

Friday, 27th November 2009

1

2 (10.00 am)

3 THE CHAIRMAN: Before we begin this morning with
4 Mr Russell's closing statement, there was a question
5 yesterday about the transcript. It has been checked and
6 I am told that the stenographer is happy with the
7 transcript as it is. If there's still any anxiety about
8 it, an opportunity will be given to you to listen to it
9 and if there is still a dispute about it then I can
10 listen to it. But for the moment after listening to the
11 tape recording or the digital recording I think it is it
12 is thought to be accurate.

13 MR SMITH: Thank you, sir, I'd prefer the opportunity to
14 consider the position. I wasn't told just until about a
15 minute ago what the position was but I would welcome the
16 opportunity to discuss it with the stenographers if I
17 could.

18 THE CHAIRMAN: Yes, you can do that and I give you an
19 opportunity to listen to it if you wish to.

20 The next matter I think is that you wish to
21 recall --

22 MR MOYNIHAN: No, sir, I was going to suggest that we
23 complete yesterday's submissions or closing statements.
24 I think that my learned friend Miss Grahame suggested
25 there had ben an error.

1 THE CHAIRMAN: Yes, I understand there was some point you
2 want to raise.

3 MISS GRAHAME: Yes, Mr Chairman, I am obliged. It has been
4 drawn to my attention that, in fact, there is an error
5 in my submissions from yesterday and in the
6 circumstances I would ask that a particular paragraph be
7 deleted from them. This is at page 32 of my
8 submissions, the final paragraph which extends into the
9 top of page 33 and it relates to Section 30 of the
10 Criminal Justice Bill.

11 It has been drawn to my attention that section does
12 not apply to Scotland and, in fact, the relevant
13 legislation for Scotland is the Criminal Justice and
14 Licensing (Scotland) Bill. The relevant section in that
15 Bill is section 6 which applies to disclosure.

16 Section 94 requires that defence statements be
17 produced by the defence when an indictment is served on
18 an accused he is to lodge that within at least 14 days
19 before a preliminary hearing and within 7 days before a
20 trial diet if there has been any material change in the
21 line of defence, but I wish to apologise for that error
22 which is entirely my responsibility.

23 THE CHAIRMAN: As long as it is corrected there is no
24 difficulty about it. Thank you very much for doing
25 that.

1 I see Mr Swann is here and you would like to recall

2 him --

3 MR MOYNIHAN: Yes, sir.

4 THE CHAIRMAN: -- to clarify one issue.

5 MR MOYNIHAN: To clarify one issue. It is not a subject of

6 any great difficulty but it may simply be preferable to

7 clarify it with Mr Swann's assistance because he is

8 here.

9 THE CHAIRMAN: Yes, is that all right, Mr Swann, if you

10 would like to come up.

11 You have already been sworn so there is no need to

12 repeat that.

13 **PETER SWANN (recalled)**

14 **Further examined by MR MOYNIHAN**

15 Q. Mr Swann, what I would like to do is just to clarify the

16 sequence of events relating to --

17 A. Sorry, Mr Chairman. Could someone just move those

18 curtains. The glare of the sun is right in my face.

19 THE CHAIRMAN: We will see if we can do that. The sun

20 hasn't been a problem recently.

21 MR MOYNIHAN: What I am being told also is the flex for the

22 microphone is caught, I think, by something being placed

23 on top of it so we will free that up just to make sure

24 that you are comfortable in the witness box.

25 Mr Swann, I am grateful to you. All I wanted to do

1 was to clarify the position relating to the document
2 that you produced for us on 22nd October and I am not
3 going to go over the whole of your testimony again.
4 What I am trying to do is just to reconcile some
5 passages that were thought on one view to have some
6 inconsistencies.

7 As you know, I have prepared nine propositions that
8 I have taken from your evidence and we will proceed
9 through them and use these propositions as a basis to
10 get some accuracy in relation to this position but,
11 please, feel free just to add or detract from the
12 propositions as we proceed.

13 A. Yes.

14 Q. First of all, my understanding is that Levy & McRae sent
15 you a package?

16 A. That's correct, yes.

17 Q. You were asked to concentrate on one particular exhibit
18 within that package, a comparison chart copy?

19 A. I was.

20 Q. The comparison chart provided was itself a copy?

21 A. It was.

22 Q. You have described it as not being a particularly clear
23 copy?

24 A. As I recall it was adequate for the job I had to do but
25 it wasn't obviously as clear as the original. It

1 couldn't have been.

2 Q. So if I then, in the sheet that you have in front of
3 you, if I adapt it to say it was not a particularly
4 clear copy but was adequate for the purposes of
5 identification?

6 A. It was, yes.

7 Q. You have also given a description from recollection,
8 insofar as you can recollect the description you gave
9 was that it was a sort of matt finish, grey, dull
10 reproduction and one that you had to take time with,
11 which you did?

12 A. Correct.

13 Q. You studied that image on alternate days?

14 A. I did.

15 Q. You formed an opinion on Y7 at that point by reference
16 to that material?

17 A. Yes.

18 Q. You sent the package, including the comparison chart,
19 back to Levy & McRae and did not keep a copy of it?

20 A. That's correct.

21 Q. The document that you produced on 22nd October to the
22 Inquiry is, therefore, a separate copy of the comparison
23 chart?

24 A. Yes.

25 Q. You received that copy some time later?

1 A. Correct.

2 Q. And you received it from someone other than

3 Levy & McRae?

4 A. Correct.

5 Q. But I take it you now have no clear recollection of when

6 you received it?

7 A. No, I haven't, no.

8 Q. Nor, in fact, from whom it came?

9 A. No, no idea.

10 Q. What I will do, because when my learned friend Mr Smith

11 was questioning you one of the images that we had was

12 overwritten, I will just check, in fact ... I am sorry,

13 it is simply the way my notes were. In fact, the image

14 was not overwritten.

15 You were asked some questions by Mr Smith about two

16 different possible originals and you had available to

17 you items on screen that are FI2210.02.

18 What I actually want to do, just for the avoidance

19 of any doubt, is just to look at this again for my

20 purposes. You have been provided in the witness box

21 with all the various originals of the documents.

22 First of all, the copy document that you produced on

23 22nd October is TS0019. We may just have to rotate it.

24 Mr Swann, because there are differences in the

25 numbering of the characteristics, I just have to be

1 quite clear in trying to figure out which original this
2 is taken from. The way that I sought to differentiate
3 is to look at the bifurcation that is above the core
4 which, on the item, if I look at Shirley McKie's
5 fingerprint as the clearer copy on the screen, at least
6 for me, is characteristic number 9?

7 A. Correct.

8 Q. Do you see that?

9 A. Yes.

10 Q. As to the possible sources of the underlying original,
11 if I begin just to discount it, please, I will begin
12 with production number 189. On a previous occasion you
13 were shown a copy which is SG0126. What I will use is a
14 better copy, DB0012H. You have, in fact, in front of
15 you the original, if you look at production 189.

16 A. Yes, I have.

17 Q. On screen we have brought up digital page 6 and you have
18 the original in front of you. Do we see, again, because
19 it is clearer if I look at Ms McKie's fingerprint, that
20 the bifurcation above the core in this version is
21 numbered characteristic number 8?

22 A. It is, yes.

23 Q. For that reason alone one could conclude that the
24 material that you were working from could not have been
25 a copy of production 189?

1 A. At the time when it was sent down to me?

2 Q. Yes.

3 A. It would appear so, yes.

4 Q. It would appear so.

5 A. Mm-hm.

6 Q. Because I don't wish to overstretch it, you have no
7 clear recollection of the original material?

8 A. No, I haven't. I mean, I can't cast my mind back that
9 length of time obviously but I cannot categorically
10 state that it wasn't this one that I saw because I can't
11 remember. I know it was a chart of this showing,
12 depicting, what I'm looking at but I can't be categoric
13 about it.

14 Q. That's fine, Mr Swann, in fact what I will then do is
15 the preferable line of question would be that the copy
16 that you produced for us, which is TS0019, just compare
17 it with what is on screen, the copy TS0019 cannot be a
18 photocopy of what we have on screen just now because the
19 bifurcation in what you have is numbered 9 not 8?

20 A. That's correct, that's correct, yes.

21 Q. Then if we look to the other two possibilities, the next
22 possibility -- and it was the one put to you in the
23 witness box on the previous occasion -- is that what you
24 produced on 22nd October is, in fact, a copy of
25 production 152. So if I bring up on screen ST0006H and

1 again we will just proceed through to the charting. On
2 this occasion it is page 7. The bifurcation, again
3 using Ms McKie's print as the clearer one, the
4 bifurcation is numbered 9?

5 A. It is, yes.

6 Q. Therefore, this is a possible source of what you
7 produced to the Inquiry?

8 A. Yes.

9 Q. What I will ask you to look at is, as I have already
10 shown you this morning, the way that I can differentiate
11 this from another version of something similar is if I
12 look to the spacing beneath the main pattern in Y7 on
13 the left-hand image. If I could bring up, please, a
14 second image side-by-side, if I bring up, please,
15 production 180 which is DB0011H. What I will do,
16 Mr Swann, is just enlarge the relevant images -- that is
17 the images of Y7. In each of these two productions, the
18 bifurcation immediately above the core remains numbered
19 9?

20 A. It is, yes.

21 Q. The difference between the two is that in DB0011 the
22 image has been cropped in such a way that there is less
23 unmarked area at the bottom of the image than there is
24 in production 152?

25 A. That's correct, yes.

1 Q. Looking at what we have on screen, may I take it that
2 the image, that the copy that you were able to provide
3 to the Inquiry looks more like the top one rather than
4 the bottom?

5 A. That's right, yes.

6 Q. So, therefore, the evidence that you gave, in fact, on
7 21st and 22nd October would be correct, that it is
8 likely that the ultimate source of the copy that you
9 produced is more consistent with the image on the top,
10 which is production 152, for the Inquiry ST0006H?

11 A. Yes, I would agree.

12 MR MOYNIHAN: Thank you very much, Mr Swann. That clarifies
13 the matter for me.

14 Sir, I do not know if there are any other questions
15 following on from that.

16 THE CHAIRMAN: Yes, has anyone any ...?

17 MR SMITH: Sir, can I just ask one question just to be clear
18 about it, which relates to the fact that this was just
19 an error that Mr Swann made?

20 THE CHAIRMAN: Yes.

21 **Further cross-examined by MR SMITH**

22 Q. Mr Swann, I just simply want to ask this: it was a long
23 time ago, of course, that you had available that
24 particular document and you thought that that was the
25 one that was sent by Levy & McRae. Have I got that

1 right?

2 A. I can't be accurate as to which one I received in the
3 bundle from Levy & McRae. I can't answer that.

4 Q. But just simply when you gave your evidence before it
5 was a mistake, as far as your recollection was
6 concerned. You just made a mistake. I am not
7 criticising you for that.

8 A. A mistake in what?

9 Q. In telling us before in the Inquiry that that was the
10 one that actually was sent by Levy & McRae. That's as I
11 understand your evidence?

12 A. Well, I made it clear at the start that I kept nothing
13 back; so therefore it couldn't have been a copy of what
14 I received. It's just the way the questions came that
15 there was some confusion, agreed.

16 Q. But when you told me you thought that was the one you
17 had been sent by Levy & McRae, as I understand your
18 evidence then you made a mistake in that evidence?

19 A. If you want to put it that way, then yes.

20 Q. I am simply wanting to clarify that, Mr Swann, because I
21 think we all understand people do make mistakes in the
22 course of their evidence occasionally because it is a
23 long time ago and you accept it is really just the
24 passage of time; is that right?

25 A. Indeed.

1 MR SMITH: Thank you.

2 MR HOLMES: No, thank you, sir.

3 THE CHAIRMAN: Thank you very much for making the journey

4 back again and clarifying that, Mr Swann. I am grateful

5 to you.

6 MR RUSSELL: Sir?

7 THE CHAIRMAN: I am sorry, Mr Russell, I should have asked

8 you.

9 MR RUSSELL: Sir, thank you.

10 **Further cross-examined by MR RUSSELL**

11 Q. Mr Swann, is it correct that on 2nd November on your

12 instructions I set out the correct events in an e-mail

13 to Gerry Moynihan?

14 A. That's correct, yes.

15 Q. Is that a hard copy of the e-mail in your possession?

16 A. It is, yes.

17 Q. Are you able to place that before the Inquiry?

18 A. I can, yes.

19 Q. Is it also correct that late yesterday afternoon while

20 we were travelling here in your car from England, on

21 your express instructions, we sent by Blackberry an

22 e-mail to the Inquiry confirming the events in the

23 following terms: we don't have a hard copy because it

24 was by Blackberry. On your behalf, it was said to the

25 Inquiry, to John Grady:

1 can interrupt. I am having problems with my LiveNote
2 connection. I wonder if this could be rectified before
3 Mr Russell begins if possible?

4 THE CHAIRMAN: Yes, shall we see if we can rectify that
5 before Mr Russell begins. **(Pause)**

6 **Submission by MR RUSSELL**

7 MR RUSSELL: Thank you, sir. I represent Michael Ross on
8 his own behalf and on behalf of Marion Ross; Peter
9 Swann, Shirley McKie's Independent Fingerprint Expert
10 prior to her trial for perjury, **Her Majesty's Advocate v**
11 **Shirley Jane McKie**; Martin Leadbetter; and John Berry.
12 I make a statement on their collective behalf.

13 As you know, we have had profoundly serious
14 misgivings concerning this Inquiry. We refused to sign
15 confidentiality undertakings and consequently have never
16 had access to the confidential core participants'
17 database.

18 Sir, this may be the Fingerprint Inquiry but the
19 fact remains it's very foundation rests on the
20 commission of murder and perjury.

21 In addressing the Inquiry yesterday Andrew Smith
22 referred to the evidence of Pat Wertheim and Arie
23 Zeelenberg and placed reliance upon the fact that:

24 "They did not reduce themselves to personal
25 attacks."

1 And invited you to contrast that with:

2 "The continual approach by the SCRO, aided by
3 Mr Leadbetter and Mr Swann, which has been to attack
4 anyone who disagrees with them."

5 Mr Smith added that the language used by Mr Swann
6 and Mr Leadbetter was:

7 "Not in any sense replicated in any statement or a
8 report by those who support Ms McKie's position."

9 Mr Smith's statement was manifestly untrue. The
10 McKie experts, Pat Wertheim, Arie Zeelenberg and Allan
11 Bayle, have each launched personalised, grossly abusive
12 and deeply offensive attacks upon the SCRO experts and
13 any other expert who got in their way, notably Peter
14 Swann and Martin Leadbetter. By way of example it was
15 Wertheim who said the SCRO officers had about them the
16 odour of corruption and alleged fraud on their part. It
17 was Zeelenberg who made false allegations of
18 criminality --

19 THE CHAIRMAN: I think there is difficulty for the
20 stenographer picking up.

21 MR RUSSELL: Thank you, sir.

22 It was Zeelenberg who made false allegations of
23 criminality trying to rally the so-called world Internet
24 experts and it was Bayle who wrote that those experts
25 who wrote that those experts who would not take up

1 Shirley McKie's cause were no better than the Gestapo
2 who herded the Jews into the gas chambers.

3 These people are sanctimonious liars. Andrew Smith
4 again yesterday afternoon alleged that in his
5 presentations, to include those of this Inquiry, Robert
6 Mackenzie's evidence triggered:

7 "Serious questions over its veracity",

8 -- and that his:

9 "... desperation shows he is either deluded or,
10 frankly, attempting to deceive. Either way he is, we
11 say, utterly discredited."

12 That was, however, an inherently dishonest and
13 unwarranted attack upon the integrity and character of
14 Robert Mackenzie. However, I cite it for one good
15 reason and that is to demonstrate how the McKies and
16 their lawyers operate and have operated throughout. The
17 fact is, however, that the character, professionalism,
18 expertise and honesty of Peter Swann, Martin Leadbetter,
19 John Berry, Robert Mackenzie, Fiona McBride, Allister
20 Geddes, Hugh MacPherson, Terry Foley, Alan Dunbar and
21 those at SCRO is beyond reproach, as has been
22 demonstrated before this Inquiry.

23 For their parts the Ms McKies and their lawyers are
24 nothing if not consistent and an example of that is to
25 be found in the letter of 14th July 2000 from Bill

1 Gilchrist, Regional Procurator Fiscal, to Frank Crowe,
2 the then Deputy Crown Agent. The letter is useful
3 because it shows that Mr Iain McKie and James Cassel,
4 his solicitor, met with Mr Gilchrist and alleged that
5 the conspiracy against Shirley, as they put it,
6 essentially started with the Asbury case and it is
7 recounted how McKie and Cassels made allegations of
8 conspiracy and perjury, both in the Asbury and the McKie
9 cases. It demonstrates how the McKies worked in tandem,
10 in harness, with their lawyers.

11 That was back in July 2000 but yesterday afternoon
12 Andrew Smith was, again, on the attack this time
13 alleging:

14 "That professionals, experts, those in the criminal
15 justice system have lied here. The problem is we don't
16 know when the lies stop and the truth commences."

17 Mr Smith went on to say:

18 "There are a number of victims in this matter, not
19 just Shirley McKie and David Asbury."

20 That again is the character approach of portraying
21 Shirley McKie and David Asbury as victims, which is the
22 last thing in this world that they are.

23 Mr Smith eventually got round to Marion Ross with an
24 observation which ranked as sanctimonious hypocrisy of
25 the highest order saying:

1 "At the end of the day, the victim that remains
2 above all is Marion Ross. To date no-one has been
3 convicted of her murder and that is a tragedy."

4 However, we say that Mr Smith's client, David
5 Asbury, was properly convicted of Marion Ross's murder
6 on overwhelming evidence. The McKie/Asbury team, before
7 this Inquiry, has even had to abandon the fiction that
8 David Asbury's fingerprint on the gift tag of the Marion
9 Ross Christmas present was a forgery. The only tragedy
10 in relation to the murder conviction was that it was
11 deliberately and dishonestly undermined by Iain and
12 Shirley McKie, which was the grossest conceivable
13 betrayal of their Police Service.

14 It was Mr Smith who alleged yesterday that:

15 "Professionals, experts, those in the criminal
16 justice system have lied here and that the problem is we
17 don't know where the lies stop and the truth commences".

18 Since Mr Smith poses the question as to not knowing,
19 "when the lies stop and the truth commences", we can do
20 no better than to refer him and this Inquiry to the
21 evidence of Iain McKie on 15th October. The very
22 specific allegation put to Mr McKie by Mr Moynihan which
23 had been made by us was that Shirley McKie, "did not
24 give a true account in her perjury trial". Mr McKie
25 admitted that, notwithstanding her answers on oath

1 whilst under cross-examination by the Advocate Depute
2 during her perjury trial, Shirley McKie was fully aware
3 of Peter Swann's work as her Fingerprint Expert and that
4 he had reported that mark Y7 was her left thumbprint.
5 Mr McKie made his admission of 15th October in the face
6 of overwhelming evidence which had been presented
7 previously by us and others.

8 Andrew Smith told the Inquiry yesterday, however,
9 that they didn't know, "when the lies stop in the truth
10 commences". Applying that statement, it is clear that
11 Iain McKie and Shirley McKie were fully aware of the
12 fact that to adopt Mr Moynihan's question of
13 15th October Shirley McKie, "did not give a true account
14 in her perjury trial".

15 Useful guidance is to be found in the Perjury Act
16 1911, section 1 of which is couched in the clearest
17 possible terms and is merciless:

18 "If any person lawfully sworn as a witness in a
19 judicial proceeding wilfully makes a statement material
20 in that proceeding which he knows to be false or does
21 not believe to be true and shall on conviction thereof
22 on indictment be liable to penal servitude for a term
23 not exceeding 7 years."

24 If, as is clear from the evidence and Mr McKie's
25 belated admission of 15th October, that Shirley McKie

1 was prepared to lie in her perjury trial concerning her
2 Fingerprint Expert Peter Swann and his identification of
3 mark Y7 as being her left thumbprint, then we say she
4 would certainly have had no reservations about giving
5 equally false testimony in the trial **Her Majesty's**
6 **Advocate v David Asbury** concerning her entry into the
7 crime scene of Marion Ross's murder.

8 Andrew Smith and the McKie lawyers themselves ask
9 this Inquiry when do the lies stop and the truth
10 commences? So I ask them why they collectively lied to
11 the Scottish Parliament in their signed statement of
12 April 2006 which must be contrasted with Mr McKie's
13 evidence of 15th October 2009. The statement was, and
14 it was signed by Andrew Smith and others:

15 "Shirley McKie advises us and we have no reason to
16 doubt this that she was not aware of the opinion of
17 Swann on the matters that she was asked about. At all
18 material times her father was being advised of the
19 developments and not all matters were communicated to
20 her."

21 That was a manifestly false statement.
22 Adopting Andrew Smith's words from yesterday, "we don't
23 know where the lies stop and the truth commences", but
24 it doesn't end there. Andrew Smith and his team have
25 for years contended that:

1 "No expert who was asked to provide an opinion on
2 the matter of comparison of the prints prior to Shirley
3 McKie's perjury trial stated that there was a match
4 between the prints", that is to say, mark Y7 and Shirley
5 McKie's left thumbprint. Again, a gross false
6 statement.

7 That brings me full circle, sir, back to the
8 disappearance of all of the legal files of Levy & McRae,
9 Shirley McKie's solicitors in the perjury trial **Her**
10 **Majesty's Advocate v Shirley Jane McKie a/k/a Cardwell.**

11 On 13th November I communicated with the Inquiry and
12 said:

13 "The Chairman has been content to excuse both David
14 Asbury and Shirley McKie from giving evidence on oath.
15 It is, however, a matter of record that both Asbury and
16 McKie have been of sufficiently robust health to
17 entertain countless journalists and to record media
18 interviews. Ms McKie was certainly well enough to
19 attend the Court of Session in order to give evidence
20 but then again the incentive of such appearance was the
21 prospect of her claiming £1 million in compensation.
22 Ms McKie was well enough to attend the Justice 1
23 Committee of the Scottish Parliament but quickly feigned
24 outrage when her victim status was challenged. For her
25 part, Ms McKie has publicly characterised the

1 SCRO experts and others as spineless maggots and
2 criminals. Ms McKie also made many poisonous
3 allegations against Mr Swann.

4 "However, whilst Ms McKie's health permits her to
5 utter insults with the propensity of a fish wife she is
6 apparently too ill to submit to cross-examination on
7 behalf of those she abuses. The Chairman is on notice
8 that Ms McKie committed perjury in her perjury trial,
9 **HMA V Shirley McKie**. As matters stand, the Chairman has
10 been entirely content to revoke Ms McKie's statutory
11 notice by reliance upon such testimony, notwithstanding
12 the fact that it was perjurious, as was finally admitted
13 by Iain McKie on 15th October 2009."

14 "The Chairman conducted his investigation of
15 Ms McKie's medical condition with inappropriate secrecy
16 and entirely to the conclusion of those entitled to
17 maintain an interest. Indeed, I am not even permitted
18 to know the name of the medical practitioner who
19 conducted Ms McKie's examination.

20 "As matters stand, Mr Swann stated clearly at an
21 early stage in giving his evidence-in-chief to the
22 Inquiry that all exhibits received from Ms McKie's then
23 solicitors, Levy & McRae, had been returned to them.
24 Since the Chairman will not allow the issue to be put to
25 Mr McKie the question arises as to our right to secure

1 corroboration through inspection of Levy & McRae's
2 files. Such files will inevitably have been passed on
3 to the successor solicitors and having regard to the
4 nature of the intervening civil proceedings will
5 doubtless have been preserved. Would you, please,
6 therefore confirm that such files have been obtained by
7 the Inquiry and they will be made available to me in
8 their entirety for inspection prior to Mr Swann's
9 resumption of evidence. It is of course unacceptable to
10 have Mr Swann re-examined as to the documentary
11 instructions received from and returned to Levy & McRae
12 when both that firm's file of papers and Ms McKie
13 herself are being protected from examination within the
14 Inquiry."

15 That was followed -- and I will say this fairly
16 briefly -- by a communication to the Inquiry from me on
17 16th November where I took issue concerning the report
18 that Levy & McRae's files had been lost and I said:

19 "I would remind the Inquiry that in our submission
20 of 14th November 2008 I raised this very issue:

21 'Thereafter the Inquiry should request the files of
22 Levy & McRae in their capacity as solicitors for Shirley
23 McKie in the case of **HM Advocate v Shirley McKie**. If
24 Shirley McKie refuses to give authority for disclosure
25 of Levy & McRae's papers, then that will be a matter to

1 be addressed by the Chairman."

2 Continuing the quotation:

3 "In the circumstances and having regard to the
4 passage of a full 12 months the question arises as to
5 what steps were taken by the Inquiry to secure such
6 evidence and more importantly precisely when.

7 Immediately I have the Inquiry's response I will be in a
8 position to further advise Mr Swann. As matters stand,
9 the loss of Levy & McRae's files, if confirmed, will
10 constitute a flagrant attempt to pervert the course of
11 justice as well as the further criminal offence of
12 obstruction contrary to section 35 of the Inquiries Act
13 2005. Such offences will have been committed by or on
14 behalf of Shirley McKie who, by her own father's
15 admission, gave perjured evidence in the proceedings **Her
16 Majesty's Advocate v Shirley McKie.**"

17 As at 7.00 pm yesterday evening I received an update
18 from John Grady who, in summary, gives an account of the
19 way in which the file may or may not have been passed
20 between four firms of solicitors representing Shirley
21 McKie to include Levy & McRae, Hughes Dowdall, Cussells,
22 Digby Brown and, as matters stand, the Levy & McRae
23 files cannot be found. So between four firms of
24 Scottish solicitors acting for Shirley McKie they claim
25 to have lost all of her files from the perjury case.

1 For our part we do not believe a word of it. As stated,
2 I first asked this Inquiry to obtain those files in
3 December 2008 since I recognised the importance of them.

4 So, sir, as matters stand Shirley McKie has not
5 appeared before this Inquiry in order to give evidence
6 on oath claiming that medical grounds prevent such
7 appearance. At the same time all of her files from her
8 perjury trial have disappeared, supposedly lost by one
9 or more of her many lawyers.

10 I cite that in stark contrast to the positions of
11 Peter Swann, Martin Leadbetter, Allister Geddes, Fiona
12 McBride, Terry Foley, Robert Mackenzie, Hugh MacPherson,
13 Alan Dunbar and others, all of whom have appeared before
14 the Inquiry and presented themselves for
15 cross-examination on oath and, no, we did not lose our
16 files along the way nor did any of us commit perjury.

17 Which brings me to another of Andrew Smith's
18 victims, David Asbury. We ask where is he? This was
19 his opportunity to give his evidence. Asbury has the
20 same penchant as McKie and that is that they give their
21 evidence through the press, through the media, through
22 the BBC, through documentaries. They do not appear on
23 the day.

24 What I say, sir, is that David Asbury has
25 demonstrated the same traits of cowardice that led him

1 to trick his way into the home of Marion Ross leaving
2 behind his fingerprint on a Christmas present gift tag
3 bearing the seasonal greeting:

4 "To Katy love and best wishes, Marion".

5 Knowing that he had left behind that fingerprint was
6 one reason perhaps why it took David Asbury 38 seconds
7 to answer the question:

8 "Did you murder Marion Ross?"

9 So there we have it, sir. No David Asbury, no
10 Shirley McKie and none of Shirley McKie's files from her
11 lawyers.

12 I would however point out one matter to Andrew
13 Smith. Yesterday he raised comment as to the fact that
14 John Berry had not appeared before the Inquiry. I would
15 respond by pointing out three matters. Firstly, John
16 Berry's 2005 signed statement was lodged with the
17 Inquiry. Secondly, Mr Berry stands by his evidence to
18 the Justice 1 Committee of the Scottish Parliament, a
19 transcript of which was lodged with this Inquiry.
20 Thirdly, Mr Berry stands by his identification of each
21 mark in relation to Shirley McKie, David Asbury and
22 Marion Ross as has also been evidenced by his signature
23 having been endorsed upon a number of the original
24 fingerprint charts previously lodged with the Inquiry.

25 I point out, sir, that as I have previously advised

1 this Inquiry Mr Berry remains terminally ill in
2 consequence of metastatic prostate cancer. He remains
3 in the Queen Victoria Hospital being nursed and
4 comforted by his devoted wife Diane and family. He has
5 been seriously ill throughout the course of this Inquiry
6 and, indeed, was gravely ill when he made the journey to
7 the Scottish Parliament in order to give his evidence to
8 the Justice 1 Committee.

9 Martin Leadbetter visits Mr Berry on a regular basis
10 and attests to his condition. We have put it at its
11 bluntest, as perhaps the only way it can be put is that
12 Mr Berry is nearing the end. If it was not for that,
13 nothing, coach and horses would not have prevented
14 Mr Berry coming before this Inquiry.

15 Malcolm Ross has also made a brief closing statement
16 to the Inquiry. It is signed and dated 25th November.
17 I say it is signed and dated because the last time I
18 cited a statement from Mr Ross the McKie's Internet
19 supporters suggested that I had made it up, which is
20 their way, when they are not in Barlinnie Prison they
21 are making allegations on the Internet.

22 What Mr Ross says is this:

23 "It has been quite clear from the outset with the
24 very restricted Terms of Reference agreed between the
25 Chairman and Government that any kind of justice for

1 Marion Ross was going to be a pipe dream. Any misguided
2 hope that the Inquiry would cast light into the shadows
3 of the injustice perpetrated on the SCRO team and Marion
4 Ross was quickly dispelled by this serial malfeasance of
5 members of the law profession in Scotland, both in the
6 Inquiry team and in those involved in the earlier facets
7 of the McKie and Asbury cases. These malfeasances were
8 manifest in the following ways: the untruthful
9 declaration that the Inquiry lawyers were independent of
10 Government; the cloak of obscurity thrown around the
11 process of the appointment of advisers to the Inquiry;
12 the failure of the Inquiry to deal with the blatant
13 attempts of the International Association for
14 Identification to pervert the course of justice by
15 actions prejudicial to the evidence of Messrs Leadbetter
16 and Swann or to investigate the role of other core
17 participants and advisers to the Inquiry in the
18 instigation of the proceedings of the IAI; the failure
19 of the Inquiry to require the attendance as witnesses
20 under oath of Shirley McKie and David Asbury; the
21 failure to allow the interrogation of Lord Boyd of
22 Duncansby on the matters concerning the disappearance of
23 evidence vital to the identification of person
24 responsible for the Marion Ross; the apparent conspiracy
25 among lawyers involved with the McKie family over the

1 years to ensure the disappearance of files detrimental
2 to the McKies but beneficial to the course of justice;
3 the failure of the Inquiry to investigate and identify
4 those responsible for the gross dereliction of duty in
5 failing to apply for a retrial of David Asbury for the
6 murder of Marion Ross.

7 "If the primary underlying purpose of the Government
8 behind the setting up of the Inquiry was to re-establish
9 public confidence in the legal processes in Scotland,
10 then the Scottish public has been let down by the
11 Inquiry's abuse of its powers. The only thing that will
12 be clear to the Scottish people is that justice is
13 ill-served by the law and that the law is ill-served by
14 Scottish lawyers.

15 "D Malcolm Ross, 25 November 2009."

16 The SCRO core participants, the Fingerprint Experts,
17 have each come before this Inquiry and defended their
18 identifications in respect of Shirley McKie, David
19 Asbury and Marion Ross. They have been supported in
20 those identifications by the independent experts: Peter
21 Swann, Shirley McKie's own Fingerprint Expert; Malcolm
22 Graham, David Asbury's own Fingerprint Expert; John
23 Berry, and Martin Leadbetter.

24 The fact that Shirley McKie's own Fingerprint Expert
25 and David Asbury's own Fingerprint Expert came before

1 this Inquiry maintaining each identification
2 demonstrates the immense integrity and invaluable
3 Independence of these independent experts.

4 I now bring this to a close. In so doing, in
5 respect of a man who has suffered a barrage of
6 criticism, I take a moment to pay tribute to the
7 dedication, determination, tenacity and integrity of Les
8 Brown in conducting his investigation into these
9 matters. We are very grateful to Mr Brown.

10 I say, sir, that Scotland should be proud of its
11 Fingerprint Experts, Robert Mackenzie, Allister Geddes,
12 Terry Foley, Fiona McBride, Alan Dunbar, Hugh McPherson
13 and those who have appeared. They have each been
14 supported by Peter Swann, Martin Leadbetter and John
15 Berry.

16 We simply leave the McKies and their lawyers to the
17 media, the Americans, the Danes and the Dutch and, of
18 course, their worldwide Internet experts. Thank you,
19 sir.

20 THE CHAIRMAN: Thank you.

21 MR MOYNIHAN: Sorry, sir, can I just make one point clear
22 because Mr Russell has made some statements about some
23 individuals, in particular some individuals who have not
24 been called to this Inquiry and therefore not had an
25 opportunity to answer, in particular in relation to

1 Mr David Asbury. This is of course an inquisitorial
2 process. The Inquiry Team has considered what witnesses
3 would have relevant evidence to provide. We have been
4 open to suggestions by core participants and, indeed, we
5 have called, as you will be aware, witnesses who other
6 core participants have suggested to us may have relevant
7 evidence.

8 I should make it clear, sir, that I, on behalf of
9 the Inquiry Team, did not consider that Mr David Asbury
10 had relevant evidence and, accordingly, I never did ask
11 Mr David Asbury to give evidence. Mr Russell did raise
12 with us the question of calling Mr Asbury and on
13 6th November he was told that the appropriate procedure
14 was to make an application to have Mr Asbury give
15 evidence, specifying what would be relevant in the
16 evidence of Mr Asbury and Mr Russell did not make such
17 an application. So the position is that Mr Asbury has
18 not been invited to give evidence because the position,
19 as far as the Inquiry Team is concerned, is that
20 Mr Asbury does not have evidence that would be relevant
21 to the limited Terms of Reference of this Inquiry.

22 THE CHAIRMAN: I need hardly say that I have listened to
23 each closing submission without interruption or comment
24 but of course the fact that these points have been made
25 does not mean for one moment, the fact that I have

1 remained silent, that I accept them.

2 That then concludes the oral part of the Inquiry.

3 The position is of course that the Inquiry does not end

4 until the report is published but, as I say, it

5 concludes the oral part.

6 I would just indicate that I intend to inspect the

7 doorframe which had the mark Y7 on it and also the tin

8 on which there were the number of marks, including the

9 one attributed Q12. Then I propose to review all of the

10 evidence and by that I mean not only the statements and

11 oral evidence that I have heard from witnesses who have

12 been called to give evidence, but also those statements

13 that have been taken by the Inquiry from others who have

14 not been called to give oral evidence. I shall also, of

15 course, have regard to the opening and closing

16 statements of the legal representatives.

17 I know that one question that people ask when one

18 gets to this stage of any Inquiry is when can they

19 expect to have the report. The position there is that I

20 should explain that the next course then is that when I

21 have reviewed the evidence I will prepare a draft of the

22 report and then I am going to give anyone, in accordance

23 with rule 12, who might be the subject of criticism in

24 the report or any organisation an opportunity to respond

25 to that.

1 I also intend, where I plan to make recommendations,
2 to give any organisation or person that is likely to be
3 affected directly by those recommendations an
4 opportunity to comment on them because the last thing,
5 as I explained in the course of the evidence, that I
6 want to do is to make recommendations which for some
7 reason unknown to me could not be put into practice and
8 I think that is only fair that that should happen.

9 Then when I have given a reasonable time for anyone
10 who might be the subject of criticism to respond or
11 those who might be the subject of recommendations to
12 express their views, then I will finalise the report and
13 it will be prepared for printing and publication.

14 So all I can say at the moment is that I will
15 endeavour and hope to complete all this as soon as I can
16 but, as I say, it will only be when that happens and the
17 publication takes place that the Inquiry will come to an
18 end.

19 Although I decided that the murder of Marion Ross
20 was not within the remit of the Inquiry, I need hardly
21 say that any material or information that has come to
22 light in the course of the Inquiry which may not have
23 been the subject of evidence because it was not directly
24 relevant to the Inquiry that could assist in the
25 investigation of this very grave, serious and appalling

1 crime that that is going to be made available to the
2 proper authorities.

3 The only remaining thing to say is that as this is
4 the last sitting here at the Community Central Hall I
5 want to thank the Chief Executive, the General Manager
6 and all the staff for giving up such a large area of
7 their premises for the Inquiry and I believe, certainly
8 as far as I am concerned, for looking after us so well.

9 My task would be all the more difficult, if not
10 impossible, without the note of the transcript. I am
11 sure we are all grateful to Georgina Ford who has been
12 our stenographer and has done it solo, other than with
13 her editor and husband, Ian Ford, and has provided I
14 think with quiet efficiency such a good transcript of
15 the proceedings and indeed has carried on late on
16 occasions without any sort of complaint. I am grateful
17 to her and also sitting on my left Miss Bahrami and her
18 predecessor, Miss Skene, who have been so efficient at
19 operating the Trial Director which I think has been very
20 helpful to the proceedings.

21 It only remains now for me to thank all those who
22 have assisted me, whether as legal representatives,
23 witnesses or indeed by coming along and showing an
24 interest in the Inquiry for their assistance and, as I
25 say, while for some the task may now be over I think

1 mine is probably just beginning but there we are.

2 Thank you all very much.

3 **(11.05 am)**

4 **(The oral hearings concluded)**

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