 foils from the Maltese Immigration Office and included 2 photographs of other men, in addition to Mr al Megrahi, whose pictures were also obtained from SA Reid. DCI Bell only specifies eleven photographs but it is clear that the array consisted of 12 photographs. Examination of the list of names suggests that three pictures supplied by SA Reid in addition to Mr al Megrahi’s picture were included in the array. A police photographer re-photographed the eleven foils in an attempt to match the quality of the picture of the accused. The bottom part of the pictures was occluded to hide the fact that Mr al Megrahi was the only man wearing a tie. The picture of Mr al Megrahi used in the array is reproduced in Annex A.

8.17.3. When I visited the SCCRC offices on 16th December 2005 I had the opportunity to see the original photospread used for Mr Gauci’s qualified identification of Mr al Megrahi on 15 February 1991. I note that the picture of Mr al Megrahi has a grainy quality in comparison to the other pictures. An attempt has been made to degrade the quality of the other pictures. The pictures of the foils are lacking in sharp focus and lacking in contrast, but in my view do not match the grainy quality of Mr al Megrahi’s picture. Therefore, Mr al Megrahi’s picture does stand out as the only picture with a markedly grainy quality. In addition, I noted that the array is large in its dimensions. This will make apparent, when the witness was examining the array, which picture he was looking at as he would probably move his head to examine each picture in turn. This is referred to in police statements. For example Insp. Scicluna (see para 8.17.4 below) stated: “he had already stopped at photo no. 8 ...” There were four police officers present with the witness, all of whom appeared to know the location of the suspect in the array. The fact that they could tell when the witness was examining the picture of the suspect, would make it more likely that non-verbal cues may be given to

the identity of the police suspect. This process may occur entirely unconsciously, unnoticed by the participants and without any intention to lead the witness.

8.17.4. The statements by DC Crawford and SA Reid corroborate the account of the identification given by DCI Bell. However, Insp Scicluna's account, which is written a few days later (25/02/1991), differed in a very significant way. Insp Scicluna described Mr Gauci saying that the pictures are: "All too young". After being asked to allow for an age discrepancy as the man might be 10–15 years older. Insp Scicluna stated: "Here he looked at me and in Maltese said "Bring me that newspaper, he is similar" – (Witness referring to a photograph published in the British Sunday Times [...]). During this time he (Gauci) had already stopped on photo no 8 (Baset) at the right hand side of the second row." This statement appears to imply that Mr Gauci believes the pictures of Abu Talb and al Megrahi to be pictures of the same person.

8.17.5. The question arises of why Inspector Scicluna's statement differs from the other three police statements in this important respect. It is possible Mr Gauci's comment was not translated, but this in itself appears to me to be an important omission. The statements of DCI Bell, DC Crawford and SA Reid do not refer to the witness speaking in Maltese to Inspector Scicluna. Insp Scicluna's statement does not say how he responded to Mr Gauci's request to get the newspaper. It is clear from the interview between DCI Bell and the SCCRC on 25th and 26th July 2006 that DCI Bell did not record in his written statement a full record of all that was said at the identification:

8.17.5.1. "Mr Scicluna brought up the issue and I remember being annoyed that a discussion regarding Talb was going on in front of the witness. Mr Scicluna wanted the comment about Talb to be included in the statement and Tony agreed to that being done. I would have preferred it if we had dealt only with the applicant's photograph that day. It was Mr Scicluna, and not Tony, who brought up the reference to Talb." (SCCRC interview with DCI Bell, 25/07/06, page 27.)

8.17.6. In his statement of 25th February 1991 in which he describes Mr Gauci's identification on the 15th February 1991, Inspector Scicluna does not record how he responded to Mr Gauci's request to "Bring me that newspaper". This issue is explored at some length in the SCCRC interview with Inspector Scicluna on 1st December 2004. The SCCRC interviewer asked whether Mr Gauci had a picture of Abu Talb (from the Sunday Times article of 5th November 1989) and the picture of Mr al Megrahi in front of him at the same time. The answer is confused. First, Mr Scicluna replies "of course". When the interviewer seeks to confirm the response, Mr Scicluna replies "how can I remember about 15 photographs at one go?" The interviewer asks if he is unable to specifically recall, to which Mr Scicluna replies; "No and I don't even know whether we brought him that. I mean at that time. I don't remember." (SCCRC interview with Godfrey Scicluna, 1/12/2004).

8.17.7. After describing Mr Gauci's qualified identification, DCI Bell's statement reads: "At this stage I could see that the witness was visibly upset. He stated to me that he was worried that he would become a 'target' and that every time he heard a bang he thought 'they' had come to get him. He was obviously concerned in case there was any publicity."

8.17.8. DC Crawford's statement reads: "I could see that, following the identification, Tony became visibly upset and frightened, he said he was very worried that he would become a target and that every time he heard a bang he thought "they have come to get me", he was obviously very frightened of any publicity that may surround this latest episode of the enquiry".

8.17.9. SA Reid's statement stated: "I learned from Gauci, who appeared to be upset, that he was worried that he would become a "target" and that every time he heard a "bang", he thought "they" had come to get him. I witnessed DCI Bell attempting to reassure the witness and calm him."

8.17.10. However, Inspector Scicluna does not make any reference to the witness becoming upset. He states “I have to state that Gauci also commented to Inspector Bell to keep everything in confidence as he was worried about his family especially his father who is an epileptic. He also mentioned the fact that someone might do him some harm”.

8.17.11. In his own witness statement Mr Gauci makes no reference at all to being upset by the identification or worried about witness intimidation.

8.17.12. It is not clear why Mr Gauci should have become upset on this occasion. He had made a qualified identification that the man looked similar. He had made similar qualified identifications on other occasions. The possibility should be considered that Mr Gauci became concerned because he received or inferred feedback that he had identified the police suspect from something said by the police officers in his presence.

8.17.13. A qualified identification that a photograph “may be” of the man he saw or was “similar to” does not amount to an unambiguous identification. There may be many men who may resemble or are similar in appearance to the man in question. Research shows that the confidence a witness expresses in an identification is malleable (e.g. Wells & Bradfield , 1998). Therefore it can be affected by the response of the police to the identification. If a witness makes a qualified identification of a foil (or somebody who is no longer a suspect) and the police ignore it, the witness may subsequently come to express less confidence in the identification. In contrast when a qualified identification of the suspect is made and the police show considerable interest, the confidence of the witness may be increased. It is very well established that feedback and the behaviour of the lineup administrator can have a substantial effect on eyewitness confidence (e.g. Garrioch & Brimacombe, 2001; Wells & Bradfield, 1998; 1999). It is known that feedback reduces the association between confidence and accuracy

(Bradfield, Wells & Olson, 2002; Semmler, Brewer & Wells, 2004) and the effect is observed in real witnesses and victims of crime (Wright & Skagerberg, 2007).

8.17.14. For example, compare this identification of Abu Talb made on 2nd October 1989 from a low quality freeze-frame of a passport photograph:

8.17.14.1. “similar to the man that came in to my shop although I was unable to say that it is definitely the same man”,

8.17.14.2. and this identification of Mohamed Salam on 14th September 1989:

8.17.14.3. “This photograph is similar to the man who bought the clothing. The man in the photograph I identified is too young to be the man who bought the clothing. If the man in the photograph was older by about 20 years he would look like the man who bought the clothing”,

8.17.15. with this initial identification of Mr al Megrahi (15th February 1991):

8.17.15.1. “Its been a long time now and I can only say that this photograph No. 8 resembles the man who bought the clothing, but it is younger.”

8.17.16. Later in the same statement after noting that he was asked to sign his name on the photograph and that DCI Bell wrote a statement for him. Mr Gauci added:

8.17.16.1. “I can only say that of all the photographs I have been shown this photograph number 8 is the only one really similar to the man who bought the clothing if he was a bit older other than the one my brother showed me.”

8.17.17. The apparent increase in confidence in the course of the statement (15/02/91) would be consistent with post-identification information gleaned from the reaction of the police officers serving to provide feedback that he had identified the police suspect.

8.17.18. The Scottish Home and Health Department Guidelines on the Conduct of Identification Parades (1982) allow for identification from an array of photographs containing the suspect and “a minimum of 11 other photographs of other persons of similar age and appearance” when the suspected person has not been apprehended.

8.17.19. The procedure described by DCI Bell met these requirements, only if it is assumed that Mr al Megrahi was the only suspect in the array. However there is some doubt about this issue. The array includes 4 photographs supplied by SA Reid. It appears that all 4 were potential suspects. In his statement written after Mr Gauci's identification, DCI Bell identified Mr al Megrahi as the suspect. He confirms this point in his interview with the SCCRC in 2006: "as far as I was concerned the applicant was the only suspect" (p.25). However, DCI Bell cannot offer an explanation for the three other photographs supplied by SA Reid being included in the array.

8.17.19.1. "I have been told that the photographs of the other three individuals also appeared in the photospread shown to Tony. I suspect that these persons may have been relevant to the inquiry but after sixteen years it is difficult to recall the possible reasons for this. Their names are familiar, but I cannot recall why their photographs were shown to Tony. There is a possibility that others may have regarded these individuals as suspects but as far as I was concerned the applicant was the only suspect in the photospread. The men in the photographs may have featured elsewhere in the inquiry; however, I cannot provide any reason to suggest that they were suspects. It is possible that they were connected to the MEBO enquiries." (SCCRC interview with DCI Bell, 25/07/06, page 25.)

8.17.20. The effect of having four suspects rather than one in the photograph array would have been to dramatically increase the probability of a mistaken identification.

8.17.20.1. Guidance to best practice for use of photospreads for identification evidence has been published in the USA (Wells *et al.*, 1998; Technical Working Party for Eyewitness Evidence, 1999). It is good practice to advise the witness that the person in question may or may not be present. This caution was given. However, when the witness declined to choose because all of the men were too young, he was instructed to allow for an age difference and look carefully at the pictures

again. This is a strong cue that the police believe the culprit to be present in the array and indicated that a choice was expected.

8.17.20.2. Wells *et al.* (1998) recommend that everyone present at an identification procedure should be unaware of which person in the array is the suspect. This procedure prevents the police giving subtle, unintentional cues that may encourage the witness to identify the suspect. (For example, two police officers may look at each other when the witness pauses at the suspect's picture.) In this case, there were four police officers from three countries present all of whom knew the identity of the suspect. This may have been an intimidating experience for any witness, which presented strong demand characteristics to pick 'the right person'. Therefore, the opportunity is provided for the witness to pick up non-verbal cues that may have led him to make his qualified identification of Mr al Megrahi, especially when encouraged to choose after initially rejecting the array.

8.17.21. In summary, the Scottish Home and Health guidelines allow for identification from photographs in the circumstances (i.e. the suspect was not available). At first sight the procedure adopted appears to comply with the guidance. However with regard to Wells *et al.* (1998) guidance on best practice for conducting an identification procedure from photographs (see paragraph 7.7) there are a number of factors that are a cause for serious concern about the reliability of the procedure.

8.17.21.1. There may have been four potential suspects in the array.

8.17.21.2. The photograph of Mr al Megrahi stands out because it was of a grainy quality in comparison to the other images. In my view this may render the lineup unfair.

8.17.21.3. There were four police officers present all of whom knew the identity of the 'primary' suspect.

- 8.17.21.4. The witness first declined to chose. He was instructed to look again. This is a strong suggestion that he was expected to identify somebody.
- 8.17.21.5. It appears that the witness may have mistaken the picture of Mr al Megrahi for a picture of Abu Talb.
- 8.17.21.6. The witness' statement is consistent with his identification being bolstered by being asked to sign the picture of Mr al Megrahi and a written statement being taken.
- 8.17.21.7. The conversation between police officers in front of the witness was not controlled and was not adequately recorded in the statements. This conversation may have provided feedback to the witness prior to his statement being taken.
- 8.17.21.8. A statement by DC Crawford (18/02/1991) on a different matter refers to "breaks in the procedure" of "being shown a selection of photographs and making a statement" conducted on 15th February 1991. If breaks in the procedure occurred between the photographs being shown and a statement being recorded, during which investigating officers have the opportunity to talk to the witness, the integrity of the identification procedure would be seriously compromised.
- 8.17.21.9. It is recorded that the witness became upset after the identification. No explanation is provided for this but it would be consistent with the witness having realised that he had identified the police suspect. Feedback of this nature has been shown to increase confidence in an identification and the witness' willingness to subsequently testify.
- 8.17.21.10. In my view, the effect of the combination of these factors is likely to have resulted in an unfair procedure. In particular, the lack of 'blind' administration of the lineup by four investigating officers, a photograph of the suspect that stands out because of its grainy quality, a large photospread that allowed the police officers to tell which picture he was looking at and an instruction to the witness to

look again when he declined to identify anybody, provide a combination of factors that are likely to unfairly lead the witness to make an unreliable identification. The uncontrolled conversation between investigators and any breaks prior to recording his statement are likely to lead to an unreliable identification and serve to increase the confidence of the witness in his identification.

8.17.21.11. When the suspect is not available (i.e. had not been apprehended), any identification procedure that complied with the code of practice required by the Police and Criminal Evidence Act (1984) (PACE) which applies in England and Wales would have differed in a number of ways. This code of practice has been developed to provide important safeguards against the risk of mistaken eyewitness identification.

8.17.21.11.1. An identification procedure must be conducted by an identification officer who has not been involved in the investigation. The rationale is to reduce the risk of leading the witness by requiring that no investigating officer takes any part in the identification procedure. In contrast on 2nd February 1991 four investigating officers who were highly motivated to obtain a positive outcome of the investigation were present at the identification. If the procedure had been administered by a single identification officer (not an investigating officer) the uncontrolled discussion, of which DCI Bell complained in his interview with the SCCRC, would not have occurred (see paragraph 8.17.5.1).

8.17.21.11.2. Under the current PACE code of practice the images would be presented on video. If moving images were not available, still images could be used. If the suspect did not have a legal representative present, the entire proceedings must be recorded on video.

Media Publicity

8.18. In December 1998 Mr Gauci saw a copy of *Focus* magazine which included a picture of Mr al Megrahi. This picture was a more recent picture than the one he had identified previously. The article identified Mr al Megrahi as a suspect and therefore will have confirmed to Mr Gauci that he had identified the suspect. The research literature shows that once witnesses receive confirming feedback, their confidence in their identification and their estimate of their ability to make a reliable identification is likely to increase. Therefore, the fact that Mr Gauci saw this article will be highly influential on the reliability and confidence of his subsequent identification of the accused. It is known that Mr Gauci had a copy of this magazine from December 1998 until April 1999.

8.19. In an undated statement (s5725), Sergeant Busuttil describes how he accompanied Superintendent Scicluna to Mary's House on the morning of 1st April 1999 where they spoke to Anthony Gauci. Mr Gauci told them that a local shopkeeper had shown him an article in a magazine, which, according to Mr Gauci, included a photograph of the man who had bought the clothing at his shop. Superintendent Scicluna had asked Mr Gauci to give him the magazine. Mr Gauci replied that he had the magazine at home and would look for it. In his statement Sergeant Busuttil goes on to describe that on 9th April 1999 he called again at Mary's House and that Mr Gauci handed him a copy of the magazine. Mr Gauci pointed to Mr al Megrahi's photograph and said "That's him". Sergeant Busuttil retained the magazine and, after travelling with Mr Gauci to Holland, handed it to Detective Chief Superintendent Bell. Mr Gauci viewed the identity parade on 13th April 1999.

8.20. In his evidence at the trial, Mr Gauci agreed that he had seen this magazine article "towards the end of 1998 or the beginning of 1999". These are the words of Counsel, rather than the witness' own words. Nevertheless, Mr Gauci agreed with the question. The magazine was published in December 1998. Therefore, it appears that Mr Gauci may have had the article in his possession for around 4 months immediately prior to the identity parade.

Furthermore, it is a matter of record that he viewed Mr al Megrahi's photograph in the article 4 days before attending the identity parade.

8.21. I understand that Mr Gauci also saw articles of the Lockerbie disaster in "It Torca". The articles formed a two-part series published on 28th February and 7th March 1999. This article was illustrated with a copy of a photograph of Mr al Megrahi. Furthermore, I understand that another article on the case, and Anthony Gauci's role in it, was printed in an Italian magazine 'Panorama'.

8.22. In an interview with the SCCRC on 2nd – 3rd August 2007 Paul Gauci (Anthony Gauci's brother) described how he kept press cuttings about the case from before the trial. He states that he would collect articles as they were published.

8.23. The articles in *It Torca* and *Focus* both printed a picture of Mr al Megrahi clearly identified as the police suspect. Viewing these articles afforded Anthony Gauci the opportunity to learn to recognise Mr al Megrahi. The opportunity to learn how Mr al Megrahi's appearance had changed over time would have been facilitated because *It Torca* published an older photograph broadly similar to the one that Mr Gauci had identified, and *Focus* published a more recent picture, similar to Mr al Megrahi's appearance in 1999. Anybody who viewed these pictures several times over the period of time that they were available to Anthony Gauci could have identified Mr al Megrahi from a subsequent lineup or photospread. Anthony Gauci confirmed in his interview with the SCCRC on 3rd August 2006 that he recalls seeing the photograph of al Megrahi published in *It Torca* on 28th February 1999. "I do recall seeing the photographs featured in the edition dated 28 February 1999" (paragraph 39).

8.24. I have been supplied with a collection of newspaper articles and TV clips reporting the Lockerbie case. Amongst this collection there are 16 newspaper articles that published a picture of Mr al Megrahi between November 1991 and 25th August 1998. These are articles which Mr Gauci may have had the opportunity to see, and thereby provide a further

opportunity to lean to recognise Mr al Megrahi's face. However, press reports in the days leading up to the identity parade are of even more concern. Mr al Megrahi's photograph was reproduced in *Kull Hadd* on 4th April 1999, and the *Times of Malta* on 6th April 1999. Images of his face were broadcast on Net TV on 5th April 1999 and on Malta TV on the 5th and 6th April 1999. A close-up of Mr al Megrahi's face was shown on Malta TV on 6th April 1999.

8.25. The Scottish Home and Health Department Guidelines for the Conduct of Identification Parades (1982) acknowledge the dangers of a witness viewing photographs of the suspect after identification from a photospread and prior to attendance at an identity parade. Paragraph 31 makes the following provision:

8.25.1. "Where there is no evidence implicating the suspect save by identification by photograph, the witness as to identification should be taken to an identification parade notwithstanding that they may already have made an identification by photograph. Care should be taken that any witness who has identified a suspected person by his photograph and who is subsequently called upon to identify that person on his apprehension is not again shown the photograph before identification proceedings. Prior to any identification parade, the defence are entitled to be advised of any earlier identification made from the photographs by any witness(es) viewing the parade."

8.25.2. The safeguard provided by paragraph 31 of the Scottish Home and Health Department Guidelines for the Conduct of Identification Parades (1982) was ineffective in view of the witness' extended opportunity to view press photographs of the suspect.

8.26. From the articles in *It Torca* and in *Focus* Mr Gauci would have learnt that Mr al Megrahi was 36 when he was alleged to have bought clothing from Mary's House, is only 5' 8" tall and not particularly well-built. These were discrepancies with Mr Gauci's description of the Libyan man as 50 years old, 6' tall and well-built. In my view extrapolating from the research on the effect of feedback on identification testimony, this new information is likely

to have reduced Mr Gauci's commitment to these original descriptors in his subsequent testimony.

8.27. In his interview with SCCRC on 3rd August 2006 Anthony Gauci confirmed that the details from the *Focus* article described in the preceding paragraph were read to him prior to the trial. "I recall that someone read the article to me but I cannot remember who the person was." (Paragraph 41). Mr Gauci recalls that such an event was a frequent occurrence: "I recall that everyday people came into the shop with newspaper cuttings." (paragraph 39).

Best practice in relation to the showing of photographs and media images

8.28. I appreciate that the Police and Criminal Evidence Act 1984 does not apply in Scotland. However the importance of keeping accurate records of images seen by a witness is recognised in the provisions of the code of practice required by the Act. Code D, Annex E, provides a suitable example of good practice with respect to the showing of photographs to witnesses and the requirement to keep good records. These procedures provide the means to establish exactly which photographs were shown to a witness and require the photographs to be retained. The following is an extract of Code, D Annex E:

8.28.1. Paragraph 10: "None of the photographs shown shall be destroyed, whether or not an identification is made, since they may be required for production in court. The photographs shall be numbered and a separate photograph taken of the frame or part of the album from which the witness made an identification as an aid to reconstructing it."

8.28.2. Paragraph 11: "Whether or not an identification is made, a record shall be kept of the showing of photographs on forms provided for the purpose. This shall include anything said by the witness about the identification or the conduct of the procedure, any reasons why it was not practicable to comply with any of the provisions of this Code governing the showing of photographs and the name and rank of the supervising officer."

8.29. Code D also requires copies of any images released to the media to be retained and for records kept of any images broadcast or printed in the media and of images that the witness recalls having seen.

8.29.1. Paragraph 3.29: “When a broadcast or publication is made (..) a copy of the relevant material released to the media for the purposes of recognising or tracing the suspect shall be kept. The suspect or their solicitor shall be allowed to view such material before any [identification] procedures are carried out, provided it is practicable and would not unreasonably delay the investigation. Each witness involved in the procedure shall be asked, after they have taken part, whether they have seen any broadcast or published films or photographs relating to the offence or any description of the suspect and their replies shall be recorded.”

Identity parade

8.30. On 13th April 1999 Mr Gauci attended an identity parade at Kamp Van Zeist.

8.30.1. His statement reads: ”I was asked to look through the glass window at eight men in another room. I was asked if I saw the man who had been in my shop. I said I wasn’t sure, but the one who looked most like him was No. 5.[...] I’m not 100% sure, it has been 10 years, and I want to be as fair as possible.”

8.30.2. The records of the ID parade report his response as “Not exactly the man I saw in the shop 10 years ago I saw him but the man who look a little bit like exactly is the number 5.”

8.30.2.1. There were 7 stand-ins on the parade lineup, which exceeds the minimum of five specified in the Scottish Home and Health Department Guidelines for the Conduct of Identification Parades (1982).

8.30.2.2. The Scottish Home and Health Department Guidelines requires that stand-ins should be “persons of similar age, height, dress and general appearance”.

- 8.30.2.3. The defence legal representative makes 7 objections to the identification procedure.
- 8.30.2.4. The first four objections are to specific stand-ins on grounds of age. The age of these 4 men range from 25 – 35. The suspect is 47. These stand-ins would have been aged 15 – 25 years of age when the Libyan customer visited Mr Gauci's shop. Therefore these stand-ins cannot be considered to be plausible foils. In my view this objection has merit. These objections were dealt with by excluding the four stand-ins concerned from the parade (page 6, Identification Parade Report).
- 8.30.2.5. The report of the identification parade (page 6) notes that objections 5 – 7 (listed below) were considered unreasonable because the police were “acting on instructions of the Crown”.
- 8.30.2.6. The fifth objection is that the event was so long ago the witness's memory is likely to be unreliable. In my view this objection has merit. The ability of the witness to identify the man he saw will be very much diminished by the long delay.
- 8.30.2.7. The sixth objection is that the witness is likely to have seen a picture of the accused in the press because his picture was released by the police or the prosecution to the media. Press reports with details of the evidence against the suspect would be highly suggestive to the witness. It is known that the witness did see such press articles. There was extensive media coverage which reproduced Mr al Megrahi's photograph, even during the 10 days prior to the identity parade. In my view the witness's exposure to press articles will make his identification unreliable. This objection is strengthened because it is known that the witness had extended opportunity to view press photographs, and he saw a picture of the accused in a press article a few days before attending the identity parade.

8.30.2.8. The seventh objection is that the available stand-ins are not sufficiently similar to the accused particularly in terms of age and ethnic background. I have been supplied with descriptions and photographs of all of the available stand-ins. Unfortunately the photographs are not identified so it is not possible to ascertain which pictures are of the men who actually stood on the parade. Working from the descriptions and ignoring the 4 stand-ins excluded following defence objection, the ages of the seven stand-ins who participated are as follows 32, 33, 33, 38, 44, 47 & 49. I have also viewed a video recording of the preparations made for the identity parade. The actual identification by the witness was not included in the recording. The video has afforded me the opportunity to assess the appearance and height of the men who actually stood in the lineup.

8.30.2.9. Working from pages A-6/6 and A-6/6 (ii) from the identification report it is possible to identify the descriptions of the stand-ins who were included in the final line-up. The stand-ins named on page A-4/6 were excluded (nos. iii, iv, vii & viii on page A-6/6). Scientific best practice would be that the foils should match the first description that the witness gave, unless the suspect differs from that description, in which cases the stand-ins should match the attributes of the suspect (Wells *et al.*, 1998; Technical Working Group for Eyewitness Evidence, 1999). The suspect does differ he first description in age and height, therefore foils should match the suspect in age and height (i.e. 47 at the time of the identity parade and 5' 8") Comparing the descriptions of the stand-ins from the final lineup, I draw the following conclusions in relation to their age and height alone:

8.30.2.9.1. Stand-in (i) can be discounted because he is implausibly tall (6')

8.30.2.9.2. Stand-in (ii) is 9 years younger but might be a plausible foil (5' 9", 38).

8.30.2.9.3. Stand-in (iii) excluded.

8.30.2.9.4. Stand-in (iv) excluded.

8.30.2.9.5. Stand-in (v) can be discounted because he is implausibly short (5' 3").

8.30.2.9.6. Stand-in (vi) can be discounted because he is implausibly young (33).

8.30.2.9.7. Stand-in (vii) excluded.

8.30.2.9.8. Stand-in (viii) excluded.

8.30.2.9.9. Stand-in (ix) can be discounted because he is implausibly young (32).

8.30.2.9.10. Stand-in (x) can be discounted because he is implausibly young (33).

8.30.2.9.11. Stand-in (xi) is a plausible foil (5' 9", 38).

8.30.2.10. In conclusion, it is my view here are only two plausible foils amongst the stand-ins included in the parade in terms of their age and height. One or both of these may be implausible due to their ethnic appearance. Looking at the photographs of all the foils, I would describe only 6 out of the 12 as being of Arabic appearance. However, as the photographs are not identified I can't match the photographs to the descriptions given in the report. Taking into account the relevant factors (i.e. the discrepancy in age, height and ethnic origin of the foils) it is my view that the lineup was strongly biased against the suspect. When combined with the fact that the witness had read accounts of the actual height and age of the suspect in the press, the effect of the biased line-up would be especially powerful. I conclude that the identity parade was seriously flawed.

8.30.3. Furthermore, in my view it was inappropriate to hold an identification parade in the circumstances for the following reasons:

8.30.3.1. the very long delay prior to holding the identity parade (over 10 years)

8.30.3.2. the prior identification of the accused from photographs in 1991

8.30.3.3. press reports that included pictures of the accused and reported his age and height which the witness acknowledged that he saw.

8.30.4. The identification of the accused is of a man of a different ethnicity from the witness.

I do not consider this to be a very important factor. The effect of a difference in

ethnicity reported in the literature accounts for about 10% of the variability of face recognition ability. Individual differences in face recognition ability are large. The witness reports that he frequently serves Arabs in his shop, so he is likely to have considerable experience recognising Arabs. In my view there are other factors that are likely to have affected the reliability of identification evidence in this case that would be of greater significance than ethnicity (i.e. long delay, prior identification, press reports, feedback to the witness).

Dock identification

- 8.31. A dock identification is a highly suggestive procedure. It is more a test of the witness' willingness to testify against the defendant than a meaningful test of identification ability. Research has demonstrated that willingness to testify is affected by information acquired after the relevant incidence. Willingness to testify, therefore is malleable and is affected by factors such as knowledge that the witness has identified the police suspect. A dock identification provides no scientifically credible test of identification.
- 8.32. The dock identification was prejudiced by the witness' extensive exposure to photographs of the defendant in press articles about the Lockerbie bomb.
- 8.33. Mr Gauci made a dock identification of Mr al Megrahi at the trial (Evidence day 31, 4777-4778). A few minutes previously Mr Gauci was shown production 451, image 67, an article about the Lockerbie Air Disaster in *Focus* magazine. He was questioned about his identification of the picture of the defendant in the article. I understand that 'image 67' showed the photograph of the defendant from the article. It is an extraordinarily leading procedure to show the witness an image of the defendant from a press report prior to asking him to make a dock identification. The dock identification is of no probative value.

Summary and conclusions

9. My conclusions are set out below. These are separated into those concerning Mr Gauci's testimony of the event of the relevant sale of clothing and his identification of the accused as the man in question. For convenience, I have repeated my conclusions from paragraph 6.13 in paragraph 9.1.1 below.

9.1. With regard to the events surrounding the sale I reach the following conclusions.

9.1.1. Anthony Gauci recalled selling some articles of clothing to a customer in winter 1988. He was first questioned approximately 9 months after the event. He had some reason to remember the sale because the man didn't seem to care what he bought and purchased a number of items. Selling clothes was a very common everyday event for Mr Gauci. He had many Libyan customers. He would have made many sales and dealt with many customers in the intervening period. Mr Gauci went on to make twenty statements to police. He learnt at an early stage that the investigation was about the Lockerbie disaster. He was shown samples of clothing described as 'blast-damaged' from his first encounter with police. The statements record how police on at least two occasions selected items from his shop, which the police officer believed were identical to the damaged samples of clothing. Mr Gauci made many changes to his testimony over time. In all cases his new testimony is more consistent with account of events suggested by questioning than was his original testimony. In my view, Mr Gauci's first statement is likely to be the most accurate account of his sale of clothing to the Libyan gentleman. This is the point at which the witness has been exposed to the least post-event information and social influence. Research demonstrates that memory distortion due to misleading post-event information and social influence can provide a plausible account for the changes in the witness' memory. In many instances outlined above there is a record of post-event information being available or social influence being present,

which was followed by a change in testimony in the direction that would be predicted by theories of memory. The conditions under which the testimony was obtained are those that have been found to increase the effect of memory distortion. First, the original memory would have been relatively weak because it was an event of relatively low salience recalled after a long delay. Second repeated questioning was extended over a very long period of time. These factors provide the opportunity for misattribution of the source of recollection and the feeling of familiarity of items and events.

9.2. With regard to the identification evidence I reach the following conclusions.

9.2.1. Although the identification of the accused from an array of photographs on 2nd February 1991 provided some evidence of identification, there were some important factors that would have impaired both the sensitivity and fairness of the procedure. There was a very long delay of approximately 2½ years prior to this identification procedure, which will have resulted in very weak memory strength at the time of identification. Research findings suggest that the fairness of the procedure would be comprised by the following factors: 1) The lineup was not conducted blind, as proposed in guidance on best practice. Four police officers were present, all of whom knew the identity of the suspect. All four police officers were involved in the investigation, and so would be motivated to obtain a 'positive' outcome of the identification procedure. Their non-verbal or verbal behaviour may result in leakage of cues that affect the behaviour of the witness. 2) There are discrepancies between the statements of those present and subsequent interviews conducted by the SCCRC that show there was considerable discussion before a witness statement was recorded. This would not have occurred if the lineup had been administered blind. 3) Initially the witness rejected the lineup but was instructed to look again. This is a biased instruction. The effect would be to bias the witness towards making an identification rather than rejecting the lineup again. 4) The picture of the suspect was of a different grainy quality to the foils in the array, and

therefore stood out. 5) There is evidence that the witness thought the picture of the accused was a picture of Abu Talb, a person he had identified previously from a press report on the Lockerbie bomb.

9.2.2. Research has demonstrated that selection of appropriate foils is essential to avoid a biased line-up. The very long delay prior to the identity parade will have resulted in an extremely weak memory strength at the time of identification. The identity parade was highly biased against the suspect because several line-up members were not plausible foils due to disparities in their age or height in comparison to both the appearance of the suspect and the witness' description. Prior identification of a photograph of the suspect substantially increases the likelihood of an innocent suspect being misidentified. Prolonged or repeated exposure to the suspect's photograph, which provides the opportunity for the witness to become familiar with the suspect's appearance, is likely to substantially increase the risk of misidentification. The integrity of the identity parade and the dock identification was compromised by the witness' exposure to press reports that included pictures of the defendant. In these circumstances, it is not possible for anybody, including the witness, to know whether the identification was based on memory of the original episode or on influence from information acquired since the event. The circumstances described provided very strong influence, generating a serious risk of a mistaken identification.

9.2.3. The witness has never made a positive identification of any photograph shown by the police nor at the identity parade. He always qualified identifications by saying the person is similar to the man he saw. Noting a resemblance is not the same as a positive identification.

9.2.4. The most impressive identification evidence arises from Mr Gauci's identification of a man who came into his shop on 25th September 1989. His witness statement is detailed and recounts the context provided by the events of the day. The statement appears very

clear about the date and was recorded the following day. I understand that records show that Mr al Megrahi was not in Malta on 25th September 1989. Police documentary evidence suggests that Mr Gauci may have been confused about the date. The documentation recorded a claim that there were contemporaneous notes of this confusion. However the records I have seen are dated in 1991. I have not seen any contemporaneous record of any such confusion.

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Declaration

I understand that my duty in providing a written report and giving evidence is to help the Court, and that this duty overrides any obligation to the party by whom I am engaged. I confirm that I have complied and will continue to comply with my duty. The opinions I have expressed represent my complete and true professional opinion. I have clearly stated any qualification to my opinion.

Professor Tim Valentine

19th December 2008



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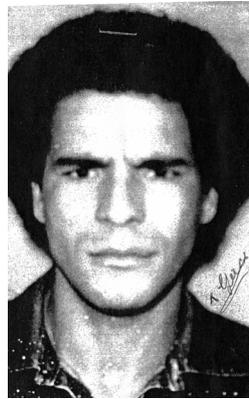
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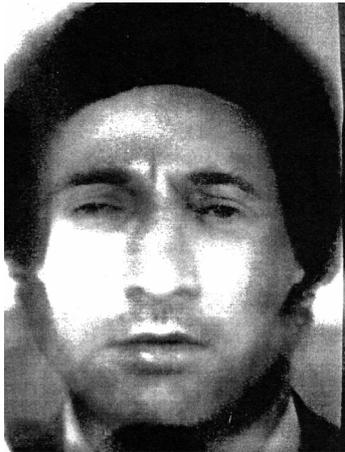
Annex A



Artist's drawing 13/9/1989



Mohamed H. Salam
“..similar to the man ..(but he was) older by about 20 years” (14/9/1989)



Composite face 13/9/1989



Abu Talb
From Panorama TV programme:
“Similar to the man.” (2/10/1989).
Not identified from photos (6/12/1989)
From Sunday Times (5/11/1989)
“May have been the man..
He looks like him.” (5/3/1990).



Abdelbaset Ali Mohamed al Megrahi
“Resembles the man but is younger”
(15/2/1991)

Annex B

Professor Tim Valentine Qualifications and experience.

1. I am a Professor of Psychology at Goldsmiths, University of London. In addition, I am a director of Valentine Moore Associates Ltd, a company that handles my private consultancy work. I have a degree in psychology from the University of Manchester (1982) and a PhD from the University of Nottingham (1986). The title of my doctoral thesis was 'Encoding processes in face recognition'. After 2 years post-doctoral research at the Medical Research Council Applied Psychology Unit in Cambridge, I was appointed to a lectureship at the University of Manchester in 1989. I moved to the University of Durham in 1992 and was appointed to a Chair in Psychology at Goldsmiths in January 1997, where I served as Head of the Psychology Department from 2000-2003. I am a Fellow of the British Psychological Society, a Chartered Psychologist and a Chartered Scientist.
2. I am an author of more than 70 scientific articles, including a single-authored article that introduced a leading theoretical framework for understanding human face recognition – (Valentine, 1991). The majority of my publications are on the psychology of face identification. The distinctiveness (or similarity) of faces has formed a central interest to my research since my doctoral research. This work has included research on the effect of ethnicity on face recognition. I have published research on the use of video identification parades, which was conducted in collaboration with Durham Constabulary and West Yorkshire Police (e.g. Valentine & Heaton, 1999; Valentine, Harris, Colom Piera & Darling, 2003) and have analysed a large sample of live identity parades conducted by the Metropolitan Police (Valentine, Pickering & Darling, 2003). My research has contributed to a change in the code of practice governing the conduct of identity parades (Police and Criminal Evidence Act, code of practice, code D), which has made video

identification the format of choice for formal identification evidence. I was awarded a research grant (£104k) from the Nuffield Foundation for further work on video identification (in collaboration with Professor Amina Memon, University of Aberdeen and West Yorkshire Police). This project benefited from an advisory panel on which both the police and Home Office were represented. As part of this project I organised a workshop on 'Eyewitness Identification Evidence' held in London, February 2006. This meeting was attended by leading psychology and law academics, barristers, police officers and Home Office officials. The Nuffield Foundation has awarded a further grant of £93k in 2006 for a project on street identification procedures. I am the principal investigator on this project, with collaboration from Professor Amina Memon (Psychology, University of Aberdeen) and Dr Andrew Roberts (Law, University of Warwick). The project is being carried in collaboration with the Metropolitan Police, Northumbria Police, West Midlands Police and Hertfordshire Police. From 2002-2005 I supervised a doctoral studentship on identification of faces from CCTV images and facial comparison, which was funded by the Economic and Social Research Council. From 2005-6 I supervised a project to evaluate of the latest generation of software for facial composite production, funded by a £51k grant from the Engineering and Physical Sciences Research Council.

3. I was invited to present my work to the First National Identification Officers conference in 2000 and to the British Association for the Advancement of Science in September 2001. I was an invited discussant for two symposia at the 5th International Conference of the Society for Applied Research on Memory and Cognition (SARMAC), Aberdeen, July 2003 and presented two invited papers at the International Psychology and Law Conference in Edinburgh, July 2003. I presented an invited paper at the 6th International Conference of SARMAC in New Zealand in January 2005, and was invited to convene a symposium on "Psychology and Law" at the 2007 British Psychological Society Annual Conference. I have presented my work to police seminars for VIPER and PROMAT – the two video identification systems in use by UK police forces; a workshop on the National Video Identification Strategy (NVIS), the Metropolitan Police Service

Identification Command and frequently contribute to training for police officers and prosecutors on identification issues. I am the only academic member of The National Identification Forum, a Home Officer advisory group set up to provide advice on identification issues for a Home Office review of the Police and Criminal Evidence Act. I organised a symposium on eyewitness identification presented at the 2nd International Investigative Interviewing Conference held at the University of Portsmouth in July 2006, which included both academic and police speakers.

Currently I am co-editing a book derived from proceeding of the conference –*The Handbook of the Psychology of Investigative Interviewing* (to be published by Wiley). Tom Williamson, who is an editor of this volume, was formerly Deputy Chief Constable of Nottinghamshire Police and previously a commander in the Metropolitan Police.

4. I have undertaken work as an expert witness on facial identification since 1999. I am listed as a ‘checked’ expert witness by Sweet and Maxwell’s Directory of Expert Witnesses (formerly The Law Society’s Directory of Expert Witnesses), and accredited as a practising member of the Academy of Experts. I have been called to give evidence in Court by both defence and prosecution, and have been consulted by West Yorkshire Police on development of video identification procedures.

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