The Committee will meet at 2 pm in Committee Room 2.

1. **Items in private:** The Committee will consider whether to take items 3 and 4 in private.

2. **Scottish Criminal Record Office inquiry:** The Committee will take evidence from—
   
   Hugh Macpherson, Principal Fingerprint Officer, Scottish Criminal Record Office  
   Fiona McBride, Fingerprint Officer, Scottish Criminal Record Office, Anthony  
   McKenna, Fingerprint Officer, Scottish Criminal Record Office and Charles Stewart,  
   Principal Fingerprint Officer, Scottish Criminal Record Office

3. **Scottish Criminal Record Office inquiry:** The Committee will consider whether to accept written evidence received after the deadline for submission of written evidence.

4. **Scottish Criminal Record Office inquiry:** The Committee will consider its approach to the remainder of its inquiry.

5. **Scottish Criminal Record Office inquiry (in private):** The Committee will consider the main themes arising from the evidence sessions to date on the inquiry, in order to inform the drafting of its report.

Callum Thomson  
Clerk to the Committee
Papers for the meeting—

**Agenda item 2**
Note by SPICe *(PRIVATE PAPER)* J1/S2/06/19/1
Written Submission from Charles Stewart J1/S2/06/19/2

**Agenda item 3**
Late written submission *(PRIVATE PAPER)* J1/S2/06/19/3

**Agenda item 4**
Paper from the Clerk *(PRIVATE PAPER)* J1/S2/06/19/4
Letter from the Minister for Justice to the Convener, 22 May 2006 J1/S2/06/19/5
Letter from the Lord Advocate to the Convener, 22 May 2006 J1/S2/06/17/6

**Forthcoming meetings—**
Wednesday 31 May, Committee Room 5;
Wednesday 7 June, Committee Room 1;
Wednesday 14 June, Committee Room 6.
Tuesday 20 June, tbc
Justice 1 Committee
Scottish Criminal Record Office inquiry
Written submission from Charles Stewart

This additional document is to set out my involvement in the original processing of the scene of crime impressions and resultant court case preparation from the vicious murder of Marion Ross.

I have prepared this document from memory as I have no access to any case paper work or any of the scene of crime marks or other material.

I think we received over 400 scene of crime impressions, over 150 sets of donors elimination prints which included family members, workers in the house and Police officers. We also received a small number of suspects.

Mr Macpherson was in charge of the team whose remit included the Kilmarnock area.

Our normal operational practice at the time was that Mr Macpherson would run the case on behalf of SCRO, and would liaise with the Officer in charge of the criminal investigation into the murder and all other relevant agencies.

Mr Macpherson would resource the staffing needs from within his team and as this was a major investigation he would be assisted by other staff seconded from other teams within the bureau.

My involvement was as an occasional verifier when required for the identified marks.

I would examine and verify the marks offered to me during the investigation.

As far as I am aware this case was dealt with in the manner as expected in the then current processes.

After a request was received from the Procurator Fiscal to prepare the evidence in the case against Asbury, I believe that discussions were held at various times and different reports were produced at the PF’s request.

The evidence preparation was unusual in that we had to produce reports and evidence books for everything in the case. This included producing all the insufficient, unidentified and identified marks, which was not something the PF normally requested. Again, unusually, we also had to produce illustrations for all those persons we had identified marks for against their elimination fingerprint forms.

I gave evidence at the Asbury trial along with Mr Macpherson.
At some time later we were informed by the PF that they wished new evidence prepared as McKie had now been charged with perjury.

The new requested evidence was prepared from the custody fingerprint form taken when McKie was charged with perjury and submitted to the PF.

Again, rather unusually the PF called three of us to give evidence during the McKie trial.

I am concerned that the Justice 1 Committee appears to be viewing this matter on the basis that there has been a mistake within SCRO. As far as I am aware their has been no legal pronouncement as to the identification of the marks concerned. Therefore it is clear that two different sets of opinions exist. I am very willing to appear as a witness and to give more information if required as this submission is at best a brief summary of a much larger document. I am grateful for the opportunity to give my side of events as we have been unable to do so before now and the public of Scotland are entitled to the truth.

Public perception and confidence

Public confidence in the fingerprint service in Scotland has suffered because of a malicious media campaign waged against us, as the four SCRO experts who correctly identified the Shirley McKie, Marion Ross and David Asbury fingerprints, and against SCRO as an organisation. Indeed it could be said that this campaign was also against the criminal justice system in Scotland.

This campaign appears to have been orchestrated by Iain McKie (father of Shirley). He has used his contacts he made when he was employed as Strathclyde Police’s media relations officer to further his daughter’s cause. Considerable column inches and TV footage have been given to misleading and inaccurate reporting. We were hindered by the instructions to us not to say anything to anyone, as the matter, we were informed, was considered to be sub-judice. This instruction effectively guaranteed that the media coverage would become a one sided tirade, thereby increasing the public loss of confidence in SCRO.

Mr McKie was well aware of the normal Police stance to criticism, that is to say nothing and ignore the criticism on the basis that it will soon blow over. He has been able to use his experience and knowledge to good effect. The lack of robust public response from either the management of SCRO or Strathclyde Police or the Association of Chief Police Officers in Scotland (ACPOS) has ensured the continuation of this saga. Indeed the making of unhelpful comments by various members of the Scottish Executive has also not helped the position (especially as the sub-judice rule is (I assume) also applicable to them).

We have no doubt that SCRO was an excellent supplier of a fingerprint service to all its customers in 1997, and indeed still is. SCRO has always been at the forefront of innovation in all matters related to fingerprinting. We were the first Bureau in Britain to adopt a computerised searching system, were the first to introduce competency tests on an annual basis for all its experts and were in the
lead at obtaining ISO 9002 accreditation. It is doubtful if many of the experts the McKie’s rely on could claim more than one of the above.

Lawyers would very quickly lodge claims for their clients that had been convicted by fingerprint evidence or where fingerprint evidence was used if they thought there was anything wrong with SCRO or its experts. The total lack of any claims (apart from David Asbury) would appear to offer a major reassurance to the public about the reliability of SCRO.

If recent events that challenge the McKie’s (Lord Hodge’s ruling, Outer House, Court of Session- Shirley Jane McKie v. The Scottish Ministers) and their experts received the same level of publicity that the McKie’s manage, then Public perception would soon swing back to be one of confidence. This has been from day one, a one sided manipulated media campaign. It is likely that only positive media coverage and time will improve the false perception.

**Her Majesty’s Inspectorate of Constabulary primary inspection**

The HMIC inspection is of little value as they were working on the basis that something was wrong and that it required to be fixed.

The HMIC primary inspection was the stimulus to implement a lot of changes to the fingerprint service, most of which were already on the agenda as proposed changes, and were fast tracked towards implementation. The fingerprint service is constantly evolving particularly in relation to the adoption and implementation of new technology. As a result all processes and procedures are under constant review.

With hindsight it appears that the decision that the SCRO was not efficient and effective was based largely on the reports of Zeelenberg and Rudruud and of Rokkjaer & Rasmussen. Why did HMIC place so much reliance on these two reports? After all when we were promised by the HMIC team that they would use experts we would consider to be our equals, we warned them not to use the Dutch and explained the basis and conclusions of the Evett and Williams report to them, and explained how it found the Dutch to be lacking in fingerprint identification skills as they spectacularly failed to identify the correct number of identifications.

HMIC appear to have made the same judgemental decision that SCRO was wrong, and have worked on that basis, a decision that many others have also reached to further their own purposes. At worst the Zeelenberg and Rudruud report and that of Rokkjaer & Rasmussen only highlighted the difference in opinion between different experts. The opinion of the SCRO experts appear to have been totally dismissed, **the two independent expert witnesses who reviewed the evidence of SCRO for the Asbury and the McKie defence teams also appear to have been totally disregarded.**

The question of confidence in the way SCRO is managed and organised is rather difficult to answer. As experts within the bureau we have had concerns about our management for years. Historically the senior management of SCRO was performed by experts who were all Police Officers and had progressed through the
ranks. For the last twenty years Police Officers with no fingerprint experience have been brought in as our managers. This has caused problems, one in particular with relevance to the McKie case was the purchase of a charting PC as a means for producing court illustrations. This machine was purchased in 1997, despite our concerns, we were told to use the machine even although it was clearly not fit for purpose.

**Scottish Fingerprint Service**

The current action plan is flawed, as the best interests of fingerprinting in Scotland would be served by only having one Bureau and not the political fudge to appease Chief Constables, that has been set up as the Scottish Fingerprint Service based on four different Bureaux across the country.

One Bureau would offer considerable efficiency in management and training, there would be no requirement for three of the four Bureaux Heads, the integration of the training and quality assurance roles that are carried out on a part time basis in three of the four Bureaux would result in efficiencies. The money saved from these efficiencies could be used to employ further experts.

The other Bureaux do not have the resources to offer weekend and out of hours cover which is available from Glasgow. The staffing levels for the workloads in the other Bureaux also cause major staffing problems during holiday periods. This is obviously a detriment to the provision of an efficient and effective service. Standardisation of shift coverage and weekend coverage across the service would be required, as would the standardisation of processes and procedures. In the near future we will be receiving fingerprints direct from the scene of crime, therefore their will be pressure to provide a twenty four hour service by fingerprint experts, the only viable way to resource this is to centralise all the expert resources in the one bureau, so that their will be enough experts available to provide the expected operational cover.

The Scottish Public deserve one centre of excellence for its fingerprint services, it would be financially and operationally more cost effective in one centre as well as being more effective and efficient. How can Zeelenberg who is in the McKie camp be a suitable person to review the SCRO processes? Especially as he appears to be a flawed expert.

**The Identification or Otherwise of Fingerprints in the McKie and other Cases**

*Training and Experience for SCRO Experts.*

We should start at the basics and look at training and experience and the application of theoretical and practical training in gaining further experience and ability.

SCRO experts undergo a lengthy training course that historically was very much ‘hands on’. Mr MacPherson and Mr Stewart underwent a seven year training programme prior to qualification as expert witnesses. Mr McKenna and Ms McBride benefited as by the time they started their career they only had to complete a five year training programme. The training required reaching the
expected level in all stages before progressing to the next stage, and the passing of all required written and oral examinations.

These four experts had no other training as photographers, scene of crime examiners or in evidence recovery. We had a basic training to allow us to appreciate these fields and how they impact on fingerprint impressions found at the scene of a crime. We were given all the required background theoretical knowledge to allow us to function with a high level of specialisation as experts.

We carried out examination and comparison and subsequent identification of fingerprints on a daily basis. We were not involved in running fingerprint bureau as the head of the bureau, nor were we involved in travelling the world giving lectures or presentations or training courses. In simple terms we practiced the theory, unlike those the McKie’s rely on who only preach theory.

Our daily work was always subject to peer review, our identifications were always subject to verification. From the middle 1990’s we all undertook an annual competency test. It should be noted that the annual competency test we undertook was reviewed in early 2000 by the FBI fingerprint laboratory who stated that “The test is too difficult to fairly assess all levels of competence” and “A proficiency test only needs to demonstrate that an examiner has the basic skills to include and exclude an identification decision, not how difficult a print he can identify” After this criticism we stopped setting our own tests and adopted the very basic of the shelf test from a commercial supplier.

In simple terms we amassed a considerable wealth of experience in carrying out comparisons, and as expected with this level of experience we became competent at working with marks of a very poor quality. We were on a daily basis practicing what we had been taught and gaining more experience.

Variations in expert interpretation of detail in fingerprints.
As far as we are aware the only serious and exhaustive study of experts interpretation was carried out in the Evett & Williams report (2) This was a review, commissioned by the Home Office in 1998, of fingerprint bureaux throughout the world in relation to the requirement for a pre set standard for fingerprint identification, particularly in relation to the then current 16 point standard adopted and implemented by British fingerprint bureaux.

The first area the report addressed was the variation in the amount of identifications on average per expert, per year. The variation was between 40 and 165. (Pages 8 & 9 of the Evett & Williams report)

The next major area was the collaborative study, this involved the production of ten scene of crime impressions and ten fingerprint impressions. These examples were sent to various fingerprint bureaux and experts of more than 10 years experience were asked to examine them and report their opinion, and indeed where they identified a match they had to count how many characteristics they had found, (Pages 15 to 20 of the Evett & Williams report)
The authors indicate on page 16 that they were surprised at the amount of variation in the number of points of similarity recorded. The difference for one mark varied from 10 to 40, for the second mark from 8 to 26, for the third mark from 14 to 56.

There was also wide variation in the decisions reached, one mark 84% identified it for court purposes and 15% as a partial identification, for the second mark 47% said full ident and 45% partial ident, for the third mark 97% said identification and 3% said partial identification, the final example produced 54% as a partial identification, 8% as not identical and 38% as insufficient.

The next two pages summarise the findings (Pages 20 and 21 of the Evett & Williams report) They indicate that the expectation was that the examiners would each produce the expected 6 or 7 full identifications, yet 16% of the participants recorded three or less full identifications. 50% of the participants managed to produce no more than 5 full identifications.

The authors also make a specific reference about Dutch experts as they indicate that the Dutch only produced one full identification and one negative comparison, and indicated that the other eight marks were inconclusive.

The report went on to discuss that “Fingerprints is an exact science” (Page 23 of the Evett & Williams report) the authors dismiss this claim very easily as they state, “If it were, then we would expect all experts to arrive at precisely the same opinion in every case. Indeed if it were an ‘exact science’ perhaps we would not need experts at all! Whatever is meant by the term ‘exact science‘ fingerprint identification cannot be one. This is not to demean the pursuit one iota. We believe that it deserves to be called a science in the same sense that any other forensic comparison is a science. But it certainly isn’t exact”

In simple confirmation of the above conclusion the authors state on (Page 31 of the Evett & Williams report) “A fingerprint identification is a matter for personal expert opinion”

Our consideration of the Evett & Williams report.
As both MacPherson and Stewart had taken part in the collaborative study, we were well aware of this report and its implications. None of us are surprised that it highlighted variation in interpretation and of conclusions.

Working within a reasonably large fingerprint bureau we see variation in interpretation and conclusion on a daily basis, so this report just confirms what we know as operational experts.

The variation in the amount of identifications was also expected as we were aware that some of the Bureaux in the United Kingdom employed their experts in the ‘dual role’ that is a scene of crime examiners and as experts. We therefore expected that the ‘dual role’ experts would have a lower throughput of work, as they are not full time employed in carrying out expert work.
The report also explains why fingerprints cannot be an ‘exact science’ a statement we are in agreement with as we know that not every examiner will reach the same conclusion as the previous one, therefore as the conclusion cannot be replicated then it cannot be an ‘exact science’.

Indeed if it was accepted that fingerprints was deemed as an ‘exact science’ the Dutch again fail because of their finding for eight of the marks as inconclusive.

You can clearly see from the above why we made our comments on page 1 of this submission in relation to the Dutch and their lack of suitability in being accepted as our equals, as we knew they do not have the ability to work with marks of the quality we are experienced in working with.

The report stimulated a lot of discussion, regrettably very little action, as things really have not changed in the last seventeen years.

We accept the easy way to standardise opinions is to dumb down to the ability of the poorest expert in the system and to set all processes and procedures accordingly. Thankfully British Bureaux in particular with a long history of manual searching (unlike most other countries) wanted to continue operating at the highest level of ability, therefore change was not obvious other than to the implementation of the non-numeric standard in England and Wales.

*Pat Wertheim*

One of Wertheim’s major allegations of criminality on our part relates to the cropping of the enlargements. Precognition of Wertheim (items 19 & 29) and repeated via the media. (5) It is stated in item 19 “This is highly irregular and, as I understand it, is contrary to established protocol in the UK regarding best evidence”

The MacKay report (6) indicates at entry 15.14.2.1 “The practice of cropping is not unique to SCRO and our experience is that virtually every Bureaux carries out cropping to one degree or another” I suspect that this is one of the few accurate comments contained in the MacKay report and clearly contradicts Wertheim’s comments above.

In (item31) of this precognition he states “The fact that three sets of charted enlargements were prepared by the SCRO in this case seems highly unusual” and “The reason for multiple sets of charts is highly questionable” If Wertheim spent some time learning about evidence preparation for Scottish Courts rather than make ill informed comment, he would be aware that all evidence is prepared at the request of the Crown and not as the experts wants to do so.

Again he has made ill informed comment in (item 34) “One is instantly aware that a different impression of the inked print was used” Again with a little knowledge he would be aware that the material was prepared at the request of the Crown, so the instruction would have been given to use a different fingerprint form.

His conclusions at (item 35) which he sums up in (item 36) by stating “Each of the issues listed above demonstrates a violation of the rule of “best evidence” that is
too blatant to be ignored. In combination they can be explained by only one of two possibilities. Either the person or persons preparing these charted enlargements were guilty of gross, unparalleled incompetence, or they were guilty of intentionally presenting false evidence in court"

Regrettably for Wertheim it is not us that is incompetent or have presented false evidence in court, the comments I have made above in relation to this precognition clearly explain our actions and destroy his malicious and insidious comments, something that MacKay should also have been able to do if he was not blinkered by his desire to blame us.

Wertheim states he started his experience from 1973 to 1979 was a three year period carrying out scenes of crime examinations and the final period as an Identification Officer. He then continues as a dual role officer for a further six years before he became the supervisor. He then changed employment and from 1989 to 1997 he was employed in another bureau as a dual role officer.

Further evidence of Wertheim’s lack of experience is available from the CLPEX web site (7) In this posting Wertheim states “I was in NO WAY qualified to testify to fingerprint identifications when I was first accepted in court as an “expert” in the late 1970’s. I attended a two- week class in Henry classification which also touched on latent print development and latent print identification. Our comparison exercises were all inked to inked. After that, there was no OJT in my department and I had to teach myself. Within two years, I was testifying to identifications. I never had a senior examiner check my work and never had a single proficiency test. And don’t make the mistake of thinking I was the exception”

What an admission about lack of initial training, no on the job training and no peer review. Compare to the SCRO training on page 5 of this document.

In a further posting on the CLPEX web site (8), Wertheim states “you are absolutely correct that comprehensive training is the only dependable foundation for expertise” Its only a pity that he did not have any otherwise he would not be making mistakes in the McKie and Asbury cases.

Wertheim changes story to suit the purpose as can be evidenced by his comments during the various BBC television programmes, in the first programme he proudly boasted that it took him less than ninety seconds to decide the fingerprint was not Shirley McKie’s, in a subsequent programme he claimed to have taken less than sixty seconds for the same comparison. Both claims are surprising for a man who makes great play of his scientific process and the application of ACE-V. I regret that in ninety seconds of examination of the mark in question I had not even begun to form an opinion because of the distortion present in the mark.

During the same programmes Wertheim and Alan Bayle made allegations about evidence being wrong in a case in Manchester. The convicted person lodged an appeal at which both experts gave evidence. The Judge disregarded their evidence and upheld the conviction.
Further evidence of the misinformation from Wertheim comes from another CLPEX posting where he states “The Danes were wrong in saying it was an erroneous identification, but the problem is that the SCRO sent the Danes faulty images. Arie Zeelenberg from the Netherlands reviewed the work of the Danes, found that they had been sent the wrong photographs and looked at the wrong fingerprint, and brought it to their attention” A very obvious falsehood in that SCRO did not send the Danes any material, the Danes were dealing with either the Executive or the Crown. Zeelenberg only reviewed the material after an independent expert (Mike Pass) had reviewed the evidence at the request of the Executive’s solicitors and had agreed with the SCRO identification. The Executive’s solicitors then informed the McKie’s solicitors, and they chose Zeelenberg to review the mark on their behalf, the quality of the mark was such that Zeelenberg was to also able to agree the identification.

Even Ian McKie noticed Wertheim’s misleading information in the above posting and attempted to further muddy the waters by stating on his website (10) “It has subsequently been revealed earlier this year that the Crown Office had given the Danish Experts the wrong production”. I have little faith in the abilities of the Crown Office but I expect that even they would be able to correctly produce the correct production for the Danes to examine, after all it is a binder containing a lot of fingerprint impressions, therefore there is no possibility of the Danes not having the correct material.

Another example comes from the same CLPEX posting (11) where he states in relation to the criminal inquiry “The SCRO “experts” were asked to explain their position. They each came to the inquiry with a lawyer and basically answered “no comment” to the questions asked by Mackay and Robertson” Again another obvious falsehood as we were not interviewed under caution by either MacKay or Robertson, but by members of their inquiry team. You will all be aware that the normal advice during a taped interview under caution is to make no comment, something I am sure Wertheim is aware off, so I can only assume this is further example of his maliciousness.

The Crown
Great concern must be expressed over the Crowns behaviour in this affair. At best a high level of gross incompetence has been shown.

They were aware of the fact that Malcolm Graham the independent fingerprint expert gave evidence agreeing with all our identifications during the trial of David Asbury, why did they fail to then call him as a witness during the McKie trial? Indeed worse still why did they not also arrange to call Peter Swann the McKie’s own expert when they were informed about him? These two experts had they been called would have left the McKie defence in tatters.

We are further dismayed by the fact that the Crown has never made any of the case material available to us so that we could consult with experts of experience and operational credibility, so that we could discuss and review our findings. The lack of material also meant that we were never able to offer any challenge to the McKie campaign.
Questions also need to be asked as to why Wertheim was able to circulate copies of the Crown productions, very surprising as independent experts normally are only allowed to examine the fingerprint material and not to copy it. Did indeed the Crown sanction his actions? If so, why? Also how was Iain McKie able to obtain and circulate a copy of the Mackay report?

The Scottish Ministers
The Ministers appear to have never had a strategy in handling this matter, there appears to have been nothing other than ‘knee jerk’ reactions to various situations as they arose (usually orchestrated media pressure) Various Ministers have made inappropriate and unhelpful comment at various times.

The First Minister indeed stated to the Scottish Parliament on the 9th of February 2006 “In this case, it is quite clear—and this was accepted in the settlement that was announced on Tuesday (7 February)—that an honest mistake was made by individuals. I believe that all concerned have accepted that” Unfortunately for the First Minister we do not accept that any mistake, honest or otherwise has been made. The Scottish Ministers have squandered a considerable amount of tax payer’s money in a needless settlement.

Further evidence that the settlement was unnecessary is shown by Lord Wheatley In his opinion he states on page 20, section 29 “I have found that in the present case it is difficult to understand, from an examination of the pursuer’s averments, what precisely are the relevant statements of malice, and of lack of reasonable and probable cause” His Lordship also comments on other claims of malicious behaviour in the averments by stating on page 22, section 31 “These various inferences can be drawn from the pursuer’s pleadings as they stand, but only with some difficulty” On page 24 at the end of section 32, Lord Wheatley states “Again it seems to me that the way in which the case is pled may provide significant difficulties for the pursuer at inquiry” On page 26 section 34 it states “On the basis of the pursuer’s averments it must be dubious whether there is, as the pursuer’s counsel claimed in submission, a case of concerted malice by the third to sixth defenders [The SCRO Experts] against the pursuer, and the claim against the fourth to sixth defenders in this respect appears to be of doubtful relevance and significantly lacking in specification. However it is only irrelevant material which is excluded at debate; averments of doubtful relevance, on which the pursuer must now peril her case, should be remitted to enquiry. On that restricted basis, I will allow the pursuer a proof of her averments of malicious prosecution” It would appear that Lord Wheatley had considerable doubt about Shirley McKie’s averments and clearly indicated that he thought she would have problems in proving her case. This is clearly a further condemnation of the Scottish Ministers incompetence in settling the case before proof, and squandering a considerable quantity of taxpayers money.

Looking at Lord Hodge’s opinion, on page 14, section 32 he states about the SCRO officials acting in good faith“ Where there was conflicting evidence from the independent experts over the match of fingerprint Y7 and the pursuer’s print, they were entitled to discount the contention that the fingerprint was so obviously not the pursuer’s that an assertion that the fingerprint was her print had to be malicious” On page 16, section 35 his Lordship states “I cannot
conclude that SCRO officials deliberately withheld evidence or deliberately misrepresented their evidence. Thus I am not satisfied that the pursuer has demonstrated that the SCRO officials acted maliciously or that the Scottish Ministers acted unreasonably in failing to admit that they did”

Conclusions

I consider that even in this limited submission that I have shown that the ‘expert’ witnesses the McKie’s have periled their case on are unreliable and have problems with the truth. They are unreliable as they change their story every time they are challenged. Indeed of the four identifications they claim to be erroneous, evidence is available that two of them after review are accepted, that is the Ayrshire robbery that Alan Bayle claimed was ‘unsafe’, mark QD2 of David Asbury that the Danes so spectacularly failed to identify, further questions need to be asked now that independent expert have agreed mark QI2 as that of the deceased, a mark that Wertheim and Bayle both got wrong.

Evidence is available from Lord Wheatley and Hodges opinions that SCRO experts are clearly not guilty of any of the scurrilous and malicious accusations made against them. Indeed when we make a criminal complaint about the McKie ‘experts’ in the same manner they produced evidence against us, we consider that prosecution would inevitably follow.

Before the various people that have made judgements in this case and expressed their opinion, they should have reviewed the ‘experts’ the McKie’s rely on in the same manner that we were reviewed. These experts would have been unable to provide the same quantity of cases for a two year period that our management supplied on our behalf. If the same reviewers were used (New Scotland Yard fingerprint department) then we are confident that these ‘experts’ would not achieve the same level of accuracy and reliability that was found in our work.

The Scottish Ministers appear to have settled with the McKie for some unclear reason, probably their own self preservation or more likely the protection of the Lord Advocate and the Crown, and to a lesser extent the protection of the reputation of Strathclyde Police.

This document is a brief summary of my considerable in depth recording of all the matters causing concern in this affair, and in no way offers, because of the restriction in submission size, all the available information on the shortcomings of the ‘experts’ used and relied on by the McKie’s. Indeed no inclusion is made of the misleading and contradictory statements of Iain McKie.

Again I am willing to appear as a witness, just as I was prepared to appear at the scheduled hearing in February, for which we spent a considerable time preparing evidence and reports for, on behalf of the Executives solicitors. I am concerned that we have asked for this material to be returned to us so that we have some reference material available, but the request has been refused as we are told the material is the property of the Scottish Ministers. I am glad to have the chance to
publicly refute the malicious and scurrilous allegations made against me and my colleagues.

Charles Stewart  
27 April 2006

References

1. Opinion of Lord Hodge, in the cause of Shirley Jane McKie against the Scottish Ministers, Outer House, Court of Session, 30 March 2006.


14. The Weekly Detail issue 76. This is available on www.clpex.com on a weekly basis. This article is a transcript of the Mark Fuhrman radio talk show and relates to Pat Wertheim answering questions about the cause of erroneous identifications.

15. The Interpol European Expert Group on Fingerprint Identification (IEEGFI) report titled ‘Method for Fingerprint Identification’


17. Association of Chief Police Officers in Scotland document titled ‘Minutes of and Documentation Referred to During the Facilitated Meeting to Discuss the Identification of Crime Scene Mark ‘Y7’


27. Letter to me from Shelley Jofre, dated 26 February 2006 asking to interview me for a forthcoming Frontline Scotland programme.


**Murder of Marion Ross**

This document is to set out my involvement in the original processing of the scene of crime impressions and resultant court case preparation from the vicious murder of Marion Ross.

I have prepared this document from memory as I have no access to any case paper work or any of the scene of crime marks, court productions, or other material.

I think we received over 400 scene of crime impressions, over 150 sets of donors elimination prints which included family members, workers in the house and Police officers. We also received a small number of suspects.

Mr Macpherson was in charge of the team whose remit included the Kilmarnock area.

Our normal operational practice at the time was that Mr Macpherson would run the case on behalf of SCRO, and would liaise with the Officer in charge of the criminal investigation into the murder and all other relevant agencies.

Mr Macpherson would resource the staffing needs from within his team and as this was a major investigation he would be assisted by other staff seconded from other teams within the bureau.

My involvement was as an occasional verifier when required for the identified marks.

I would examine and verify the marks offered to me during the investigation.

As far as I am aware this case was dealt with in the manner as expected in the then current processes.

After a request was received from the Procurator Fiscal to prepare the evidence in the case against Asbury, I believe that discussions were held at various times and different reports were produced at the PF’s request.

The evidence preparation was unusual in that we had to produce reports and evidence books for everything in the case. This included producing all the insufficient, unidentified and identified marks, which was not something the PF normally requested. Again, unusually, we also had to produce illustrations for all those persons we had identified marks for against their elimination fingerprint forms.

I gave evidence at the Asbury trial along with Mr Macpherson.

At some time later we were informed by the PF that they wished new evidence prepared as McKie had now been charged with perjury.
The new requested evidence was prepared from the custody fingerprint form taken when McKie was charged with perjury and submitted to the PF.

Again, rather unusually the PF called three of us to give evidence during the McKie trial.

Justice 1 Committee – Scottish Criminal Record Office Inquiry

The comments below are in response to the call for written evidence and in particular to the four areas indicated on the request as shown below.

- Do you have confidence in the identification processes used by the SCRO? If not, what further changes do you think should be made to ensure future confidence in fingerprint and forensic services in Scotland?
- The recommendations of Her Majesty’s Inspectorate of Constabulary primary inspection report of SCRO in 2000 have now been fully discharged. Are you confident in the way in which SCRO is now managed and organised? If not, what changes do you think should be made?
- An Action Plan to develop the Scottish Fingerprint Service as an integrated part of the new Scottish Forensic Science Service is due to be published in early April 2006. Are you content with the terms of the Action Plan? If not, how would you wish to see it revised?
- Do you have information relevant to the misidentification, or otherwise, of fingerprints in what has become known as the Shirley McKie case?

Public perception and confidence

Public confidence in the fingerprint service in Scotland has suffered because of a malicious media campaign waged against us, as the four SCRO experts who correctly identified the Shirley McKie, Marion Ross and David Asbury fingerprints, and against SCRO as an organisation. Indeed it could be said that this campaign was also against the criminal justice system in Scotland.

This campaign appears to have been orchestrated by Iain McKie (father of Shirley). He has used his contacts he made when he was employed as Strathclyde Police’s media relations officer to further his daughters cause. Considerable column inches and TV footage have been given to misleading and inaccurate reporting. We were hindered by the instructions to us not to say anything to anyone, as the matter, we were informed, was considered to be sub-judice. This instruction effectively guaranteed that the media coverage would become a one sided tirade, thereby increasing the public loss of confidence in SCRO.

Mr McKie was well aware of the normal Police stance to criticism, that is to say nothing and ignore the criticism on the basis that it will soon blow over. He has been able to use his experience and knowledge to good effect. The lack of robust public response from either the management of SCRO or Strathclyde Police or the Association of Chief Police Officers in Scotland (ACPOS) has ensured the continuation of this saga. Indeed the making of unhelpful
comments by various members of the Scottish Executive has also not helped the position (especially as the sub-judice rule is also applicable to them).

We have no doubt that SCRO was an excellent supplier of a fingerprint service to all its customers in 1997, and indeed still is.

SCRO has always been at the forefront of innovation in all matters related to fingerprinting. We were the first Bureau in Britain to adopt a computerised searching system, were the first to introduce competency tests on an annual basis for all its experts and were in the lead at obtaining ISO 9002 accreditation. It is doubtful if many of the experts the McKie’s rely on could claim more than one of the above.

Lawyers would very quickly lodge claims for their clients that had been convicted by fingerprint evidence or where fingerprint evidence was used if they thought there was anything wrong with SCRO or its experts. The total lack of any claims (apart from David Asbury) would appear to offer a major reassurance to the public about the reliability of SCRO.

If recent events that challenge the McKie’s (Lord Hodge’s ruling, Outer House, Court of Session—Shirley Jane McKie v. The Scottish Ministers) (1) and their experts received the same level of publicity that the McKie’s manage, then Public perception would soon swing back to become one of confidence.

This has been from day one, a one sided manipulated media campaign. It is likely that only positive media coverage and time will improve the false perception.

**Her Majesty’s Inspectorate of Constabulary primary inspection**

The HMIC inspection is of little value as they were working on the basis that something was wrong and that it required to be fixed. To start with a closed mind is always dangerous.

The HMIC primary inspection was the stimulus to implement a lot of changes to the fingerprint service, most of which were already on the agenda as proposed changes, and were fast tracked towards implementation.

The fingerprint service is constantly evolving particularly in relation to the adoption and implementation of new technology. As a result all processes and procedures are under constant review.

With hindsight it appears that the decision that the SCRO was not efficient and effective was based largely on the reports of Zeelenberg and Rudruud (3) and of Rokkjaer & Rasmussen. (4)
Why did HMIC place so much reliance on these two reports? After all when we were promised by the HMIC team that they would use experts we would consider to be our equals, we warned them not to use the Dutch and explained the basis and conclusions of the Evett and Williams report to them, and explained how it found the Dutch to be lacking in fingerprint identification skills as they spectacularly failed to identify the correct number of identifications.

HMIC appear to have made the same judgemental decision that SCRO was wrong, and have worked on that basis, a decision that many others have also reached to further their own purposes. At worst the Zeelenberg and Rudruud report and that of Rokkjaer & Rasmussen only highlighted the difference in opinion between different experts. The opinion of the SCRO experts appear to have been totally dismissed, the two independent expert witnesses who reviewed the evidence of SCRO for the Asbury and the McKie defence teams also appear to have been totally disregarded.

The question of confidence in the way SCRO is managed and organised is rather difficult to answer. As experts within the bureau we have had concerns about our management for years. Historically the senior management of SCRO was performed by experts who were all Police Officers and had progressed through the ranks. For the last twenty years Police Officers with no fingerprint experience have been brought in as our managers. This has caused problems, one in particular with relevance to the McKie case was the purchase of a charting PC as a means for producing court illustrations. This machine was purchased in 1997, despite our concerns, we were told to use the machine even although it was clearly not fit for purpose.

**Scottish Fingerprint Service**

The current action plan is flawed, as the best interests of fingerprinting in Scotland would be served by only having one Bureau and not the political fudge to appease Chief Constables, that has been set up as the Scottish Fingerprint Service based on four different Bureaux across the country.

One Bureau would offer considerable efficiency in management and training, there would be no requirement for three of the four Bureaux Heads, the integration of the training and quality assurance roles that are carried out on a part time basis in three of the four Bureaux would result in efficiencies. The money saved from these efficiencies could be used to employ further experts.

The other Bureaux do not have the resources to offer weekend and out of hours cover which is available from Glasgow. The staffing levels for the workloads in the other Bureaux also cause major staffing problems during holiday periods. This is obviously a detriment to the provision of an efficient and effective service.

Standardisation of shift coverage and weekend coverage across the service would be required, as would the standardisation of processes and procedures.
In the near future we will be receiving fingerprints direct from the scene of crime, therefore there will be pressure to provide a twenty four hour service by fingerprint experts, the only viable way to resource this is to centralise all the expert resources in the one bureau, so that there will be enough experts available to provide the expected operational cover.

The Scottish Public deserve one centre of excellence for its fingerprint services, it would be financially and operationally more cost effective in one centre as well as being more effective and efficient.

**Scottish Fingerprint Service Action Plan**

A very basic and obvious inaccuracy appears on page 5; at 1.1 of the Action Plan (28) the second word used is “misidentification” Regrettably this is inaccurate as there is no legal decision either supporting or rejecting the identification. Therefore this wording should read as debated or disputed identification, or similar.

On page 7, 2.4 action point 1 it states “The action plan indicates that Sir David O’Dowd will consider the 25 recommendations and 20 suggestions made by HMIC in 2000”. Most of these recommendations were already on the SCRO wish list for changes and improvements.

Page 10 at 3.7. It states “Historically, accreditation to expert status as a fingerprint expert was based on duration in post rather than formal assessments of competence, which in practice led to accreditation after five years experience” This statement is rather worrying as the implication is that trainees just served five years then automatically became experts. Structured training was in place that was based on the most important factor of being an expert which is the amount of operational experience and the reliability of the trainee in successfully and accurately carrying out their comparisons. Indeed some of our trainees were held back for longer as it was considered that they did not meet our requirement for reliability and accuracy.

Page 12 at 3.13. The Council for Registration of Forensic Practitioners is mentioned and it is indicated that the plan hopes to move towards 100% registration. Regrettably some staff within SCRO are now declining to renew their registration, mostly for one of two reasons, they see no point in being a member of a worthless organisation as there is no test of ability or proficiency involved, and they are concerned over the way the CRFP allowed themselves to be used by McKie in her attempt to gag and silence Peter Swann.

Page 12 at 3.14. Competency testing was in place for several years prior to 2002, using an internal test. I explain the background to this on page 6 of my submission. The current available test is a test of very basic ability and is of limited value as it does not rate experts by ability.

Page 12 at 3.15. the final entry is “Outside Glasgow, while independent verification is applied, the smaller scale of the bureaux means that anonymity cannot be
achieved" The simple question is how can we have a standardised service if the same procedures and processes are not in place within all bureaux in Scotland?

Page 15 at 4.9. Non-numeric standard, the Glasgow bureau was on target to go non-numeric at the same time as the bureaux in England and Wales in 2001. Our progression we understand has been held up by our political masters.

Page 15 at 4.10. The information is flawed as SCRO has been progressing towards non-numeric introduction since the mid 1990’s, indeed I was involved in ACPO Crime Committee National Project Board workshops in the late 1990’s about the transition to non-numeric.

Page 15 at 4.13. There has been no facility for palm searching in our present AFR, but this facility could have been available 4 or 5 years ago if we had gone ahead with an upgrade to the Scottish AFR system.

Page 21, action point 22, there is no requirement for a ‘safeline’ as there are adequate procedures in place at present for contentious issues.

Page 23, action point 25, The use of experts with an international perspective may be a good concept, regrettably in this instance it is not a good idea. Firstly as the IEEGFI (15) point out experts should not get involved outside of their own legal system. Again this is a prime example of Zeelenberg failing to practice what he preaches. Secondly I doubt if Zeelenberg will offer any positivity to the process as he is so heavily engaged in justifying his existence after his errors in the Marion Ross case. It is totally incomprehensible as to why an expert with such a prominent opinion with this case can have any involvement in any action plan.

Page 25, item 4, the staffing structure is wrong, no mention is made of the Glasgow AFR/Tenprint Operations Manager or the AFR/Tenprint Coordinator.

Overall the Action Plan has little that is new in it and little to commend it.

**MacKay Report**

One of the most worrying aspects of this report (6) is in section 8 dealing with criminal allegations against officers of Strathclyde Police. On page 40 at 15.8.4.1 it states “No officer named in this section was cautioned, nor was it considered necessary to do so during the interviews. Strategic direction had been given to the enquiry officers in this regard” Who gave this direction? Why? And indeed why we were not treated in the same manner? Does this not clearly show the intention of the enquiry team being over zealous and very blinkered in their approach, indeed why did they suppress the evidence of criminality that allegedly related to other outwith SCRO.

On page 42 at 18.8.6.1 the report adopts the classic misguided interpretation about fingerprint evidence, it states “Prior to this incident it had been the accepted ethos within not only the Police Service, but the entire Criminal Justice System,
that fingerprint evidence was infallible and it had rarely been challenged or fully evaluated over 100 years” The author of the report is obviously ignorant or misleading the reader as he should be aware that for many years fingerprint evidence is scrutinised by the defence team appointing their own independent experts to review the offered fingerprint evidence. In simple terms the evidence is reviewed prior to the trial, normally agreed and therefore the purpose of the joint report is served, notwithstanding this we as professional expert witnesses still are called to court and challenged. This obvious error to mislead can be evidenced from a letter (29) from Paul McBride who is vice chairman of the Criminal Bar Association in which he states “I have been doing the job 20 years, and in a case when there is fingerprint evidence you automatically get sanctioned [by the Scottish Legal Aid Board] to have it checked out by your own expert. I have never been in a case where it is not checked out”

In the Marion Ross case both defence teams carried out the above and appointed their own independent experts, who carried out their comparisons and agreed with our identifications.

Further evidence of the unreliability of the MacKay report is shown on page on page 33 at 15.7.3.35 where he admits receiving the Danish report and the commissioning of an independent criminal enquiry. Why at no time in this report is the Danes claimed wrong identification for mark QD2 as David Asbury not mentioned.

I could go on for pages about the flaws in this document, I will just make one more reference which is to a letter from Malcolm Graham the Asbury independent fingerprint expert (30) in it he states “I have never had the opportunity to read the MacKay report, but strongly dispute the part quoted by yourselves in the MacKay report where I make some sort of admission that if the original identification by SCRO is wrong, then I accept I am wrong. If that is indeed in the MacKay report, then it raises issues about the accuracy of the report and the conclusions Mr MacKay has drawn from his perceptions” Page 32 at 15.7.3.24 shows the comments being referred to by Mr Graham.

Strathclyde Police

Strathclyde Police along with SCRO were originally to be investigated by HMIC about the role they played in the Marion Ross murder. Very quickly for some unknown reason the role of Strathclyde Police was removed from the investigation.

One of the few accurate statements in the report (6) Page 15 at 15.2.4.2. it states “It is not unusual for a Police Officer’s fingerprint to be found at the scene of a crime that he or she has attended in the course of their duty and most fingerprint experts have experience of this” I think all fingerprint examiners are aware of the regular occurrence of Police Officers leaving impressions at the locus.

There has been great speculation about the security and reliability of the log keeping at the locus. Indeed the MacKay report (6) on page 46 at 15.8.8.5 states
"The report by the Detective Superintendent into the dispute was thorough, factual and well encompassed the difficulties surrounding the log keeping at the locus" Again the report on page 51 at 15.10.1.2 states “However it should be acknowledged that this list is not exhaustive and it is only as good as the accuracy and dedication of the log keepers which at times, could have been more professional. We are aware that unnecessary access was permitted to the house, outwith the knowledge of the Senior Investigating Officer.”

Indeed in recent times even senior members of the Procurator Fiscals service have made public comment about the lack of log keeping at the locus, particularly at the Scottish Fingerprint Service fingerprint conference held at Tulliallan in 2004.

Very obviously the log was not kept correctly, therefore no one knows who actually was present or not.

More concerning is why did the Officer in charge supply Shirley McKie’s name as being one of the officers to be compared for elimination purposes if he did not consider that she had been at the locus? Indeed if this information had not been supplied to us by Strathclyde Police we would not have compared her fingerprints.

The Identification or Otherwise of Fingerprints in the McKie and other Cases

Training and Experience for SCRO Experts.

We should start at the basics and look at training and experience and the application of theoretical and practical training in gaining further experience and ability.

SCRO experts undergo a lengthy training course that historically was very much ‘hands on’. Mr MacPherson and Mr Stewart underwent a seven year training programme prior to qualification as expert witnesses. Mr McKenna and Ms McBride benefited as by the time they started their career they only had to complete a five year training programme.

These four experts had no other training as photographers, scene of crime examiners or in evidence recovery. We had a basic training to allow us to appreciate these fields and how they impact on fingerprint impressions found at the scene of a crime. We were given all the required background theoretical knowledge to allow us to function with a high level of specialisation as experts.

We carried out examination and comparison and subsequent identification of fingerprints on a daily basis. We passed all the required examinations both practical and theoretical that were then in place, before we completed our final examinations prior to becoming authorised as an expert. We were not involved in running fingerprint bureau as the head of the bureau, nor were we involved in travelling the world giving lectures or presentations or training courses. In simple terms we practiced the theory, unlike those the McKie’s rely on who only preach theory.
Our daily work was always subject to peer review, our identifications were always subject to verification. From the middle 1990’s we all undertook an annual competency test. It should be noted that the annual competency test we undertook was reviewed in early 2000 by the FBI fingerprint laboratory who stated that “The test is too difficult to fairly assess all levels of competence” and “A proficiency test only needs to demonstrate that an examiner has the basic skills to include and exclude an identification decision, not how difficult a print he can identify” After this criticism we stopped setting our own tests and adopted the very basic of the shelf test from a commercial supplier.

In simple terms we amassed a considerable wealth of experience in carrying out comparisons, and as expected with this level of experience we became competent at working with marks of a very poor quality. We were on a daily basis practicing what we had been taught and gaining more experience.

Variations in expert interpretation of detail in fingerprints.

As far as we are aware the only serious and exhaustive study of experts interpretation was carried out in the Evett & Williams report (2) This was a review, commissioned by the Home Office in 1989, of fingerprint bureaux throughout the world in relation to the requirement for a pre set standard for fingerprint identification, particularly in relation to the then current 16 point standard adopted and implemented by British fingerprint bureaux.

The first area the report addressed was the variation in the amount of identifications on average per expert, per year. The variation was between 40 and 165. (Pages 8 & 9 of the Evett & Williams report)

The next major area was the collaborative study, this involved the production of ten scene of crime impressions and ten fingerprint impressions. These examples were sent to various fingerprint bureaux and experts of more than 10 years experience were asked to examine them and report their opinion, and indeed where they identified a match they had to count how many characteristics they had found, (Pages 15 to 20 of the Evett & Williams report)

The authors indicate on page 16 that they were surprised at the amount of variation in the number of points of similarity recorded. The difference for one mark varied from 10 to 40, for the second mark from 8 to 26, for the third mark from 14 to 56.

There was also wide variation in the decisions reached, one mark 84% identified it for court purposes and 15% as a partial identification, for the second mark 47% said full ident and 45% partial ident, for the third mark 97% said identification and 3% said partial identification, the final example produced 54% as a partial identification, 8% as not identical and 38% as insufficient.
The next two pages summarise the findings *(Pages 20 and 21 of the Evett & Williams report)* They indicate that the expectation was that the examiners would each produce the expected 6 or 7 full identifications, yet 16% of the participants recorded three or less full identifications. 50% of the participants managed to produce no more than 5 full identifications.

The authors also make a specific reference about Dutch experts as they indicate that the Dutch only produced one full identification and one negative comparison, and indicated that the other eight marks were inconclusive.

The report went on to discuss that “Fingerprints is an exact science” *(Page 23 of the Evett & Williams report)* the authors dismiss this claim very easily as they state, “If it were, then we would expect all experts to arrive at precisely the same opinion in every case. Indeed if it were an ‘exact science’ perhaps we would not need experts at all! Whatever is meant by the term ‘exact science’ fingerprint identification cannot be one. This is not to demean the pursuit one iota. We believe that it deserves to be called a science in the same sense that any other forensic comparison is a science. But it certainly isn’t exact”

In simple confirmation of the above conclusion the authors state on *(Page 31 of the Evett & Williams report)* “A fingerprint identification is a matter for personal expert opinion”

**My consideration of the Evett & Williams report.**

As both MacPherson and Stewart had taken part in the collaborative study, we were well aware of this report and its implications. None of us are surprised that it highlighted variation in interpretation and of conclusions.

Working within a reasonably large fingerprint bureau we see variation in interpretation and conclusion on a daily basis, so this report just confirms what we know as operational experts.

The variation in the amount of identifications was also expected as we were aware that some of the Bureaux in the United Kingdom employed their experts in the ‘dual role’ that is a scene of crime examiners and as experts. We therefore expected that the ‘dual role’ experts would have a lower throughput of work, as they are not full time employed in carrying out expert work.

The report also explains why fingerprints cannot be an ‘exact science’ a statement we are in agreement with as we know that not every examiner will reach the same conclusion as the previous one, therefore as the conclusion cannot be replicated then it cannot be an ‘exact science’.

Indeed if it was accepted that fingerprints was deemed as an ‘exact science’ the Dutch again fail because of their finding for eight of the marks as inconclusive.
You can clearly see from the above why we made our comments on page 3 of this submission in relation to the Dutch and their lack of suitability in being accepted as our equals, as we knew they do not have the ability to work with marks of the quality we are experienced in working with.

The report stimulated a lot of discussion, regrettably very little action, as things really have not changed in the last seventeen years.

We accept the easy way to standardise opinions is to dumb down to the ability of the poorest expert in the system and to set all processes and procedures accordingly. Thankfully British Bureaux in particular with a long history of manual searching (unlike most other countries) wanted to continue operating at the highest level of ability, therefore change was not obvious other than to the implementation of the non-numeric standard in England and Wales.

**Pat Wertheim**

One of Wertheim’s major allegations of criminality on our part relates to the cropping of the enlargements. Precognition of Wertheim (items 19 & 29) and repeated via the media. (5) It is stated in item 19 “This is highly irregular and, as I understand it, is contrary to established protocol in the UK regarding best evidence”

The MacKay report (6) indicates at entry 15.14.2.1 “The practice of cropping is not unique to SCRO and our experience is that virtually every Bureaux carries out cropping to one degree or another” I suspect that this is one of the few accurate comments contained in the MacKay report and clearly contradicts Wertheim’s comments above.

In (item 31) of this precognition he states “The fact that three sets of charted enlargements were prepared by the SCRO in this case seems highly unusual” and “The reason for multiple sets of charts is highly questionable” If Wertheim spent some time learning about evidence preparation for Scottish Courts rather than make ill informed comment, he would be aware that all evidence is prepared at the request of the Crown and not as the experts wants to do so.

Again he has made ill informed comment in (item 34) “One is instantly aware that a different impression of the inked print was used” Again with a little knowledge he would be aware that the material was prepared at the request of the Crown, so the instruction would have been given to use a different fingerprint form.

His conclusions at (item 35) which he sums up in (item 36) by stating “Each of the issues listed above demonstrates a violation of the rule of “best evidence” that is too blatant to be ignored. In combination they can be explained by only one of two possibilities. Either the person or persons preparing these charted enlargements were guilty of gross, unparalleled incompetence, or they were guilty of intentionally presenting false evidence in court”
Indeed if Wertheim was professional he would have attempted to use the charting PC and experience the problems we had in its use, his lack of integrity in offering unwarranted criticism about a machine he knows nothing about reflects badly on him and is another example of him making snap decisions.

Regrettably for Wertheim it is not us that is incompetent or have presented false evidence in court, the comments I have made above in relation to this precognition clearly explain our actions and destroy his malicious and insidious comments, something that MacKay should also have been able to do as part of his investigation.

Wertheim states he started his experience from 1973 to 1979 was a three year period carrying out scenes of crime examinations and the final period as an Identification Officer. He then continues as a dual role officer for a further six years before he became the supervisor. He then changed employment and from 1989 to 1997 he was employed in another bureau as a dual role officer.

Further evidence of Wertheim’s lack of experience is available from the CLPEX web site (7) In this posting Wertheim states “I was in NO WAY qualified to testify to fingerprint identifications when I was first accepted in court as an ‘expert’ in the late 1970’s. I attended a two-week class in Henry classification which also touched on latent print development and latent print identification. Our comparison exercises were all inked to inked. After that, there was no OJT in my department and I had to teach myself. Within two years, I was testifying to identifications. I never had a senior examiner check my work and never had a single proficiency test. And don’t make the mistake of thinking I was the exception”

What an admission about lack of initial training, no on the job training and no peer review. Compare to the SCRO training on page 5 of this document.

In a further posting on the CLPEX web site (8), Wertheim states “you are absolutely correct that comprehensive training is the only dependable foundation for expertise” Its only a pity that he did not have any otherwise he would not be making mistakes in the Marion Ross case.

Further evidence about training and experience comes from a radio talk show in Spokane WA (14) Answering questions about the cause of erroneous identifications Wertheim states “The Problem’ Pat stated is that the US has no training standards. The Chief can come in one day and say ‘hey, Mark! We need a fingerprint expert-go to this 40 hour course and get to work. He emphasised that we are the only country that does it this way- the UK has a 3-5 year modular training programme, New Zealand requires 5 years training before case work- that we are so far below the average it’s not even funny”

Wertheim changes story to suit the purpose as can be evidenced by his comments during the various BBC television programmes, in the first programme he proudly boasted that it took him less than ninety seconds to decide the fingerprint was not Shirley McKie’s, in a subsequent programme he claimed to have taken less than sixty seconds for the same comparison. Both claims are surprising for a man who makes great play of his scientific process and the application of ACE-V. I regret
that in ninety seconds of examination of the mark in question I had not even begun
to form an opinion because of the distortion present in the mark.

During the same programmes Wertheim and Alan Bayle made allegations about
evidence being wrong in a case in Manchester. The convicted person lodged an
appeal at which both experts gave evidence. The Judge disregarded their
evidence and upheld the conviction.

Further evidence of the misinformation from Wertheim comes from another
CLPEX posting (9) where he states “The Danes were wrong in saying it was an
erroneous identification, but the problem is that the SCRO sent the Danes faulty
images. Arie Zeelenberg from the Netherlands reviewed the work of the Danes,
found that they had been sent the wrong photographs and looked at the wrong
fingerprint, and brought it to their attention” A very obvious falsehood in that
SCRO did not send the Danes any material, the Danes were dealing with either
the Executive or the Crown. Zeelenberg only reviewed the material after an
independent expert (Mike Pass) had reviewed the evidence at the request of the
Executive’s solicitors and had agreed with the SCRO identification. The
Executive’s solicitors then informed the McKie’s solicitors, and they chose
Zeelenberg to review the mark on their behalf, the quality of the mark was such
that Zeelenberg was also able to agree the identification.

This falsehood is also evidenced by the MacKay report (6) on page 21 at 15.4.1.13
states “Crown Office submitted all remaining identified crime scene marks and
tenprints from David Asbury to experts in Denmark”

Even Ian McKie noticed Wertheim’s misleading information in the above posting
and attempted to further muddy the waters by stating on his web site (10) “It has
subsequently been revealed earlier this year that the Crown Office had given the
Danish Experts the wrong production”. I have little faith in the abilities of the Crown
Office but I expect that even they would be able to correctly produce the correct
production for the Danes to examine, after all it is a binder containing a lot of
fingerprint impressions, therefore there is no possibility of the Danes not
having the correct material.

Another example comes from the same CLPEX posting (11) where he states in
relation to the criminal inquiry “The SCRO “experts” were asked to explain their
position. They each came to the inquiry with a lawyer and basically answered “no
comment” to the questions asked by Mackay and Robertson” Again another
obvious falsehood as we were not interviewed under caution by either
MacKay or Robertson, but by members of their inquiry team. You will all be
aware that the normal advice during a taped interview under caution is to make no
comment, something I am sure Wertheim is aware off, so I can only assume this is
further example of his maliciousness.

Another posting from Wertheim (23) states “Proof that an unethical law
enforcement agency exists in the free world can be found by looking no further
than the Shirley McKie and David Asbury cases. Each case was prosecuted on
the basis of single fingerprint identification, but both identifications were blatantly
erroneous” I must be missing the point but which bit is the proof? And as usual he
is factually inaccurate as there was more than one single fingerprint identification as he well knows in the Asbury case. Indeed he is wrong in that neither of the marks are erroneous identifications.

The last example I am including is from another CLPEX posting (13) about erroneous identifications within SCRO, “Then there was another case in which Alan Bayle caught another bad identification a couple of years after the McKie and Asbury cases, which was also confirmed as bad by the Northern Ireland Police” My entry below where I mention this case shows clearly that this statement is at odds with the truth.

If Wertheim is as good an expert as he professes, why has he never worked at any of the large American fingerprint bureaux who have positive reputations and credibility?

Alan Bayle

It should be remembered that his 24 years experience (correct at the time of his compiling the report) cover both time as a scene of crime examiner and as a fingerprint expert. If you remove at least 5 years to allow for the normal British training that leaves 19 years split between scene examination and expert work. In reality not more than ten years meaningful experience as an expert. It should also be noted he was employed in the training department for several years, this would also reduce his operational experience.

You should be aware of Bayle’s previous excursions in the Scottish Courts. He gave evidence at a murder in Glasgow where the female victim was thrown out of a window in a high-rise block of flats. His evidence was about the position of the fingerprints and that in his opinion the deceased threw herself out of the window. This was refuted by eyewitnesses who had watched the deceased being thrown out the window, the accused was duly found guilty of murder.

In another case Bayle gave evidence that his comparison of fingerprint material was inconclusive and that the offered identification was “unsafe”. This contradicts his claim that fingerprint evidence is an exact science in that you can only reach one of three conclusions, that is identified, negative or insufficient. The accused was duly convicted as there was sufficient other evidence without the fingerprint. Regrettably the Crown asked the PSNI to examine the mark prior to the trial but did not supply either the original material or the correct working conditions to the experts. The experts I believe concluded that on the material offered the mark was insufficient and could not offer any other opinion. Subsequently after the trial the Crown carried out an investigation and offered the PSNI experts the original material and they then concluded that the identification was sound.

I am sure that you are aware of the case I already mentioned, in Manchester, which Frontline Scotland and Panorama both championed. The evidence of Bayle and Wertheim was not accepted and even the resultant appeal against conviction was dismissed.
In another CLPEX posting (18) Bayle states “Welcome to the Police State of Scotland. SCRO is right and everybody else is wrong. The marks in question have been doctored, changed and photographed so that SCRO can persuade everybody that the marks were ident. They are not even close” Another obviously defamatory and unsustainable statement.

In recent times the McKie’s appear to have stopped putting Bayle forward for interview, after some of his embarrassing (for them) television interviews, particularly on ‘Newsnight Scotland’

Arie Zeelenberg

His CV is limited in that he started as a scene of crime officer in 1971 and became Deputy Head of the Fingerprint Service in 1982, and then Head in 1983. This shows 12 years when he could gain meaningful fingerprint experience, regrettably, this was as a dual role expert, after these 12 years he would be limited in his comparison practice as he was Head of the bureau and heavily involved in lecturing etc.

Some very interesting recommendations come from the IEEFGI (15) report as they must reflect the views of the Chairman of the Group who was Zeelenberg. On page 6 section 2.5.1 it states “It is recommended that only the receiving country can or should decide on the validity of an identification for its own judicial process” Clearly the Group recognised the problem of working in different countries to different standards and expectations.

On page 8 section 3.1 it states “The likelihood of experts giving evidence across the borders in the near future will generate the chance of opposing opinions in court and as a result cause damage to the fingerprint evidence” Pity he does not follow his own advice, if he had he would not have caused the damage to the reputation of fingerprint evidence.

On page 8 section 4.6 it states “The exchange of evidential conclusions between countries using different standards could in particular cases bring to light that opinions upon the question whether identification is beyond any doubt, differ. The same differences may occur with experts delivering second opinions in another country or system. Both systems/organisations involved may generate perfectly safe and sound evidence but may have different opinions coming from their standards and the application of them. Even if neither of the conclusions is wrong per se it will be exploited by the defence” Again Zeelenberg recognises that variations occur because of differences in experts from different backgrounds.

On page 15 section 6.2 it states “The expert must be well equipped in order to be able to undertake the job in the right way. An important basis is a high level of experience and proper training. Experience is necessary to reference the judgement of several values of the comparison. The feel for responsible tolerances comes from practice. The required knowledge can only be obtained from an extensive number of comparisons in the zone where the extreme border of solid identifications twines with dangerous look-alikes”. Clearly Zeelenberg
recognises the importance of training and experience, it is a pity that his is so limited in comparison to the SCRO Experts.

On page 1 of his report (16) paragraph 4 he states in relation to the facilitated discussion at Tulliallan “The aim of this meeting was to try and discuss the identification in a casual setting with our fellow experts in order to convince them on a professional level of the error and to turn the chain of events” Reading (17) clearly shows this statement not to be accurate as it states in the Welcome, introduction and brief presentation of circumstances in section ‘B’ “Dr Bramley advised members that the purpose of the meeting as he understood it was to reach a consensus over the identity of the fingerprint in the McKie case” As Dr Bramley was the meeting facilitator then I consider he would know what the meeting was to be about, therefore Zeelenberg appears to be wrong in this statement.

On page 2, paragraph 2 of his report (16) he states “the key question in the matter at hand is whether the wrong identification is an honest mistake or an act of deliberate wrong doing” He follows this in paragraph 3 by stating “This is not an easy question to answer because it deals with intent and intent by nature is hard to judge. We cannot read peoples minds and find out for what reasons they acted as they did.” If Zeelenberg is reading peoples minds I assume that he has some qualification as a psychologist to allow him to undertake this psychoanalysis. Any attempt by him to analyse the minds of others can only be based on his own mindset and attitudes.

The next few pages of this report reveal his inexperience as a fingerprint examiner as it is clear that he has no experience of working with marks of the quality that are disputed.

On page 7 of the report, paragraph 2 he states “Those are properties that indicate very strongly a mark coming from a right thumb” If Zeelenberg carried out an important part of his examination process that is considering the surface the mark is placed on, and indeed if he had examined the mark on the door facing when it was offered to him he would have found it is virtually impossible to place the right thumb on the door facing in such a position. In the same paragraph he states “This is an indication that the lines ‘fanout’ on the tip at the left side” Again with limited experience he would know his statement is correct for a good percentage of all thumb marks found, but had he gained meaningful experience it would warn him to be aware that in certain circumstances of excess distortion the ‘lines’ at the tip fan the wrong way, which can fool the inexperienced, as he indeed was.

Later on also on page 7, he makes great play as to whether the bottom part is joined to the top part. While an expert can form an initial opinion by examining the scene of crime impression as to this question, the only definitive test is the actual comparison against the donor form. Unfortunately we did not have a fingerprint form that disclosed the required area for comparison, so we could not offer a definite opinion about the top of the thumb.

On page 9, paragraph 5 he states in relation to Mr Macpherson “The fact that he informed superiors about his findings prior to verification and repeated that
ignoring the doubts of Geddes created another point of no return.” Knowing Mr Macpherson as I do I am sure that he would not notify anyone prior to verification, worse still is the blatant distortion about Geddes, he had no doubts about the identification. As Zeelenberg states in the previous paragraph “Geddes declined to confirm the identification but confirmed the elimination” I was always taught that an elimination is just an identification by another name.

The rest of his report is a pathetic attempt to justify his psychological analysis of how he considers we acted criminally. Regrettably for him it is not us that have offered misleading statements as a means to self preservation. The Evett & Williams report (2) clearly established the Dutch lack of ability and experience, there is no reasonable evidence offered that Zeelenberg is capable of working with marks of the complexity that are debated in the Marion Ross case.

In relation to the facilitated meeting at Tulliallan (17) in section ‘B’ part 3 the presentation by Rudrud and Zeelenberg, Zeelenberg stated “He explained that they did not volunteer for the job they were just asked to do it” As I have shown with my comments above on the IEEFGI (15) report, Zeelenberg went against his own advice in working in another legal jurisdiction with expert evidence prepared to different expectations, it would appear that he is typical of the ‘Do as I say, not as I do’ attitude. While he did not volunteer for the job he had the ability to decline the request. Further on in section ‘E’ the report of Rudrud and Zeelenberg, on page 12 they state “In general we would regard the latent to be a borderline case, it is doubtful whether this print could be the source of a solid identification” If this is accepted as a true statement then it clearly indicates that both these experts were working at the ultimate limit of their ability. Indeed they even debate if it could result in a “solid identification” I think confirms that they are struggling to work with this mark. Again on page 17 they express their concerns over the quality and suitability of the mark for identification “The investigated latent is of questionable quality with regards to the possibility of a positive identification”

This report highlights that Zeelenberg used the internet images for his purposes. As an expert I was always taught to use original material not third or fourth generation material that has been degraded by its production. Mr Mackenzie in sections ‘H & I’ states “A. Zeelenberg claims internet material best quality, yet when confronted with ridgeology taken from Internet , is critical of quality” To be consistent it is either the best or its not, it cannot change to suit his purpose. As Zeelenberg had admitted looking at internet images prior to the request to be one of HMIC’s experts, I consider it likely that he did not approach the comparison with an open mind as he had previously made his decision and was now trying to support and justify his mistake.

From my experience of Zeelenberg giving a presentation to SCRO on how the Dutch make identifications I consider that he does not have the experience to identify a mark of this quality; he has admitted in the Tulliallan meeting that the mark is problematical as a source for identification. The Evett & Williams report clearly evidenced the unreliability of the Dutch. He clearly talks a ‘good game’; regrettably he is unable to perform one. He has done himself no favours or helped the reputation of finger prints as a means of identification, indeed his pathetic attempts at psychoanalysis further evidence his desperation to justify his error.
The Crown

Great concern must be expressed over the Crowns behaviour in this affair.

They were aware of the fact that Malcolm Graham the independent fingerprint expert gave evidence agreeing with all our identifications during the trial of David Asbury, why did they fail to then call him as a witness during the McKie trial? Indeed worse still why did they not also arrange to call Peter Swann the McKie’s own expert when they were informed about him? These two experts had they been called would have left the McKie defence in tatters.

We are further dismayed by the fact that the Crown has never made any of the case material available to us so that we could consult with experts of experience and operational credibility, so that we could discuss, reconsider and review our findings.

The lack of material also meant that we were never able to offer any challenge to the McKie campaign.

The Crown have also kept quite about areas they are aware of the truth and they know would benefit SCRO if they spoke out, for example the Alan Bayle case involving the PSNI.

The Scottish Ministers

The Ministers appear to have never had a strategy in handling this matter, there appears to have been nothing other than ‘knee jerk’ reactions to various situations as they arose (usually orchestrated media pressure)

Various Ministers have made inappropriate and unhelpful comment at various times.

The First Minister indeed stated to the Scottish Parliament on the 9th of February 2006 “In this case, it is quite clear-and this was accepted in the settlement that was announced on Tuesday (7 February) - that an honest mistake was made by individuals. I believe that all concerned have accepted that” Unfortunately for the First Minister we do not accept that a mistake, honest or otherwise has been made. The Scottish Ministers have squandered a considerable amount of tax payer’s money in a needless settlement.

Further evidence that the settlement was unnecessary is shown by Lord Wheatley (12)In his opinion he states on page 20, section 29 “I have found that in the present case it is difficult to understand ,from an examination of the pursuer’s averments, what precisely are the relevant statements of malice, and of lack of reasonable and probable cause” His Lordship also comments on other claims of malicious behaviour in the averments by stating on page 22, section 31 “These
various inferences can be drawn from the pursuer’s pleadings as they stand, but only with some difficulty” On page 24 at the end of section 32, Lord Wheatley states “Again it seems to me that the way in which the case is pled may provide significant difficulties for the pursuer at inquiry” On page 26 section 34 it states “On the basis of the pursuer’s averments it must be dubious whether there is, as the pursuer’s counsel claimed in submission, a case of concerted malice by the third to sixth defenders [The SCRO Experts] against the pursuer, and the claim against the fourth to sixth defenders in this respect appears to be of doubtful relevance and significantly lacking in specification. However it is only irrelevant material which is excluded at debate; averments of doubtful relevance, on which the pursuer must now peril her case, should be remitted to enquiry. On that restricted basis, I will allow the pursuer a proof of her averments of malicious prosecution” It would appear that Lord Wheatley had considerable doubt about Shirley McKie’s averments and clearly indicated that he thought she would have problems in proving her case. This is clearly a further condemnation of the Scottish Ministers incompetence in settling the case before proof, and squandering a considerable quantity of taxpayer’s money.

Looking at Lord Hodge’s opinion (1) on page 14, section 32 he states about the SCRO officials acting in good faith” Where there was conflicting evidence from the independent experts over the match of fingerprint Y7 and the pursuer’s print, they were entitled to discount the contention that the fingerprint was so obviously not the pursuer’s that an assertion that the fingerprint was her print had to be malicious” On page 16, section 35 his Lordship states “I cannot conclude that SCRO officials deliberately withheld evidence or deliberately misrepresented their evidence. Thus I am not satisfied that the pursuer has demonstrated that the SCRO officials acted maliciously or that the Scottish Ministers acted Unreasonabiy in failing to admit that they did”

The Scottish National Party

This organisation has played a major part in supporting the McKie campaign of disinformation. This is best shown in Mike Russell’s press release (19) where he states “Shirley McKie has suffered enormously since false fingerprint evidence was produced against her during her perjury case in which she was eventually cleared” and further on he states “I am therefore astonished that what claims to be an independent enquiry has apparently managed to come to the conclusion it has. This is that, although the SCRO produced bogus evidence against Shirley, they were not to blame for it, and that there was no question of incompetence or misconduct on their part” As has clearly been established by Lord Hodge there is no question of bogus evidence having been produced, therefore there is also no possibility of incompetence. These defamatory comments were reported in the Daily Express on Friday March 22, 2002

Another example of the one sided blind support for the McKie’s is shown in the media coverage over the disciplinary investigation into the behaviour of the Aberdeen ‘expert’ Gary Dempster. The Scotsman on 17 March 2006 stated in relation to Nicola Sturgeon “Taunting Mr Stephen over Liberal Democrat support for freedom of speech, she urges him to condemn the outrageous action against
Gary Dempster for speaking his mind” Why am I not surprised, that there has been no public pronouncement from Ms Sturgeon about the curtailment of my colleague Fiona McBride’s freedom of speech.

In a parliamentary question S2M-3830, Alex Neil states Scottish Criminal Record Office Staff’s Letter to Lord Cullen-That the Parliament notes the action of the SCRO staff who signed the letter dated 14 November 2005 to Lord Cullen, the Lord President and Lord Justice General, In relation to the cases of HMW v David Asbury and HMA v Shirley McKie and regrets, and condemns the fact, that their stance has become public, given the responsibility of everyone involved not to compromise the impartiality of the Justice system” Another example of attempted control as he makes no comment or condemnation of the regular pronouncements by the McKie conspirators and their frequent public comment.

This organisation and its Leaders have been misled by spurious information from the McKie supporters. The have not improved their own credibility in their search for political advancement, in fact their blind support for the McKie campaign may well cause them long term damage.

Iain McKie

I could spend many pages asking questions about the validity of the information that he publishes in various journals and the interpretation he places on them. I will only illustrate a few examples.

On CLPEX (21) in a response to Malcolm Graham he states “His comments go well beyond those I would expect from an objective fingerprint ‘expert’” He is rather hypocritical as he is happy for his experts to make comments and unsustainable allegations in reports supporting his daughter, yet those who support a different opinion are expected to be objective. His next line is “While I fully support his right to hold contrary opinions the manner and form of his presentation staggers and saddens me” So McKie is happy with the concept of Malcolm Graham holding a contrary opinion yet he does not consider that we have that right. Further on he reveals his true character by making not so veiled threats to Mr Graham as he states “Until this point I had considered him to be a man of integrity. While I have suspicions re his motivation in acting as he has I will leave that matter to be decided in any subsequent legal action we might take”

In another posting (22) in relation to the findings of the ‘Internal Independent Enquiry’ he states “It contradicts the findings of the major enquiry undertaken by Her Majesty’s Inspector of Constabulary. His report contained the conclusion ‘that the mark was not made by Shirley McKie. It is (the independent experts) view that decision could have been reached at an early point in the comparison process” Looking at Lord Hodge’s opinion (1) on page 14, section 32 he states about the SCRO officials acting in good faith” Where there was conflicting evidence from the independent experts over the match of fingerprint Y7 and the pursuer’s print, they were entitled to discount the contention that the fingerprint was so obviously not the pursuer’s that an assertion that the finger print was her
print had to be malicious” His Lordship again clearly highlights one of the many flaws in the HMIC report and totally contradicts McKie’s comments in this posting.

A more recent posting (24) in relation to reports that an ‘expert’ from the Aberdeen fingerprint bureau was being disciplined for speaking to the media he states “When Fiona McBride one of the 6 experts at SCRO responsible for the errors recently spoke out in the media(as is her right to do so) there was no threat of discipline against her” Yet another factual inaccuracy as on the 7March 2006, Ms McBride had been served notice of a disciplinary investigation into her media comments defending SCRO, well before similar action was raised against Dempster.

Again in the same posting (24) McKie states in relation to the Grampian report “In a joint report with Grampian colleagues- the first Scottish experts to publicly speak out-it was concluded that the SCRO experts were wrong in identifying Shirley’s print” Another clear misrepresentation as he is well aware as reference to (25) mentioned below shows he was fully aware and had made great play of the Lothian’s ‘experts’ letter to the Lord Advocate. Therefore Grampian were not the first Scottish experts to speak out.

An item on McKie’s own website in relation to the Danish report (10) “It has subsequently been revealed earlier this year that the Crown Office had given the Danish Experts the wrong production”. I have seen no evidence to suggest that the Crown Office presented the wrong material. Indeed if these experts have any level of credibility the first thing to establish before attempting a comparison is that you have the correct scene of crime marks and the appropriate fingerprint form available for your purposes. In the same item he further states “In effect the main thrust of the Danish report is that the 6 SCRO experts were wrong in their identification of the Marion Ross print on the tin. Interestingly they also point to the poor quality of some of the photograph productions they were asked to examine. This has been a common criticism of SCRO’s work and their report is further confirmation of just how flawed the SCRO work has been” As I mentioned earlier it is impossible to give the Danes any credibility as they failed to identify the much clearer mark as Asbury, therefore they are unlikely to have the experience and ability to identify the deceased’s fingerprint on the tin. As to the comments about the quality of the photographs that is easily refuted as nothing to do with SCRO as the quality of the material submitted to us is down to the individual submitting Police force in this case Strathclyde Police.

McKie placed great reliance over many years on the letter from the 14 Lothians and Borders Police experts to the Lord Advocate. In Points of View in the Herald (25), Alison Hannah one of the 14 who was meant to support the letter stated “I would like to reply to Iain McKie’s letter (November 14) It is time to respond to his regular and frequent mention of the Lothian and Borders Police’s 14 experts. I am one of those 14 experts whose name appeared on the letter. I did not sign the letter and I certainly did not agree with its contents. The letter was sent without my consent or approval” Mr McKie has made regular comment about the detriment to these experts as a result of their actions, Ms Hannah goes on to say “No disciplinary action was ever taken despite the fact that the management did not approve of the letter’s content and the possible implication to the Force”
On this subject the letter from the Lothians experts stated “a display of gross incompetence by not one but several experts within that bureau. At worst it bears all the hallmarks of a conspiracy unparalleled in the history of fingerprints” Lord Hodge’s opinion (1) again clearly contradicts the contents of this letter.

As a summary of Iain McKie the best I can say is that it is best to treat his regular pronouncements with a high level of scepticism.

**The Media**

It is obvious that certain sections of the media are either being manipulated or misguided in their blind support for the McKie cause.

The following item appeared in the Sunday Herald (26) The opening statement is “A secret report commissioned by the Crown Office in 2000 into the case involving former detective Shirley McKie has revealed that a third fingerprint was wrongly identified by Scottish forensic experts” The article further states “The Sunday Herald can reveal that staff at the SCRO misidentified a print found on a £10 banknote that linked 21-year-old joiner David Asbury to the savage murder of Marion Ross, 51, a Kilmarnock women, in 1997” The accuracy of the reporting is totally flawed as even an expert with Zeelenberg’s limited experience, has now conceded that this mark is correctly identified. I have not noticed the journalist concerned publish a retraction or apologies for his at best misleading report.

The integrity of the BBC is also much in question as the standard and accuracy of their reporting particularly in relation to Frontline Scotland and Panorama can be questioned. It appears that their reporter Ms Shelley Jofre is a firm supporter of the McKie’s. I understand that during the early programmes she refused to present evidence that supported the correct SCRO identifications despite that being available, with the result that a one sided view was put forward.

I note that the invite I received to appear (27) stated “You should know that we have received a written legal undertaking on behalf of Shirley McKie that she will not sue the BBC in respect of any allegations made against her on Frontline Scotland. However it is possible that Ms McKie could still sue anyone making allegations against her” Am I meant to take this as a warning that I can’t say anything I want too, or is it a rather obvious attempt to control what I would say?

Worse still my colleague Fiona McBride, prior to her appearance on Newsnight Scotland for a live interview along with Iain McKie (which he subsequently withdrew from) was warned by BBC staff that she could not call the identification an identification as it had been established in law that it was not. This blatant misrepresentation of the legal position regarding the identification further highlights the BBC mindset and bias, and shows that the one sided view remains in place.
Conclusions

I consider that even in this limited submission that I have shown that the ‘expert’ witnesses the McKie’s have periled their case on are unreliable and have problems with the truth. They are unreliable as they change their story every time they are challenged. Indeed of the four identifications they claim to be erroneous, evidence is available that two of them after review are accepted, that is the Ayrshire robbery that Alan Bayle claimed was ‘unsafe’, mark QD2 of David Asbury that the Danes so spectacularly failed to identify. And now indeed, further independent verification of mark QI2 as the deceased, which contradicts Wertheim and Bayle, and shows that they both got it wrong.

Before the various people that have made judgements in this case and expressed their opinion, they should have reviewed the ‘experts’ the McKie’s rely on in the same manner that we were reviewed. A review that showed our work to be 100% reliable and accurate. These experts would have been unable to provide the same quantity of cases for a two year period that our management supplied on our behalf. If the same reviewers were used (New Scotland Yard fingerprint department) then we are confident that these ‘experts’ would not achieve the same level of accuracy and reliability that was found in our work. This surely must be done in order to see which experts are reliable and capable.

The Scottish Ministers appear to have settled with the McKie for some unclear reason, possible explanations are their own self preservation or more likely the protection of the Lord Advocate and the Crown, and to a lesser extent the protection of the reputation of Strathclyde Police.

The Scottish Fingerprint Service has recognised the operational benefit of employing experts only as experts and has in the last year removed the last dual role experts, therefore reliance is placed on the master of one trade rather than the jack of all trades.

It appears that our ‘Human Rights’ have been breached at every opportunity and that a virtual lack of the employers duty of care towards us has been obvious. I may be cynical but attempts have been made towards a duty of care within the last six months. Unfortunately this does not undo the lack of care for the previous nine years.

We have had to endure regular vilification by the pro McKie media, all clearly orchestrated and based on falsehoods and the McKie’s unfounded criminal complaints to the Crown about us.

We are very concerned that our management appear to be controlled by those above them, as they have not been allowed to publicly express their support for us and challenge many of the misleading statements that appear in the media.

Malcolm Graham the independent fingerprint expert employed by the Asbury defence team wrote in the Glasgow Herald (20) “She had her day in court, was acquitted and left the court without a stain on her character. She had her rights,
she exercised them and she and her father still do so with almost unanimous support from the media. A triumph for Scottish justice” He goes on to say “The real injustice is that four fingerprint experts from the SCRO were suspended, not for mistakenly identifying a fingerprint, nor for incompetence, but because an allegation of serious criminal conduct was made against them” and further on he says “It is surely their rights that have been infringed. Each party in a dispute has an unalienable right to be heard and to prepare their case thoroughly- except the four victims at the SCRO” His final comment should cause a lot of reflection and consideration as he says “An opinion held by a large number of individuals is not necessarily the correct one”

Charles Stewart
May 2006
Dear Pauline

Thank you for your letter of 15 May about your Committee’s inquiry into the Scottish Criminal Record Office and the Scottish Fingerprint Service and requesting access to confidential reports held by the Executive.

I fully understand that the Committee wishes to have access to the two reports that were commissioned by the Executive from John MacLeod and a further report which was prepared by Michael Pass. The Executive is committed to being as helpful as possible to the Committee in the conduct of this inquiry and so, as I said in my letter of 13 April, it was only with the greatest reluctance and after careful consideration that I concluded that these reports would not be made available.

It is important to be clear about the reasons for that conclusion. It is assuredly not, as Mike Pringle claimed on 26 April (column 2920), that “there must be something in those three reports [i.e. the Mackay report and two MacLeod reports] that somebody is trying to hide.” In fact, the content of the reports – whether they are favourable to one side, or the other, or neither – has played no part whatsoever in my consideration. As I tried to make clear in my letter of 13 April, it is the purpose for which the reports were commissioned, not their content, that has been the issue. It has long been accepted that reports commissioned for the purpose of civil proceedings are not released and it is that principle that, to protect the public interest in future cases, I am seeking to preserve here.

As I have previously stated, it is a principle of Scots law that neither party to any litigation is obliged to disclose reports commissioned for the purpose of the litigation. Notwithstanding that principle, you suggest that the Executive retains the discretion to disclose them. That discretion could be exercised, however, only to the detriment of the public interest because, once compromised, the rule that such reports are not disclosed would no longer be clear. That would create uncertainty about if
and when such reports might be disclosed. As set out in my letter of 13 April, that could seriously compromise the ability of Ministers to pursue or defend litigation in the public interest in the future.

The ability of Ministers to pursue or defend litigation in the public interest could also be compromised if experts from whom we may commission reports believe, as a result of the current inquiry, that there is a possibility that undertaking such work opens them to public examination in Parliament. Clearly, a perception that they might be put in that position could lead to reluctance to undertake work for the Executive, which would make it harder for Ministers to secure the type of confidential advice and reports that other litigants can obtain. I am sure the Committee will bear these important considerations in mind in determining its approach to witnesses. And I should clarify that for the Executive’s part, and contrary to some speculation, we have not imposed a ‘gagging order’ or, indeed, any new constraints on Mr MacLeod or Mr Pass: we are merely maintaining the standard approach to confidentiality that is implicit at the outset for all work of this type.

Let me assure you again that I have no desire to do anything that would impede the work of the Committee. In your letter you suggested that you and I, together with our respective advisers, might meet to discuss the issues associated with these reports. I would be very happy to meet you to discuss how the Executive can assist the inquiry.

CATHY JAMIESON
Thank you for your letter of 15 May in connection with your Committee’s inquiry into the Scottish Criminal Record Office and the Scottish Fingerprint Service in which you seek a copy of the report prepared by DCC James McKay and any other unpublished reports which I hold which may be relevant to the inquiry.

I would, of course, wish to assist you in any way that I can and I confirm that I am happy to appear before the Committee in due course if it considers that to be appropriate. But my position in relation to disclosure of the McKay report has already been made clear.

It is a fundamental principle in our democracy that persons who are accused or suspected of committing a criminal offence are presumed to be innocent unless and until found guilty in a criminal court. For this reason, the State should not accuse a citizen of having committed a criminal offence unless that allegation is made in a court of law.

Accordingly, reports to prosecuting authorities which may contain allegations of criminal conduct by individuals are regarded as highly confidential since putting such reports in the public domain risks subjecting citizens to trial by media, without the evidence being tested in court, and without the protections afforded to accused persons. Reports by police officers to the Procurator Fiscal are protected by common law duties of confidentiality and are also governed by the terms of the Data Protection Act.

I am obviously aware that the substance of the McKay report is already in the public domain following the publication of the full Executive Summary on a number of websites. It is also clear that a number of individuals have had copies of that document for some time prior to publication on the internet.

I do not intend to afford any form of legitimacy to these unauthorised disclosures, nor detract from the fundamental principles that I have set out above, by placing any part of the McKay report in the public domain. I also believe that consideration of the report will lead to a process that focuses on the allegations of criminality, as well as the decision to take no proceedings, notwithstanding the assurance that you seek to provide in your letter, and the fact that the role of the Crown does not,
quite properly, form part of the Committee's remit.

I strongly deplore the unauthorised disclosure and publication of parts of the Mackay report. It has exposed the individuals concerned to trial by media, it has undermined the independence of the prosecution, the confidence that should exist between the Crown and the police, and the confidence that individuals can have that what they tell investigators will only be revealed in a court of law.

As far as any other reports that I hold are concerned, they are governed by the same fundamental principle of confidentiality which underpins our system of investigation and prosecution of crime. As the head of that system, it would be entirely inappropriate for me to take any steps that would undermine it.

Yours sincerely,

COLIN BOYD