Pauline McNeill MSP  
Convener, Justice 1 Committee

SCRO and SFS Inquiry

Thank you for your letter dated 17 August 2006.

I acknowledge the Committees decision to publish all evidence that it accepts.

I had concerns regarding my witness statement taken by officers of James Mackays Tayside Inquiry Team. As you know this was a criminal investigation into an allegation of criminal corruption against SCRO. An allegation made by Iain McKie. I have taken legal advice and I have been informed, that as the Crown when releasing my statement placed no restrictions on it, there should be no ramifications for me if published in your report. Therefore I have re-submitted all the material that I quoted from during my oral evidence on the 26th June 2006.

I would like to repeat a concern I made in my original letter.

“As with all police investigations Mackay was answerable to the Procurator Fiscal. In this case the PF of North Strathclyde William Gilchrist. The opinion of James Mackay was not absolute. The Mackay Report was handed to Mr Gilchrist who in turn conducted his own interviews and subsequently made his own report.  
Why is the committee not pursuing the report of Mr Gilchrist with the same fervour? Why is the committee not seeking ALL evidence available to the Lord Advocate when the decision was taken not to prosecute the four officers?  
By all means continue in your efforts to secure the release of the Mackay Report in its entirety. I would however repeat that it was not a stand alone report and should be released within its proper context. ”

I will continue to assist the Committee in any way I can. If there are any issues that require further discussion or clarification please do not hesitate to contact me.

Thank you.
Yours sincerely.

Alister Geldes.
Further to my statement noted on 24 August, 2000 (24/08/2000), I have been asked to clarify a possible ambiguity in that statement concerning the identification of crime scene mark Y7.

I was asked by Hugh MacPherson, Principal Fingerprint Officer to compare the crime scene mark against a set of elimination fingerprints supplied by Shirley Cardwell (McKie). I was already aware that Shirley Cardwell was a police officer who had been at the locus of the Marion Ross murder and identified from a list supplied by Strathclyde Police.

I had previously been to the locus of the murder and knew the importance of the mark, it having been found on the bathroom door frame in close proximity to the body. That information would be contained within the Identification Bureau log submitted with any crime scene marks. I also knew that the finding of the mark (crime scene mark Y7) was significant as it had only been found on the second occasion the area had been examined.

Given the significance of the position of that mark and Hugh MacPherson's identification as that of a police officer, it was felt that, at the very least, that officer would be in serious trouble for leaving her fingerprint in such an important area. I was asked to verify the mark and without any pressure from Mr MacPherson I subsequently made my own independent examination and found 10 characteristics, in sequence and agreement, I was happy to eliminate the mark on what I had found and accepted by Mr MacPherson.

From my discussion with Mr MacPherson, he appeared to be of the opinion that the officer leaving the mark would be in some form of trouble and was therefore looking to achieve a 16 (sixteen) point identification.
I was thanked for my efforts and allowed to continue with my other duties.

The case was unusual in two ways, firstly that the disputed crime scene mark (Y7) was only discovered during a second examination of the locus, and secondly, that it was that of a police officer found so close to the body.

**Annual Leave - 14/10/2000 – 22/10/2000**

Statement noted by Detective Sergeant 7634 H Dunn at 1120 hours on 13 October, 2000 (13/10/2000) at 1 Pacific Quay, Glasgow and is corroborated by Detective Constable 9031 G Ogilvie.
Dear Mr Bell

THE SCOTTISH MINISTERS
SHIRLEY McKIE v STRATHCLYDE JOINT POLICE BOARD AND OTHERS

I refer to the above Court of Session action in which my Office is instructed on behalf of the Scottish Ministers. Mrs Fiona Robertson, the principal solicitor dealing with the case, has asked me to contact you on her behalf.

As you may be aware, we are currently involved in a very tight timetable with regard to the court action. The Pursuer has introduced significant additional averments to her written case. We need to take the comments of a number of SCRO employees (or former employees) on the new matters raised by the Pursuer, before the end of this week.

I enclose a copy of the relevant section of the Pursuer’s pleadings (14 copies will follow with the hard copy of this letter). I would be obliged if you would forward one copy to each one of the employees listed below, as a matter of urgency. Please ask them to prepare any comments they have on the pleadings, and then to telephone either myself or my colleague Leigh Anne Brown on Thursday 11 September to provide an oral statement. We will return their calls to minimise their expense.

The individuals listed at 1-7 should contact me on 0131 244 0600, and those listed at 8-14 should contact Leigh Anne Brown on 0131 244 0595.

1. -?- Bruce (no first name given. According to Pursuer, this SCRO employee was asked to undertake a ‘blind comparison’ on 17/2/97)
2. -?- Foley (as 1. above)
3. -?- Fadden (as 1. above)
4. -?- McClure (as 1. above)
5. Mr Robert Mackenzie (Deputy Head of Bureau)
6. Mr -?- Taylor (carried out Primary Inspection and organised meeting at Police Training College on 15/8/00, attended by Rudrud and Zeelenberg)
7. Mr Alan Dunbar (Quality Assurance Officer)

8. Mr Charles Stewart (Fingerprint Officer)
9. Ms Fiona McBride (Fingerprint Officer)
10. Mr Anthony Joseph McKenna (Senior Fingerprint Officer)
11. Mr Hugh MacPherson (Fingerprint Officer)
12. Mr -?- Geddes (Fingerprint Officer)
13. Mr David Halliday
14. Mr Terry Folie (please note that we are not sure whether Mr Terry Folie is the same individual as the person named at no. 4 above. Please let me know whether there are (or have been in the past) two Mr Folie(s) employed with SCRO.)

You may be aware that Mr Stewart, Ms McBride, Mr McKenna and Mr MacPherson (at 8-11 above) are also Defenders to the court action and therefore have their own solicitors, Messrs Thomsons, to act on their behalf. We have advised Thomsons that we are contacting their clients for a statement.

If you have any queries, or wish to discuss anything on receipt of this fax, please contact me. Many thanks for your assistance.

Yours sincerely

GILLIAN NELSON
5. On page 11, line 2, by deleting after the word "made" to the end of that article and substitute therefor:

"The course of the investigation into the murder of Mrs. Ross required a comparison to be undertaken of the prints found on the doorframe and on the tin. In each case the source of which was unknown (i.e. a "latent" print) and thereafter required to be compared with a possible source (in the present case, with the pursuer and Marion Ross respectively). On 16th January 1997, the latent print found at the locus was sent to SCRO for the purposes of excluding it from the enquiry ("elimination purposes"). It was received on that date by Hugh Macpherson, formerly the third defender in this action and an employee of the SCRO. Following enquiries with SCRO on the HOLMES computer system, on 6th February, a request was made of SCRO that elimination prints be taken from the pursuer. On that date, an elimination print was taken from and submitted to SCRO. On 7th February, Macpherson confirmed that the elimination print had been received. On 10th February 1997, Macpherson carried out a comparison and he stated that the latent and elimination prints matched, thus stating on work sheets that he used, that the print was that of the pursuer. On 11th February 1997, Macpherson telephoned Detective Chief Inspector Heath, who was leading the murder squad, and stated that the latent print was that of the pursuer. Heath then directed that a statement be obtained from the pursuer to explain how her print could have been left at the locus. Thereafter, on 11th February 1997, Macpherson instructed another employee within SCRO, Geddes, to compare the latent with the elimination print. Geddes declined to confirm that there was a match and refused to sign the appropriate form. He was able to find only ten points of similarity and not the sixteen that were then required. The pursuer had by then denied being at the locus. Notwithstanding Geddes' doubts, Macpherson contacted a police officer, McAllister, and told him that there was no possibility of an error in the mark and that there was a match. Macpherson had not at that time had any confirmation by any other expert of the identification. The only other opinion he had obtained was a contradiction (viz from Geddes). He did not disclose that to McAllister. On 12th February 1997, Macpherson asked Fiona McBride (formerly the fifth defender) to check the comparison. She identified
the mark as that of the pursuer. On 12th and 14th February, the pursuer became vociferous in her denial that the print could be hers. On 17th February 1997, the pursuer requested that the matter be rechecked, and asked that she be permitted to be present when the comparison was made. The request that she be present was refused. The head of SCRO (Mr. Ferry) decided that "blind comparisons" should be carried out by other employees of SCRO. On 17th February, after 6.00 pm, the comparison was carried out. SCRO employees Bruce, Foley, Padden, McClure and Mackenzie were asked to carry out the comparison. The results were as follows: Bruce refused to make the comparison having found only 8 points of similarity; Foley found only ten points and refused to accede to the view that there was a match; Padden refused, stating that it was difficult to conclude that there was a match; and McClure stated that the quality of light was insufficient to draw the match. All of those employees were of considerable experience. Notwithstanding the doubts expressed by them, and that had been expressed by Geddes previously, Mackenzie advised Ferry on 18th February that there was a match. He did not advise Ferry that five officers had doubted the match and that they had refused to confirm the comparison. Ferry expressed concern about the gravity of the allegation to McKenzie. On 18th February, Macpherson again asked McBride to confirm the identification (despite the fact that she had done so previously). On 18th February 1997, a further officer, Dunbar, confirmed that there was a match. On 18th February 1997, Ferry contacted police officers involved in the murder enquiry, and confirmed that three of his "top experts" had confirmed the match. He did not advise that five had refused. The examination and comparison exercise was carried out initially by one employee within SCRO, and thereafter the views of that officer would have been checked by other employees. Following the initial report to the pursuer that it was being suggested in the report from SCRO that the latent print was left by her, she challenged that view. The pursuer was advised, and has no reason to doubt the veracity of the statement, that the print was subsequently checked by other employees within SCRO who confirmed the original view that the latent print was hers. That position of the SCRO employees was maintained throughout the trial of Asbury, during the criminal investigation into the conduct of the pursuer, and up to the trial of the pursuer. At all material times, the reputation of SCRO was such that their evidence to the effect that latent prints matched putative sources was rarely if ever
challenged in court. As condescended upon, the fingerprint evidence in the case against Ashbury was of high importance. At any stage, had it been stated by SCRO that the original identification of the print alleged to be that of the pursuer had been incorrect, this would have had the immediate effect of prejudicing the prospects of a conviction of Ashbury, as the same SCRO employees were responsible for preparation of the reports relating to the latent print said to be that of Ashbury. Marion Ross as that said to be that of the pursuer. Thus, should any error be admitted in one, this would inevitably have called in to question the position relating to the other. Further, should there be an admission at any stage of an error being made, the hitherto unimpeachable reputation of SCRO would have been called in to question. In fact, as condescended upon, the latent print identified to be that of the pursuer was not her print. That it was not her print was obvious. It had been doubted by Geddes, and subsequently by four other employees as condescended upon Esto any error had been made in that identification at the outset, it would have been obvious to any employee of SCRO who had any reasonable experience of the identification or comparison of such marks, who was alerted to the suggestion that the fingerprint was not validly identified that the original identification was erroneous. The pursuer is unaware of the extent to which the print was checked and rechecked within SCRO, nor by whom. The print comparison was such that there were numerous points of difference between the latent and the pursuer's print. Any single point of difference would have alerted any fingerprint examiner of the fact that the prints were not a match, no matter how many points of similarity there were. Notwithstanding the obvious difference between the prints, the employees of SCRO continued to maintain that there was a match. Further, the latent print alleged to be that of Marion Ross, was clearly and obviously not that of the late Mrs. Ross. That comparison was also carried out by the same employees of SCRO who carried out the comparison of the print alleged to be that of the pursuer. Having regard to the obvious nature of the differences between the latent prints on the door frame and the tin; the fact that two misidentifications occurred within the same case; the repeated checking and rechecking of the comparison; and the hitherto unimpeachable reputation of the SCRO, it is believed and averred that the employees within SCRO who analysed the print were aware during the preparations for the Ashbury trial onwards, that the latent print on the door frame was not that of the pursuer, but nonetheless, to maintain the reputation of SCRO, continued to state that there was a correct identification of the
latent as that of the pursuer. Those employees knew that to admit that an error had been made (if that is what had happened) would prejudice not only the possibility of a conviction in the Asbury case, but also the entire reputation of the SCRO. The original statement that the latent was correctly identified as that of the pursuer was at least negligent. No fingerprint expert would have misidentified the fingerprint, had any degree of reasonable care been exercised. Following the acquittal of the pursuer, hereinafter condescended upon, formal enquiries were held. No fingerprint expert, other than those within SCRO, has maintained that the claimed match is a valid one. Numerous experts throughout the world have been invited to comment to inquiries, and none has stated that the latent matches that of the pursuer. As condescended upon, once it was known that the pursuer challenged the initial views expressed, any fingerprint expert subsequently checking the initial comparison would have been aware that there were in fact substantial differences between the marks and the elimination prints. Accordingly, any representation at that stage and following that the latent was that of the pursuer was false, and known to be false. The conduct of the said SCRO officers who confirmed the match, was such that they knew as from 17th February 1997 that there was no match. They continued to maintain what they knew to be false, and knew that the pursuer would at least be disciplined and may be prosecuted. Following the pursuer's acquittal, officers of SCRO who had maintained the position that there was a match, were investigated with a view to their being prosecuted for perjury. The allegation against them was to the effect that in the trial of the pursuer and of Asbury, to the extent that they maintained that there was a match, that evidence was false and they knew it to be false. The enquiry was conducted at the request of the Crown Office by former Deputy Chief Constable of Tayside Police, James Mackay and Detective Chief Superintendent Scott Robertson. They fully investigated the matter, and concluded that there was criminal conduct by the said SCRO employees sufficient to justify criminal charges being brought against the said employees. Notwithstanding their opinion on the evidence, and so far as they are aware there was no contradictor to that position, no prosecution took place. The SCRO continued to maintain that their identification was correct, and continue to do so. Such an attitude is consistent only with a desire to continue to protect their reputation rather than admit that the identification was wrong. At a meeting on 15th August 2000, two fingerprint experts (Rudrud and Zeelenberg) were invited by SCRO to a presentation
by SCRO. At that meeting employees of SCRO (in particular McKenzie and Dunbar) provided a demonstration seeking to convince those experts and others present there that their opinion was correct. They provided comparison photographs to justify their opinion. They had given no advance copies of the documents to Rudrud and Zeelenberg who were unable to respond without the opportunity to closely examine the photographs. Following the meeting, an analysis by those experts indicated that the presentation had been fundamentally flawed in that the alleged areas of similarity were only superficially similar, and it was an impossibility that the areas of similarity identified by SCRO between the latent and the comparator could have been produced by a single print. That position would have been obvious to any fingerprint expert, and would certainly have been obvious to any expert preparing the comparison prints and seeking to identify points of similarity prior to such a presentation. It is believed and averred that the SCRO staff were deliberately seeking at that meeting to misrepresent the position, thus continuing the dishonest approach that had been adopted by them as condescended upon. Prior to the pursuer being prosecuted, SCRO staff were again asked to provide an opinion on whether the latent print was that of the pursuer. They confirmed to the Crown that it was. By so confirming, the SCRO staff knew that their opinion would be critical in the decision on whether to prosecute the pursuer. They knew that had they stated that there was no match, no prosecution would or could proceed. At least by that stage, SCRO staff were aware that there was no match, but nonetheless continued to maintain that it was.

At no time did any member of SCRO disclose to the pursuer or her legal advisers, or to the Crown, or to the jury in her trial, that doubt had been expressed within their own offices as to the accuracy of the representation. Their function is not that of a prosecution agency. Their failure to disclose such a crucial matter in evidence or before, is indicative of malice in the preparation for and giving of their evidence. Had they disclosed it to the Crown, it is likely that the pursuer would not have been prosecuted. They accordingly deliberately misrepresented the position, which resulted in the pursuer being prosecuted. But for that misrepresentation, she would not have been prosecuted for perjury. With reference to the averments in answer, and in particular the call placed, notwithstanding the fact that such information is confidential, no expert who was asked to provide an opinion on the matter of comparison of the prints prior to the pursuer's trial, stated that there was a match between the prints. Pat
Wertheim and David Grieve were asked to provide opinions and confirmed that no match existed and that was obvious.

IN RESPECT WHEREOF