

**Justice 1 Committee**

**Scottish Criminal Record Office inquiry**

At its 19th Meeting, 2006, the Committee agreed to accept a late supplementary submission to the inquiry from Peter Swann. This is attached as paper 3.

Dougie Wands  
Senior Assistant Clerk

ADEN BS  
Ben Cousins  
Craig Gibson  
William Maxwell

CONCEPTEBS  
Edward G. Murphy  
Frank Harrison

OSGALBS  
Christopher  
Arundell  
Margaret Martin



**LEVY & McRAE**  
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266 St. Vincent Street  
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Telephone: 0141 307 2311  
Fax: 0141 307 6857  
0141 307 6858  
DX: GW 149 Glasgow

Reference: PW/MOR/MCK117/1

Vicemart Extension: 108

12th May 1998

Peter M Swann Esq  
Fingerprint Consultant  
35 Woodlands  
Horbury  
Wakefield  
WEST YORKSHIRE WF4 5HH

We hereby certify this to be a true  
and accurate copy of the original.

Signed  
TOWELLS, Solicitors

Dear Mr Swann

SHIRLEY JANE MCKIE OR CARDWELL

I represent Shirley McKie, a Police Officer, who is presently on bail having been charged on Petition Warrant with serious offences.

I enclose a copy of the Petition Warrant which discloses the crime alleged and a copy of her statement.

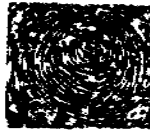
You will immediately be aware that there is in this case a suggestion that fingerprint impressions may have been "lifted" and transplanted.

In the first instance I would like to know whether or not you would be in a position to act as an expert to consult and possibly witness in this case. Please confirm your expertise providing me with a Curriculum Vitae or other relevant information together with a note of your charging. I will thereafter seek and hopefully obtain approval to instruct you in this matter.

Yours sincerely

PETER WATSON BA LLB SSC  
Solicitor Advocate

Enc.



# FINGERPRINT • ANALYSIS

Independent Consultant to the Legal Profession  
Peter M. Swann, FAE FFS

Our Ref: PMS

14th May 1998

Your Ref: PW/MOR/MCK117/1

Levy & McRae  
Solicitors and Notaries Public  
266 St. Vincent Sreet  
Glasgow  
G2 5RL

Dear Mr Watson.

SHIRLEY JANE MCKIE OR CARDWELL

I am in receipt of your letter of the 12th May 1998 regarding the above named together with accompanying correspondence and confirm that I would be pleased to assist you in this matter. I have, as you are no doubt aware, met both Mr McKie and his daughter and talked of the case at some length and am aware, therefore, of the question they both raised concerning events that have followed.

I enclose a brochure for your information (CV) and would add to this by informing you that obviously all my experience has been gained in the police service, the West Riding/Yorkshire Force. I rose through the ranks to be Chief Inspector in Charge of the Fingerprint Bureau, a position held for 15 years followed by a 3 year secondment in the rank of Superintendent as the 'Police Adviser' to the Home Office. I left this post in 1987 and since then have worked as an independent consultant. I am an accredited expert via the Academy of Experts in London.

My charges are in accordance with current legal aid rates, ie. £43 per hour. At this stage I could not give any indication as to the amount of time would be required to assess the evidence and report to you, but I feel it would be considerable and no doubt involve travelling to Glasgow. I would have to see all exhibits (fingerprint) in the case, documentation relating thereto, disposal of all marks and be provided with appropriate copies thereof.

Yours sincerely

Peter M Swann

**THE  
ACADEMY  
EXPERTS**

35, Woodlands, Horbury, Wakefield, West Yorkshire, WF4 5HH

Telephone: Wakefield 01924 290306 (Office) 01924 276986 (Home) Fax 01924 200917

Development : Examination : Assessment : Report : Briefing : Expert Witness



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Peter Watson  
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Voicemail Extension: 108

22nd May 1998

Peter M Swann Esq  
Fingerprint Consultant  
35 Woodlands  
Horbury  
Wakefield  
WEST YORKSHIRE WF4 5HH

Dear Mr Swann

SHIRLEY JANE MCKIE OR CARDWELL

Thank you for your letter of 14th May and I would like to confirm your appointment as an expert in this case at £43 per hour plus VAT.

I await the Crown's approval for access to the information.

Yours sincerely

PETER WATSON BA LLB SSC  
Solicitor Advocate

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Reference: PW/MOR/MCK117/1

Voicemail Extension: 108

17th June 1998

Peter M Swann Esq  
Fingerprint Consultant  
35 Woodlands  
Horbury  
Wakefield  
WEST YORKSHIRE WF4 5HH

Dear Mr Swann

SHIRLEY JANE MCKIE

We are pleased to confirm we have approval to employ your services to examine productions and complete a report for a sum, including outlays, travel and all other expenses, not exceeding £700.

Yours sincerely,

PETER WATSON BA LLB SSC  
Solicitor Advocate

PROFESSORS  
Toby Caplan  
Zoe Wilson  
W.P. Le Macouh

CONSEILLERS  
Leonard G. Morris  
Frank Durand

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Rory Samuels  
Amy Fortie  
Vivienne Morton



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Reference: PW/SB(DMcK) SJB/MCK117 1

Voice-mail Extension: 111

17th August 1998

Peter M Swan Esq  
Fingerprint Consultant  
35 Woodlands  
Horbury  
WAKEFIELD  
West Yorkshire WF4 5HH

Dear Mr Swan

SHIRLEY JANE MCKIE

We refer to our letter of 17th June 1998 and should be grateful if you would confirm to us whether you would wish to travel to examine the production or whether you wish us to arrange their uplift and forward them to you for your examination.

We should be grateful to hear from you in early course.

Yours, Sincerely

DAVID MCKIE

5/11/98

PARTNERS  
Betsy Caplan  
Peter Watson  
William Macreath

CONSULTANTS  
Leonard C. Murray  
Frank Davidson

ASSOCIATES  
Greg Sanders  
Anne Bennie  
Margaret Morton



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Reference: PW/DMcK/SJB/MCK117 1

Voicemail Extension: 111

20th August 1998

Peter M Swan Esq  
Fingerprint Consultant  
35 Woodlands  
Horbury  
WAKEFIELD  
West Yorkshire WF4 5HH

Dear Mr Swan

SHIRLEY JANE MCKIE

We thank you for telephoning us to confirm your availability.

We have made further contact with the Procurator Fiscal's Office to discuss the question of the availability of Productions. They are at present in Edinburgh but we await confirmation from the Procurator Fiscal that they will be returned to Glasgow in due course. Unfortunately, they will not release the Productions but are happy to make them available for your examination.

Accordingly, under the circumstances, we should be grateful if you would provide us with a range of dates over which time you would be available to attend to visit Glasgow to examine the same.

We look forward to hearing from you in due course.

Yours ~~A~~incerely

DAVID ~~M~~CKIE



# FINGERPRINT • ANALYSIS

Independent Consultant to the Legal Profession

Peter M. Swann, FAE FFS

Our Ref: PMS

21st August 1998

Your Ref: PW/SB(DMcK)SJB/MCK117.1.

Levy & McRae  
Solicitors and Notaries Public  
266 St. Vincent Street,  
Glasgow  
G2 5RL

Dear Mr McKie,

SHIRLEY JANE MCKIE

Further to your letter of the 17th August 1998 and to my telephone conversation regarding same, I confirm that, if it is possible to have all exhibits in the case delivered to the address shown, then this will be acceptable. All exhibits, I understand to include, actual lifted impression(s), negatives, forms, documentation etc.

Yours sincerely

Peter M Swann

**THE  
ACADEMY  
EXPERTS**

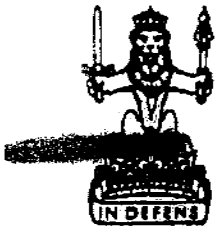
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Development : Examination : Assessment : Report : Briefing : Expert Witness







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Telephone 0141-429-5566  
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Please reply to :  
**D M Greaves**  
**Solemn Team 'C'**

Regional Procurator Fiscal: *Alfred D Vannet*

Messrs Levy & McRae  
Solicitors  
DX: GW 149  
Glasgow

Your reference PW/DMcK/SJB/MCK117 1

Our reference DMG/MB/98007845

Date 21 August 1998

Dear Sirs

HMA -v- SHIRLEY JANE McKIE or CARDWELL

I refer to your letter of 20th inst. Unfortunately, the position has not changed. Last week I was in contact with the Depute at Crown Office regarding this case. She assures me I should have Crown Counsel's instructions within the next 2 weeks. Thereafter, I will either request further examination of the productions which are at PSDB or I will arrange for their return to Glasgow.

I confirm that I will contact you as soon as all the label and documentary productions are available for examination.

Yours faithfully

~~D M GREAVES~~  
Principal Depute

ASSOCIATES  
Greg Sanders  
Anne Beanie  
Margaret Morton



DX: GW 149 Glasgow

DAVID MCKIE

PARTNERS  
Tony Caplan  
Peter Watson  
William Macreath

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Frank Davidson

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Voicemail Extension: PW/AMCC/SJB/MCK117 1

113

7th October 1998

Peter M Swann FAE FFS  
Fingerprint Analysis  
35 Woodlands  
Horbury  
Wakefield  
WEST YORKSHIRE  
WF4 5HH

Dear Mr Swann

SHIRLEY JANE MCKIE  
YOUR REF: PMS

We refer to previous correspondence and write to confirm that the Crown have indicated that the most crucial date of evidence, namely the piece of wood, is still with their Fingerprint Expert who is down in England. The wood has not been returned to Crown Office and they cannot give a time scale within which it will be. We will revert to you when it has been returned.

We believe it is highly unlikely that the Crown will agree to the Productions being released and sent to you in England and that we will have to make arrangements for you to travel to Scotland to carry out the necessary examination. We will revert to you with further details when they come to hand.

Yours sincerely

ANGELA MCCracken

Tony Copley  
Peter Watson  
William Macneath

Leonard G. Murray  
Frank Davidson

Greg Sanders  
Anne Bennis  
Margaret Morton



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**FACSIMILE MESSAGE**

TO: PETER SWAN FROM: ANGELA MCCRACKEN  
FAX NO: 01924-200917 DATE: 10/11/98  
ATTENTION: — TOTAL NUMBER OF PAGES: 1

**URGENT**

Dear Mr. Swan,

HNA v Shirley Jane McKea & Cardwell

Your ref: PMS

Could you please make contact with our  
Mrs. McCracken, Our Counsel Bert Kerrigan Q.C.,  
wishes to come down and meet with you  
tomorrow at your office to have a general  
discussion about the case.

Regards,

The information contained in this fax is strictly private and confidential and for the use of the addressee only; it may also be legally privileged and/or price sensitive. Notice is hereby given that any disclosure, use or copying of that information by anyone other than the intended recipient is prohibited and may be illegal. If you have received this fax in error please notify us immediately.

ADVISING  
Tony Caplin  
Peter Wilson  
William V. Smith

CONSULTANTS  
Leonard G. Smith  
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Reference: PW/AMCC/KW/MCK117-1

Voicemail Extension: 113

12th November 1998

Peter M Swann Esq  
35 Woodlands  
Horbury  
Wakefield  
Yorkshire  
WS4

Dear Mr Swann,

HMA v SHIRLEY JANE MCKIE

We refer to previous correspondence and also to our Mrs McCracken's telephone conversation with your wife. We would be obliged if you would please make contact with our Mrs McCracken on your return from Australia in order that we can arrange a mutually convenient time when Bert Kerrigan QC and Maurice Jamieson, Advocate can travel to West Yorkshire to meet with you to discuss this case.

We are anxious to progress matters and look forward to hearing from you at your earliest possible convenience.

Yours sincerely,

ANGELA MCCracken

# memo

Date: 02/12/98  
To: PETER SWANN  
Cc: HERBERT KERRIGAN Q.C.

From: ANGELA MCCRACKEN  
RE: HMA V SHIRLEY MCKIE

---

I HAVE BEEN TRYING TO CONTACT YOU BY TELEPHONE AND FAX.  
COUNSEL IS ANXIOUS TO MEET WITH YOU TOMORROW AND I WOULD BE  
GRATEFUL IF YOU COULD PLEASE TELEPHONE ME AS A MATTER OF URGENCY.  
THANK YOU.

OFFICE TEL NO. 0141 307 2311

MOBILE 0378 509181

02/12/98

Confidential

1



BARNES  
B. W. Caplan  
Peter Hanson  
William Macneath

CONSULTANTS  
Leonard G. Murray  
Frank Davidson

ASSOCIATES  
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Margaret Morton



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amccracken@lemac.co.uk

8 January 1999

Peter M Swann  
Fingerprint Analysis  
35 Woodlands  
Horbury  
Wakefield  
West Yorkshire  
WF4 5HH

Dear Mr Swann,

SHIRLEY JANE McKIE  
YOUR REF: PMS

We refer to the voicemail message you left on our Mrs McCracken's telephone and would advise that we have attempted to return your call but without success. Perhaps you would be good enough to telephone our Mrs McCracken on receipt of this letter.

Yours sincerely, /

ANGELA McCracken



PARTNERS  
Burt Cracken  
Peter Venson  
William Blacketh

CONSULTANTS  
Leonard G. Murray  
Frank Baskin

ASSOCIATES  
Greg Sanders  
Anne Bernie  
Margaret Horton



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amccracken@lemac.co.uk

22<sup>nd</sup> February 1999

Peter M Swann  
Fingerprint Analysis  
35 Woodlands  
Horbury  
Wakefield  
West Yorkshire, WS4 5HH

FAX NO: 01924-200917

Dear Sirs,

HMA v SHIRLEY JANE McKIE or CARDWELL  
YOUR REF: PMS

We refer to your telephone conversation with our Mrs McCracken and now enclose a copy of the Crown's Fingerprint Report together with other relevant Crown Productions.

We acknowledge that you will travel to Glasgow on Tuesday 2<sup>nd</sup> March 1999 and meet with our Mrs McCracken and Senior Counsel at 2:00pm within our office. We will arrange flights and will revert to you with confirmation of the times in due course.

We have once again requested that the Procurator Fiscal's Office supply us with photographs of the fingerprints and we hope to revert to you with copies of these in the next few days.

Yours sincerely,

ANGELA McCracken

Enc.

PARTNERS  
Tony Capron  
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William Macrae

CONSULTANTS  
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Frank Davidson

ASSOCIATES  
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Voicemail Extension: 113

[amccracken@lemac.co.uk](mailto:amccracken@lemac.co.uk)

26<sup>th</sup> February 1999

RECORDED DELIVERY

Peter M Swann Esq  
Fingerprint Analysis  
35 Woodlands  
Horbury  
Wakefield  
West Yorkshire, WS4 5HH

Dear Mr Swann,

HMA v SHIRLEY McKIE  
YOUR REF: PMS

We refer to the above and now enclose herewith a flight ticket in respect of your visit to Glasgow on Tuesday 2<sup>nd</sup> March 1999.

We also enclose herewith three videos, Volumes I, II and III of the Copy Productions and photographs we have obtained from the Procurator Fiscal's Office.

Yours faithfully,

ANGELA McCracken

*Angela McCracken*

PARTNERS  
Tony Curran  
John McEwan  
Angela McCracken  
0141 307 2311

CONSULTANTS  
Leonard G. Murray  
Heide Davidson

ASSOCIATES  
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Liam Bannister  
Margaret Nixon



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Reference: PW/AMcC/KW/ MCK117-1

Voice-mail Extension: 113

3<sup>rd</sup> March 1999

Peter Swann Esq  
Fingerprint Analysis  
35 Woodlands  
Horbury  
Wakefield  
West Yorkshire, WF4 5HH

Dear Mr Swann

HMA v SHIRLEY McKIE

We refer to the above and now enclose herewith Shirley McKie's left hand thumbprint.

Yours faithfully,

ANGELA McCracken

Enc.

SHIRLEY MIDDLE  
LEFT HAND THUMBPRINT

We hereby certify this to be a true  
and accurate copy of the original.  
Signed.....Towells.....  
TOWELLS, Solicitors



ASSOCIATES  
David Curran  
David Watson  
John A. McDonald  
Craig Sanders

CONSULTANTS  
Leonard G. Stanley  
Frank Henderson

ASSOCIATES  
~~Shirley McKie~~  
Adele Hume  
Clifford J. McNamee



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Reference: PW/MOR/MCK117/1  
Facsimile Extension: 108

peterwatson@lemac.co.uk

12 March 1999

Peter Swann Esq  
Fingerprint Analysis  
35 Woodlands  
Horbury  
Wakefield  
WEST YORKSHIRE WF4 5HH

Dear Mr Swann

HMA V SHIRLEY MCKIE

I enclose a copy of a letter I have received from Shirley McKie together with my reply. I would be grateful if you could write to me in terms that may be passed on to Shirley McKie dealing with the matters which she raises.

If you feel there is any other step we can take to assist you in completing your report or providing a further report then you must be in touch as a matter of urgency.

Yours sincerely

PETER WATSON BA LLB SSC  
Solicitor Advocate

Enc.

12 March 1999

Shirley McKie  
161 Welbeck Crescent  
TROON  
Ayrshire

Dear Ms McKie

HMA V SHIRLEY MCKIE

I refer to my conversation with you on the evening of 11 March. Your letter of 7 March has been passed to Donald Findlay and to Victoria Young. I have requested, as a matter of urgency, a further Consultation in order that they can deal with the points you raise and you have the opportunity to articulate all your concerns.

So far as Mr Swann is concerned, he was given all the material which we hold which includes precognitions, Crown Productions, the video and, of course, your fingerprints. We held nothing back from him. Mr Kerrigan met with him for an entire day, Angela McCracken separately met with him and Donald Findlay has met with him. As far as I am aware all the issues which both Senior Counsel wished to explore were explored and Mr Swann's report reflects the issues concerned.

I will, as a matter of course, pass a copy of your letter to Mr Swann to determine whether or not he wishes to make any additional comments.

As you know, we also have the expert from the United States, Pat Wertheim, coming over.

I think we have explored the issue of fingerprints as fully as possible but I am anxious to have your confirmation that we have attended to all that you wish done. We have asked for the Strathclyde Police Memo.

At the end of the day it is a matter for Mr Findlay to determine the course of your defence and I hope that the change to Mr Findlay meets your earlier unhappiness with Mr Kerrigan.

You must let me know what further steps you consider we should take that have not already been taken and you must alert me as soon as possible to any concerns that arise.

I can tell you that I have spoken in detail with Mr Findlay who is content with the preparation and has expressed satisfaction with all the steps taken.

You mentioned in our telephone conversation some concerns about Angela McCracken's workload. I was a little surprised to hear this since Angela McCracken's workload is entirely normal and within the parameters one would expect in a litigation practice. I have checked the matter and I am entirely satisfied that she has allocated and is in a position to allocate all the time necessary to your case, as am I. I can assure you that as far as resources are concerned, we have an abundance of those and indeed there are others who are, from time to time, involved in your case which you will not necessarily have knowledge about.

If you do have any concerns in relation to resources I would be pleased to hear from you.

So far as your meeting with the expert is concerned I can tell you that it is not normal practice for an accused person to meet with an expert witness and it is a matter which has been raised with Mr Findlay. He is not keen that this takes place. Indeed the ethical practice is that an accused person should not meet and discuss evidence with any potential witness in the case.

12 March 1999

Shirley McKie

However, your letter and indeed a copy of this letter will be before Mr Findlay and hopefully these matters can be dealt with at Consultation.

Yours sincerely

PETER WATSON BA LLB SSC  
Solicitor Advocate

7, March, 1999.

Ms Angela McCracken,  
Levy and McCrae Solicitors,  
266, St. Vincent Street,  
GLASGOW G2 5RL

161, Welbeck Crescent,  
TROON.  
Ayrshire.

Private and Confidential

Dear Angela,

It's good to see last Friday in the past. I appreciate the help and encouragement given by yourself and Mr. Findlay.

With the trial now only four weeks away I feel the time has come for myself, my father and our supporters to become more involved and be given the opportunity to bring our considerable experience to bear on this case.

Our concerns are particularly strong in respect of the fingerprint experts as we appear to have been excluded from their deliberations.

I am not aware of any legal or practical reasons why I should not be able to speak to any expert witness before their examinations and to pass on to them my knowledge, feelings and concerns. I do of course respect their right to carry out the actual examination as they see fit.

I would appreciate it if we are fully consulted before Mr. Wertheim or any other defence expert carries out their examinations.

In addition it would be extremely helpful if you could forward me a copy of the brief you prepared for Peter Swann and the information sent to Pat Wertheim as soon as possible.



In the absence of information to the contrary we are also concerned that our experts might be tending to follow the prosecution lead instead of working to an agreed defence agenda prepared by the whole defence team including ourselves.

We are sure you will agree that it is important that we seek to answer not only the prosecution questions but pose some very relevant ones of our own and take **nothing** which the prosecution or their expert witnesses say for granted.

This includes the photographs, fingerprints, and forms etc. provided by the prosecution.

For example Peter Swann did not even see me or take my prints prior to doing his examination. While I am sure you passed on my comments and reservations to him in your briefing it appears as if, initially at least, he accepted the elimination prints the prosecution had provided. How do we know the fingerprint forms have not been fabricated? Is the print now on the door facing the same as the one which was allegedly there when initially examined?

Given the amount of evidence being gathered which proves that I was not at the locus the most relevant questions for the defence experts appears to be:

### **Who's print is it ? If it's mine who put it there and how ?**

This is a radically different way of looking at the problem. At present there appears to be an emphasis on the first part of the question whereas the second is critical.

I am impressed by Pat Wertheim's statement, " A naïve examiner who examines a fabricated latent but fails to detect it may well be contributing to the conviction of an innocent person." ( Page 2 'Detection of Forged and Fabricated Latent Prints' Journal of Forensic Identification 652 / 44 (6), 1994 )

The experts say that it is a central principle of fingerprint examination that prints cannot be lifted and laid without their ( the experts ) knowing it and without background 'noise' being present.

I know I have never entered the locus and there is a growing body of evidence to prove this

The conclusion must be, unless someone has an identical print to mine or the experts can indeed find the 'noise', that we are involved in a major challenge to fingerprint evidence.

This 'truth' must be put fully to the test and requires to be examined with all the intellect, skill, care and technical support we have at our disposal.

It appears as if **unidentified** prints are acceptable but the concept of **unexplained** prints almost appears too much of a challenge to the expert. Do they in seeking to sustain their reputation of rightness and integrity find difficulty in accepting they can be fallible and may simply not yet have the answers.

Please find attached some fingerprint issues which I believe should be considered for inclusion in any expert briefing you might provide.

Can I also remind you of your undertaking to obtain a copy of the Strathclyde Police memo of March, 1998, entitled, ' Safe Skin Lightly Powdered Latex Examination Gloves.'

I trust you will bear with my concerns but in the absence of information and given the relatively short time to trial is difficult for me to make the necessary informed judgments

I look forward to a reply by return.

Thank you for your help, assistance and understanding.

Yours sincerely,

**.Shirley McKie**

Encls:

## SOME QUESTIONS TO BE ANSWERED BY THE FINGERPRINT EXPERTS

**Discussion:** The following thoughts have been developed for the information of the Defence Team and the expert fingerprint witnesses. They do not claim to be informed but could form the basis for further inquiry or defence questions.

**Question:** **HOW DID THE FINGERPRINT GET THERE ?**

- 1) Did Shirley placed it there herself ? This is the critical question !!

There is a growing body of evidence, much of it from Police and related witnesses, that she was not inside the locus, had no discernible motive for being there and that she did not leave the alleged fingerprint . All the facts surrounding this case other than the disputed fingerprint point to her telling the truth. A valid question for the prosecution appears to be, 'If the print is hers, how did she put it there. ?'

On any objective measure she clearly had so much more to gain by lying and saying she was at the locus and had left the alleged fingerprint. She would have avoided prosecution and the threat of jail and loss of her job. She and her family would have been spared the unrelenting psychological trauma they have experienced over the past two years.

The hurt and damage which might result from her refusing to perjure herself has been evident for some time. It is inconceivable that she and her family would continue to lie in the face of such obvious health, financial and other losses.

**GIVEN THIS THE CENTRAL ISSUE IS :**

**'WHOSE FINGERPRINT IS IT ? IF IT IS SHIRLEY'S WHO OTHER THAN HER PUT IT THERE AND HOW' ?**

While we have employed fingerprint experts to answer these interlinked questions there is a danger that they will address the first part - 'Whose print is it ?' but fail to fully address the second 'If it is Shirley's who other than her put it there and how ?'

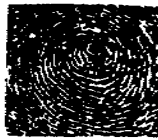
From this central questions others have been formulated.

- 2) Is there someone else with the same fingerprint who had access to the locus ? Has any check been made to compare her print with others found at the locus?
- 3) Has a mistake/deliberate deception been made by IB in their initial identification/ labeling etc. of the print?  
Is there now a cover up?  
Is the print now being examined by our experts the same one that was originally found by the IB?  
What did they do when they examined the bathroom door area on the 10<sup>th</sup> and 14<sup>th</sup>, January? Apparently they dusted first with aluminum powder and later with black powder. Is this standard procedure ? Is there evidence that this was the sequence of events ?  
Were the fingerprint procedures as stated in fact carried out?  
Does the positioning of the fingerprint on the door frame cause any concern ?
- 4) Has a mistake/deliberate deception been made by SCRO in their identification of the print from lifts/photographs provided by IB? Are the fingerprints on the elimination print forms all Shirley's, have the forms been altered in any way ? Have any mistakes been admitted by IB/SCRO in this inquiry or was it perfect ?
- 5) Is a cover up being perpetrated ? Was the original print wrongly identified ? Has a replacement print been forged/fabricated either when the frame was in position at the locus or after it was removed as a production ?
- 6) Is the fingerprint a forgery which has been placed at the locus by someone unknown?
- 7) Is the fingerprint a fabrication that has been left at the locus by someone unknown ?

- 8) **Has the print has been inadvertently/accidentally left at the locus by someone other than Shirley ?** Was the print unknowingly/accidentally picked up by a second party when they touched an item containing Shirley's fingerprint and the print was inadvertently transferred to the door frame ? Appears as if the person would have to be wearing latex gloves or some other suitable material for picking up the print and transferring it. Can you accidentally transfer prints under the right conditions from latex gloves or whatever onto another surface? Still appears as if some background 'noise' would be left. If you can purposely transfer prints then there must be a possibility of accidental transference under the right conditions. Are here any examples of this ?
- 9) **As far as can be ascertained were the correct procedures followed by the prosecution expert witnesses?** Have these procedures been critically examined.
- 10) **Can the fingerprint be further examined in any way by an electron microscope?** Would the use of such equipment increase the likelihood that background noise would be detected ? Would such equipment fully identify the sequence of powdering i.e. Aluminum first followed by Black Powder ? Were in fact both procedures carried out as stated ?

This list of questions is by no means exhaustive but is a summary of our thoughts to date.

It is unlikely that all of the above questions will be answered but they must be asked.



# FINGERPRINT • ANALYSIS

Independent Consultant to the Legal Profession  
Peter M. Swann, FAE FFS

Our Ref: PMS/1439/99

16th March 1999

Your Ref: PW/MOR/MCK117/1

Levy & McRae  
Solicitors  
266 St Vincent Street  
Glasgow  
G2 5RL

Dear Mr Watson,

HMA V SHIRLEY MCKIE

I am in receipt of your letter of the 12th March 1999 together with the matters raised by Ms McKie. I had, at the time of receipt of this letter and enclosures, already completed my report to Mrs McCracken in connection with my visit to Glasgow, the examination of exhibits and points raised in my meeting with Mr Donald Findlay.

I have, therefore, prepared an additional report to follow from the original, in which I have, as far as possible, answered the many issues raised by Ms McKie.

Yours sincerely

Peter M Swann

**THE  
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5

**FINGERPRINT · ANALYSIS**  
Independent Consultant to the Legal Profession

**ADDITIONAL REPORT**

7 This 'additional report' attempts to answer the many issues raised in the paper 'SOME QUESTIONS TO BE ANSWERED BY THE FINGERPRINT EXPERTS' and in this respect I would comment as follows:

HOW DID THE FINGERPRINT GET THERE?

- 1) Did Shirley place it there herself? This is the critical question!!

From my examination of the essential exhibits in the case, relevant to this question, ie. the door standard, the presence of the thumb print thereon and the fingerprint form of Ms McKie, as I have said in my previous report there is only one conclusion that I can arrive at, she must have put it there, herself. If she didn't, then someone else did and by what means? In view of comments I will pass in respect of further questions and with reference to my previous report, I cannot satisfactorily answer such an explanation, simply because I haven't got one. From a purely logical approach by a fingerprint person, the thumb print in question is present on the exhibit, I have no doubt as to its genuineness nor indeed have I any as to ownership of it. Having said this one reaches somewhat of an 'impasse' and quite frankly I cannot see any avenue in which progress may be made. I will however answer as many of the issues as I can and hope these can throw some light on the matter.

'WHOSE FINGERPRINT IS IT? IF IT IS SHIRLEY'S WHO OTHER THAN HER PUT IT THERE AND HOW'? (I note also your comments that there is a danger that the first part of this question, 'Whose print is it' will be addressed but that the second part 'If it is Shirley's who other than her put it there and how?', will not)

- 2) Is there someone else with the same fingerprint who had access to to the locus?

The fundamental basis for fingerprint identification is that we all have different ones. No one has ever been found to have the same sequence of characteristics as another, the probable foundation for this being that 'nature never reproduces herself'. We all share common patterns and types of ridge characteristics but the all important fact is that, irrespective of pattern or characteristic 'type', the sequence in which they appear has never been known to have been repeated.

Having been examining fingerprints for over 41 years, whilst I cannot present visual proof, I have no doubts at all that there is no one else with the same fingerprints as Ms McKie or anyone else for that matter.

# FINGERPRINT · ANALYSIS

## Independent Consultant to the Legal Profession

Having said this, there will be no other person with the same fingerprint as Ms McKie who will have had access to the location concerned. No such person will exist. In respect of checking procedures in Fingerprint Bureaux, I have little doubt that the elimination prints of police officers engaged in the enquiry will have been checked against marks found, this being standard procedure.

3) Has a mistake/deliberate deception been made by IB in their initial identification/labelling etc. of the print?

Is there now a cover up? - having seen statements of evidence, the many 'charts' prepared, the original exhibit etc. I could not subscribe to such a suggestion.

Is the print now being examined by our experts the same one that was originally found by the IB? - having seen the Left Thumb print in situ on the door standard, being satisfied as to its genuineness, I fail to see how it cannot be the same one.

What did they do when they examined the bathroom door area on the 10th and 14th January? Apparently they dusted first with aluminium powder and later with black powder. Is this standard procedure? Is there evidence that this was the sequence of events? - the first intimation I had of this 'dual' powdering was in a report prepared for the Prosecution by Mr T Kent, Home Office when he was informed of this. At the time of my examination of the door standard I could not tell or see any tell tale signs that it had been so examined. All I can say as to 'procedure' is that I never followed such a course of action, as head of a fingerprint/scenes of crime unit, but it may well be something that is done in Scotland and if the end result is more definite and easier to see, then so be it. With aluminium powder, it is usual practice to 'lift' marks found, whereas with black or white powder developed marks are usually photographed. In this case following powdering with aluminium powder it may have been decided not to 'lift' but to use black powder followed by photography. At least with this method one can see the locus of the mark but it would be interesting to know why this was done and when such a decision was taken.

Were the fingerprint procedures as stated in fact carried out?

If this is a reference to the powdering of the door standard twice, then I can only assume it was.

Does the positioning of the fingerprint on the door frame cause any concern? - see Page 6 Paragraph 4(3) of report.



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**FINGERPRINT · ANALYSIS**  
**Independent Consultant to the Legal Profession**

4) Has a mistake/deliberate deception been made by SCRO in their identification of the print from lifts/photographs provided by IB?

Are the fingerprints on the elimination print forms all Shirley's, have the forms been altered in any way? - all I can say in answer to this point is that when I visited the High Court of Justiciary, the fingerprint form that I saw was in good order and had not been tampered with in any way. It follows that since that time I have now received, as I understand it, self taken impressions of the Left Thumb of Ms McKie which do show the same detail in this particular impression that I had seen previously.

Have any mistakes been admitted by IB/SCRO in this enquiry or was it perfect? - I have no information in this respect.

5) Is a cover up being perpetrated?

Was the original print wrongly identified? - again I have no information from which to answer this point, but would doubt it. After comparison has been made and an identification is the result, then this is usually checked by other fingerprint persons to prevent any errors being made.

Has a replacement print been forged/fabricated either when the frame was in position at the locus or after it was removed as a production?

In my opinion this has not happened and I have gone to some lengths to highlight the problems associated with any fabrication in my previous report, attached.

6) Is the fingerprint a forgery which has been placed at the locus by someone unknown? - in my opinion, NO!

7) Is the fingerprint a fabrication that has been left at the locus by someone unknown? - in my opinion, NO!

8) Has the print been inadvertently/accidentally left at the locus by someone other than Shirley?

Was the print unknowingly/accidentally picked up by a second party when they touched an item containing Shirley's fingerprint and the print was inadvertently transferred to the door frame? - in my opinion, NO!. Here we are into the scenario of transplanting, albeit as described here, by a person who didn't know such was happening. This simply could not occur.

I have no personal experience of nor, indeed have I seen any readings on the aspect of transference by 'latex gloves'. Again, however, we are into the arena of transplanting which I cannot subscribe to, not simply to dismiss any such suggestion, but with due regard to all the problems involved.

**FINGERPRINT · ANALYSIS**  
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Still appears as if some background 'noise' would be left - if any attempt at transplanting or forgery had taken place, then I would agree that some area either in or around the 'mark' would display some sign of what had occurred. This I have referred to in my report.

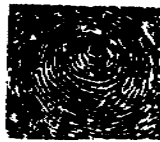
If you can purposely transfer prints then there must be a possibility of accidental transference under the right conditions. Are there any examples of this? - none that I am aware of. I have read no literature regarding any successful forged or transplanted thumb, finger or palmprint. Considerable research was conducted over the past years into a case I have been involved with in Perth, Western Australia. Here the allegation was that a fingermark developed on the back of a cheque had been placed there by using a rubber silicon replica of the donor's right forefinger, such replicas being in existence. It was accepted by the court that the mark was genuine after it had been examined by many international fingerprint experts.

9) As far as can be ascertained were the correct procedures followed by the prosecution expert witnesses? - I find it difficult to suggest how any incorrect procedure could apply in this kind of work. A mark is found at a crime scene, it is either lifted or photographed, photographs of it are submitted to the Fingerprint Bureau, it is compared and either identified or not identified. Obviously there are details made of where it is found, when, by whom and its exact position at the crime scene. I am sure if, when the appropriate 'docket' or 'correspondence' regarding this case are produced, this information will be present. If not then where this occurs, it will no doubt be 'critically examined'.

10) Can the fingerprint be further examined in any way by an electron microscope? - I am not really qualified to speak of such equipment but I doubt if it would show anything that one could not determine by use of an ordinary magnifying glass as used by fingerprint experts. Whether it would go any way to answering the points raised, I don't know, but I am not aware of such being used in this kind of fingerprint work.

8 This report should be read in conjunction with pages 1 to 8 of my original report.

Peter M Swann  
16th March 1999



# FINGERPRINT • ANALYSIS

Independent Consultant to the Legal Profession  
Peter M. Swann, FAE FFS

FINGERPRINT EVIDENCE  
IN  
HMA v SHIRLEY JANE McKIE

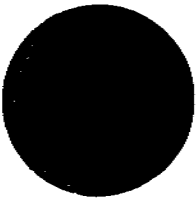
A report prepared on the instructions of:

Levy & McRae  
Solicitors  
266 St Vincent Street  
Glasgow  
G2 5RL

By:

Peter M Swann

A Fellow of the Academy of Experts, a Fellow of the Fingerprint Society and a Member of the International Association for Identification. A former Fingerprint Adviser at the Home Office with 41 years experience in all aspects of fingerprint work.



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**Independent Consultant to the Legal Profession**

**INTRODUCTION**

This report refers briefly to the circumstances of the case as I understand them but in particular to a Left Thumb impression of Shirley Jane McKie, a serving Detective Constable in the Strathclyde Police, found at the scene of a murder in Kilmarnock, January 1997. Ms McKie engaged on enquiries into the incident alleges she never entered the house at 43 Irvine Road, Kilmarnock and that there must be some mistake regarding the finding of her thumb print within. She is subsequently charged with Perjury.

The findings of the police in respect of this particular mark are examined, the actual exhibit viewed and comparisons made between the mark and the Left Thumb impression of Ms McKie.

The forging and transplanting of fingerprints is discussed, problems in this respect, addressed and a final summary assesses the evidence as I see it.

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**INDEPENDENT REPORT/EXAMINATION**

1        There are three defences in connection with fingerprint identification cases. These are:

    a) a complete denial of the identification. A simple denial of such a finding will carry little weight in the face of a strong prosecution case and by itself will have little chance of assisting the defence case.

    b) admittance of the identification but giving a satisfactory account for its existence, ie accidental or innocent handling, legitimate access etc. There is always scope for examining these areas. Accidental or innocent handling does take place in a variety of different ways and does need serious consideration as it is likely the donor may not be aware or does not recall so doing.

    c) the fingerprint has been transplanted or forged. In connection with such a forged or transplanted mark may be:

- i    a forged impression, ie. an impression which is a replica of the ridge detail of a finger, thumb or palmprint made artificially by means of a stamp, die, cast, mould or other reprographic technique.
- ii   a transferred latent mark, ie. a perspiration mark transferred or transplanted from one surface to another on which it can be discovered by normal development techniques.
- iii  a transferred powdered mark, an already developed mark which is lifted from one surface and placed on another. This could also refer to situations where the original mark is left by a contaminated hand leaving a residue which can be lifted and placed elsewhere.

    Such an allegation is a very serious one and the question arises as to who is the allegation directed, the Scene Examiner who found the mark in question or the Fingerprint Expert, who is proving identity of the mark, ie:

- i    that the witness himself has carried out the forgery or transplant, or,
- ii   that it has been done by another person, eg the Investigating Officer, with the connivance of the witness, or,
- iii  by person or persons unknown, in order to incriminate the Defendant.

    Well documented continuity in the chain of evidence from the finding of the fingermark at the scene to its production in evidence will tend to suggest lack of opportunity, particularly if it is suggested that it has

**FINGERPRINT · ANALYSIS**  
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been carried out by person or persons unknown. It has to be remembered also that on every occasion a scenes of crime officer finds a mark at a scene, powders it and then lifts same with a piece of adhesive tape and places it on to a clear acetate backing sheet he has, in fact, transplanted that particular mark. He has lifted it from one place to another.

The question as to whether a fingerprint is a forgery or not poses a problem in itself. I doubt whether any fingerprint expert has ever seen a forged or transplanted fingermark in a live crime scene situation or in the event of him or her having seen one, was not aware of it. There is no documented case on such. Categorically stating therefore that a forgery would be easy to detect and then having to admit that one had never seen such a forgery would not enhance the witness' competence in connection with questions on the matter. I do believe, however, because of the difficulties one would encounter in such an exercise as 'forging or transplanting' a fingermark, which I refer to later, that something would or should capture the attention of an experienced fingerprint expert as not being quite correct and cause further investigations to be made.

It is important in all cases for the identification to be checked by an independent expert. Mistakes do occur, albeit my knowledge of working in a police environment for many years, does suggest that they shouldn't. Nevertheless I have been involved in cases of wrong identifications and it follows that there is always the possibility of this happening again.

Addressing the question, therefore, as to whether it is possible to transplant a fingerprint impression, or in this case the Left Thumb print of Shirley Jane McKie, I would suggest that this is easier accomplished under ideal laboratory or experimental conditions. To do so, successfully, in the context of a crime scene would be so difficult that it would be virtually impossible. Such difficulties being:

- i to successfully transfer a latent impression from one surface to another so it can then be developed and identified would require considerable skill on the part of the person attempting to do so.
- ii it would be necessary to establish that the 'donor', Ms McKie, was capable of leaving a latent impression that can be transferred and then developed on the new surface. The volume of sweat, if any, exuded and its chemical composition varies not only from individual to individual but also from the same individual under different conditions, ie. time of year, body temperature, other physical conditions, psychological conditions etc. It cannot be guaranteed then, that at a specific time an individual will leave an impression which can be transferred and the resultant impression be developed by chemical or physical means and eventually identified. It can be

**FINGERPRINT · ANALYSIS**  
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argued that given that a donor is capable of leaving a transferable mark, given that there was the opportunity to initially lift that mark for such a purpose, it does not follow that an opportunity must arise to leave the mark at a suitable crime scene.

- iii it would be necessary to have access to materials, items, fixtures, etc. on which the donor could be reasonably expected to have left her thumb, finger or palmprints. It would also be necessary, if the exercise were to be carried out to a successful conclusion, to ensure that the individual, in this case Shirley Jane McKie, was completely unaware of such access, otherwise evidence of the opportunity to obtain her impression to carry out a transplant could be given.
- iv it would be necessary to locate latent, ie. non-visible marks without any means of development.
- v it may be necessary to isolate latent impressions made by the donor from impressions made by other persons. This would presuppose a very detailed knowledge of the donor's fingerprints.
- vi scrutiny of such latent impressions to ensure that there is sufficient ridge characteristic detail present to make it worthwhile transferring is virtually impossible.
- vii marks must be found and transferred with reasonable speed, the fresher the mark the easier the transfer. Physical and chemical changes can cause deterioration in the quality of the mark. It could not be stored for a period of time.
- viii the mark must be capable of transfer using a medium which will leave no obvious traces on the surface from which the mark has been lifted, ie. traces which might be indicative of what has occurred.
- ix the transfer to the second surface must be done with extreme care in order not to damage the impression being transferred nor to leave any trace of the transfer medium or to leave any trace of other contamination which might be detected in the course of the subsequent examination.
- x it would be impossible to check that sufficient characteristic detail capable of development and sufficient to meet the needs of the rigid standards of identification required, had been transferred. (Any attempt at development to ensure this would negate the purpose of the exercise).
- xi it would be necessary that the transferred mark be placed on a surface or article which would be examined by a scenes of crime officer. There may not be an absolute guarantee of this. The digit, in this case, a Left Thumb, must be left in a position which is logical, ie. where one would normally expect to find such an impression in that position or that there is no physiological inconsistency in the impression of a particular digit being found in a given position.
- xii to carry out a transplant successfully it would be necessary to commit a crime.
- xiii if the allegation was that the mark had been forged as opposed to being transplanted then the following additional problems or difficulties could be experienced:
  - a) it would be necessary to obtain an impression in this case of her Left Thumb which might prove difficult without her knowledge or cooperation. Although moulds can to some extent

## FINGERPRINT ANALYSIS

Independent Consultant to the Legal Profession

be made from impressions left by digits, for the best results the actual digits must be used.

- b) a cast would then need to be made from any such mould, since this would be reverse colour/direction.
  - c) the end result would need skillful preparation and use and would need to so resemble a natural impression as to fool a fingerprint expert.
  - d) it would have to be left a crime scene subject to the risks previously referred to.
- xiv success would require prior knowledge that any marks found would be identified on submission to the Strathclyde Fingerprint Bureau, irrespective of questions of quality and the number of ridge characteristics.
- xv it would be necessary to ensure that the person it was intended so to incriminate did not have an alibi to cover the period of time of the alleged offence.

The question might be asked as to what factors might indicate that a mark had been transplanted or conversely what should be looked for if such a suggestion was made. Possible indications are:

- a) a transferred mark could appear weak through loss of perspiration to the original surface and the transfer medium and therefore difficult to develop in comparison with other marks found.
- b) the position in which the mark is found or the direction in which it points may be unusual. Alternatively when the mark is identified, the finding of an impression of that particular thumb, finger or palm in such a position might raise questions.
- c) there may be an area of comparative cleanliness immediately surrounding the mark where the transfer medium has removed material from the receptor surface or there may be unusual contamination in the same removed from the original surface and deposited with the transplanted mark or there may be indications of adhesive deposited from the transfer medium.
- d) if the transfer medium used is excessively adhesive the area surrounding the print may be impossible to powder properly due to excessive adhesive deposits making fingerprint development difficult.
- e) there may be a noticeable lack of sweat pores in developed mark(s) which may indicate transplanting. Such an operation is likely to damage sweat pores by flattening them through additional pressure. This is not conclusive but may be indicative by comparison against other impressions left by the same digit of the same person.

If the allegation is that a fingerprint has been forged then the following factors might be indicative of the fact:

- a) the finding of more than one latent impression of the same thumb/finger which are identical in shape and reveal the same characteristics. Natural or genuine impressions of the same digit will not coincide to that degree.



**FINGERPRINT · ANALYSIS**  
**Independent Consultant to the Legal Profession**

- b) even if a cast is coated with genuine sweat it is impossible to reproduce the natural effects of sweat exudation from the pores and comparison of the sweat pore areas may reveal unusual features by comparison with genuine impressions.
- c) the comparative inflexibility of a cast may leave an impression with unnaturally defined edges or indentations in the edges when compared with genuine impressions.
- d) the mark may appear unusually clear and defined because of lack of contamination on the cast compared to the hand.
- e) use of the original mould would leave an impression reverse for colour and direction.
- f) carelessness in applying the sweat to the cast may result in a mark which is both full or partially reverse colour.
- g) the finding of a single mark where one might expect to find a sequence of fingers if the surface or article were touched naturally. Even if a clear sequence is not always found there are often indications, ie. smudges and smears of other fingers in conjunction.
- h) most casting material lacks the natural elasticity of the skin which in turn may leave some indication that a cast has been used, ie. a small area of the impression revealed on curved or rounded surfaces etc.
- j) to ensure success the forger will tend to leave marks which are highly conspicuous and obvious, more so than genuine marks.

2        It is very apparent from the previous pages, the many problems associated with any suggestion that a thumb, finger or palmprint is not a genuine impression, ie. one made by the natural finger. In view of the various points put to me in the discussions I have had in this case, I felt it necessary to detail all the various problems that would be encountered in such a situation and to which I will refer in my comments on the material I have seen in this case.

**EXAMINATION OF EXHIBIT**

3        I report having visited the High Court of Justiciary, Saltmarket, Glasgow on Tuesday, 2nd March 1999 in company with Mrs A McCracken and was granted facilities to view certain exhibits in the case. These included the following:

Exhibit 102 - Door Standard right-hand side. This had been removed from the area of the downstairs bathroom.

Fingerprint Form in the name of Shirley Jane McKie

Actual size photograph of mark on Exhibit 102

Other exhibits connected with case

G

**FINGERPRINT · ANALYSIS**  
**Independent Consultant to the Legal Profession**

4 As far as Exhibit 102 was concerned, I would describe it as follows:

Piece of wood, 76" long x  $1\frac{5}{8}$ " wide x  $\frac{1}{2}$ " thick. It was gloss painted on one side, white and pale blue, the remainder being plain wood. I have made a sketch of it, attached, on which may be seen the comments at its top which obviously assist in positioning same, as it would be seen in situ.

I have indicated the position of the mark in question which could still be clearly seen thereon. In this respect I would comment as follows:

- 1 the 'mark' appeared to have been developed by the application of a black fingerprint powder.
- 2 it was located some 19" to  $19\frac{1}{2}$ " from the top of the piece of wood and was pointing in and upwards from the bathroom side edge.
- 3 one can never with absolute certainty suggest what someone was doing, ie, their actions, when they left a particular mark, but in this case it does appear consistent with Ms McKie having held or touched the door surround at this point and she must have been on the bathroom side of it to leave it in such a position. To try and leave a left thumb impression where found from the hallside is not really possible
- 4 whilst the ownership of the mark is not in dispute, I can confirm that it is her Left Thumb with at least 16 ridge characteristics in agreement in both detail and position.
- 5 the appearance of the mark had all the hallmarks of having been left or deposited by the natural thumb as opposed to any transplanting or forged process. None of the factors I refer to in previous pages, which may be indicative of this, were present and in fact the mark's disposition, ie. the way it lay on the exhibit or the natural manner in which the thumb had made contact, the ridge structure and presence of sweat pore detail all added to its genuineness.
- 6 there was no sign of any disturbance to either the mark or the area around it which may have followed had any adhesive medium made contact or some form of replica used.

**MEETING WITH COUNSEL - MR DONALD FINDLAY QC**

5 Following my examination of exhibits in the case, a meeting was held with:

Donald Findlay QC

Victoria Young, Advocate

during which the main points of discussion were:

1 confirmation that the mark on the Door Standard, the photograph of the mark in the production and the Left Thumb impression of Shirley Jane McKie on the Fingerprint Form were, indeed, all the same subject. This was confirmed from my observations of all three.

Shirley Jane McKie

**FINGERPRINT · ANALYSIS**  
**Independent Consultant to the Legal Profession**

2 confirmation that the mark on the door was the Left Thumb print of Shirley Jane McKie.

3 confirmation that, in my opinion based on all the points I have made and referred to in this report, the mark on the door is the result of it being deposited by the natural thumb.

4 confirmation, as far as possible that it would be difficult to see how Ms McKie could have left her mark on the door, other than being in the bathroom or at the very least on that side of the door entrance area. As I have said earlier it is consistent with her being on the bathroom side of the door as opposed to the hall side.

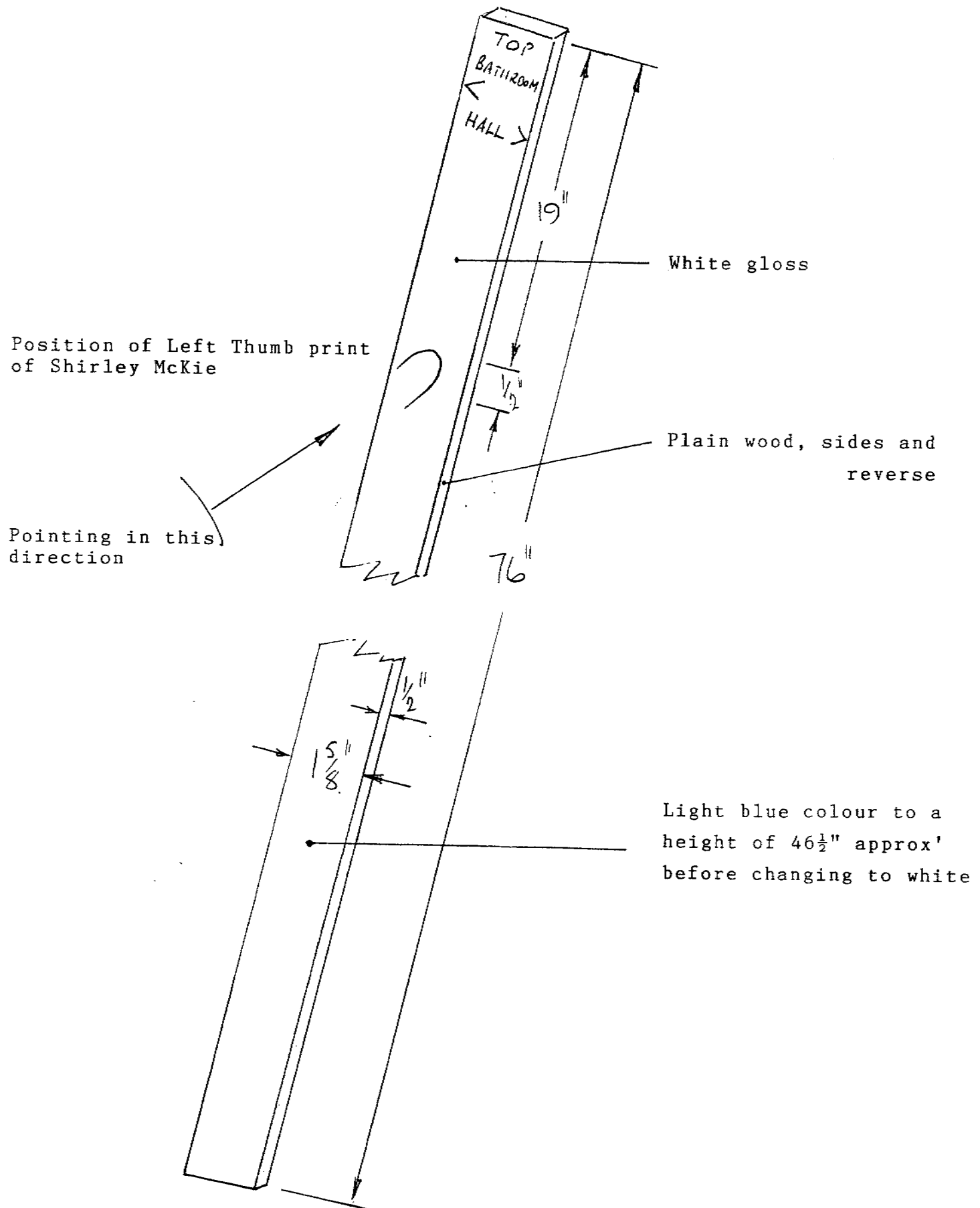
**CONCLUSION/SUMMARY**

6 Having examined Exhibit 102, the Door Standard, being satisfied as to the genuineness of the developed mark thereon and the positivity of its identification as the Left Thumb of Shirley Jane McKie, there is only one conclusion that I can arrive at, that is that she must have been there, at some stage, and left her mark where found. Taking into account all the circumstances, this is the only conclusion one can arrive at and I can only refer again to what I say in paragraph 1, 'Accidental or innocent handling does take place in a variety of different ways and does need serious consideration as it is likely the donor may not be aware or does not recall so doing'

Peter M Swann  
16th March 1999

Shirley Jane McKie

SKETCH OF EXHIBIT 102  
(Door Standard right-hand side downstairs bathroom)



**FINGERPRINT · ANALYSIS**  
Independent Consultant to the Legal Profession

**ADDITIONAL REPORT**

7 This 'additional report' attempts to answer the many issues raised in the paper 'SOME QUESTIONS TO BE ANSWERED BY THE FINGERPRINT EXPERTS' and in this respect I would comment as follows:

HOW DID THE FINGERPRINT GET THERE?

- 1) Did Shirley place it there herself? This is the critical question!!

From my examination of the essential exhibits in the case, relevant to this question, ie. the door standard, the presence of the thumb print thereon and the fingerprint form of Ms McKie, as I have said in my previous report there is only one conclusion that I can arrive at, she must have put it there, herself. If she didn't, then someone else did and by what means? In view of comments I will pass in respect of further questions and with reference to my previous report, I cannot satisfactorily answer such an explanation, simply because I haven't got one. From a purely logical approach by a fingerprint person, the thumb print in question is present on the exhibit, I have no doubt as to its genuineness nor indeed have I any as to ownership of it. Having said this one reaches somewhat of an 'impasse' and quite frankly I cannot see any avenue in which progress may be made. I will however answer as many of the issues as I can and hope these can throw some light on the matter.

'WHOSE FINGERPRINT IS IT? IF IT IS SHIRLEY'S WHO OTHER THAN HER PUT IT THERE AND HOW'? (I note also your comments that there is a danger that the first part of this question, 'Whose print is it' will be addressed but that the second part 'If it is Shirley's who other than her put it there and how?', will not)

- 2) Is there someone else with the same fingerprint who had access to to the locus?

The fundamental basis for fingerprint identification is that we all have different ones. No one has ever been found to have the same sequence of characteristics as another, the probable foundation for this being that 'nature never reproduces herself'. We all share common patterns and types of ridge characteristics but the all important fact is that, irrespective of pattern or characteristic 'type', the sequence in which they appear has never been known to have been repeated.

Having been examining fingerprints for over 41 years, whilst I cannot present visual proof, I have no doubts at all that there is no one else with the same fingerprints as Ms McKie or anyone else for that matter.

Shirley Jane McKie

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**Independent Consultant to the Legal Profession**

Having said this, there will be no other person with the same fingerprint as Ms McKie who will have had access to the location concerned. No such person will exist. In respect of checking procedures in Fingerprint Bureaux, I have little doubt that the elimination prints of police officers engaged in the enquiry will have been checked against marks found, this being standard procedure.

3) Has a mistake/deliberate deception been made by IB in their initial identification/labelling etc. of the print?

Is there now a cover up? - having seen statements of evidence, the many 'charts' prepared, the original exhibit etc. I could not subscribe to such a suggestion.

Is the print now being examined by our experts the same one that was originally found by the IB? - having seen the Left Thumb print in situ on the door standard, being satisfied as to its genuineness, I fail to see how it cannot be the same one.

What did they do when they examined the bathroom door area on the 10th and 14th January? Apparently they dusted first with aluminium powder and later with black powder. Is this standard procedure? Is there evidence that this was the sequence of events? - the first intimation I had of this 'dual' powdering was in a report prepared for the Prosecution by Mr T Kent, Home Office when he was informed of this. At the time of my examination of the door standard I could not tell or see any tell tale signs that it had been so examined. All I can say as to 'procedure' is that I never followed such a course of action, as head of a fingerprint/scenes of crime unit, but it may well be something that is done in Scotland and if the end result is more definite and easier to see, then so be it. With aluminium powder, it is usual practice to 'lift' marks found, whereas with black or white powder developed marks are usually photographed. In this case following powdering with aluminium powder it may have been decided not to 'lift' but to use black powder followed by photography. At least with this method one can see the locus of the mark but it would be interesting to know why this was done and when such a decision was taken.

Were the fingerprint procedures as stated in fact carried out?

If this is a reference to the powdering of the door standard twice, then I can only assume it was.

Does the positioning of the fingerprint on the door frame cause any concern? - see Page 6 Paragraph 4(3) of report.

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4) Has a mistake/deliberate deception been made by SCRO in their identification of the print from lifts/photographs provided by IB?

Are the fingerprints on the elimination print forms all Shirley's, have the forms been altered in any way? - all I can say in answer to this point is that when I visited the High Court of Justiciary, the fingerprint form that I saw was in good order and had not been tampered with in any way. It follows that since that time I have now received, as I understand it, self taken impressions of the Left Thumb of Ms McKie which do show the same detail in this particular impression that I had seen previously.

Have any mistakes been admitted by IB/SCRO in this enquiry or was it perfect? - I have no information in this respect.

5) Is a cover up being perpetrated?

Was the original print wrongly identified? - again I have no information from which to answer this point, but would doubt it. After comparison has been made and an identification is the result, then this is usually checked by other fingerprint persons to prevent any errors being made.

Has a replacement print been forged/fabricated either when the frame was in position at the locus or after it was removed as a production?

In my opinion this has not happened and I have gone to some lengths to highlight the problems associated with any fabrication in my previous report, attached.

6) Is the fingerprint a forgery which has been placed at the locus by someone unknown? - in my opinion, NO!

7) Is the fingerprint a fabrication that has been left at the locus by someone unknown? - in my opinion, NO!

8) Has the print been inadvertently/accidentally left at the locus by someone other than Shirley?

Was the print unknowingly/accidentally picked up by a second party when they touched an item containing Shirley's fingerprint and the print was inadvertently transferred to the door frame? - in my opinion, NO!. Here we are into the scenario of transplanting, albeit as described here, by a person who didn't know such was happening. This simply could not occur.

I have no personal experience of nor, indeed have I seen any readings on the aspect of transference by 'latex gloves'. Again, however, we are into the arena of transplanting which I cannot subscribe to, not simply to dismiss any such suggestion, but with due regard to all the problems involved.

Shirley Jane McKie

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**Independent Consultant to the Legal Profession**

Still appears as if some background 'noise' would be left - if any attempt at transplanting or forgery had taken place, then I would agree that some area either in or around the 'mark' would display some sign of what had occurred. This I have referred to in my report.

If you can purposely transfer prints then there must be a possibility of accidental transference under the right conditions. Are there any example of this? - none that I am aware of. I have read no literature regarding any successful forged or transplanted thumb, finger or palmprint. Considerable research was conducted over the past years into a case I have been involved with in Perth, Western Australia. Here the allegation was that a fingermark developed on the back of a cheque had been placed there by using a rubber silicon replica of the donor's right forefinger, such replicas being in existence. It was accepted by the court that the mark was genuine after it had been examined by many international fingerprint experts.

9) As far as can be ascertained were the correct procedures followed by the prosecution expert witnesses? - I find it difficult to suggest how any incorrect procedure could apply in this kind of work. A mark is found at a crime scene, it is either lifted or photographed, photographs of it are submitted to the Fingerprint Bureau, it is compared and either identified or not identified. Obviously there are details made of where it is found, when, by whom and its exact position at the crime scene. I am sure if, when the appropriate 'docket' or 'correspondence' regarding this case are produced, this information will be present. If not then where this occurs, it will no doubt be 'critically examined'.

10) Can the fingerprint be further examined in any way by an electron microscope? - I am not really qualified to speak of such equipment but I doubt if it would show anything that one could not determine by use of an ordinary magnifying glass as used by fingerprint experts. Whether it would go any way to answering the points raised, I don't know, but I am not aware of such being used in this kind of fingerprint work.

8 This report should be read in conjunction with pages 1 to 8 of my original report.

Peter M Swann  
16th March 1999

Shirley Jane McKie



## CURRICULUM VITAE

PETER MALCOLM SWANN

- 1934 - Born Wakefield, West Yorkshire (27.01)  
Educated Sandal Endowed and Normanton Grammar School to 'school certificate' level.  
Trained as an engineering draughtsman to National Certificate level at Wakefield Technical College.
- 1953 - National Service (Army)
- 1955 - Joined the West Riding Constabulary as a Police Constable following two years army service in the Royal Military Police in Trieste. Served as uniformed patrol officer for over two years at Hebden Bridge.
- 1957 - Joined the West Riding Constabulary Fingerprint Department at Force Headquarters, Wakefield.  
- undertook the various courses in fingerprint classification, searching, identification and examination of scenes of crime.
- 1967 - Promoted to rank of Detective Sergeant. Responsibilities for round the clock cover for the department. This involved checking of identifications and attendance at major crime scenes.
- 1969 - Promoted to rank of Detective Inspector, Deputy Head of Department. In addition to supervisory responsibilities, assessment of staff, lecturing to students, I attended at all major crime scenes in the police area and in neighbouring forces when our services were requested.
- 1970 - Attended in Malta at the request of the Maltese Government to examine and report on fingerprint evidence in a major case.
- 1971 - Promoted to rank of Detective Chief Inspector, Head of Department. Responsibility for the efficient running of the department, assessment of staff and associated matters. Was responsible for fingerprint input at all major crime scenes.  
- Attended at the Fire Brigade Headquarters, Moreton in the Marsh, one week residential course on scene examination where fire was involved.  
- Attended at the Metropolitan Police Training School, Hendon, London, a one week course on 'explosives'  
- Attended the National Fingerprint Conference in Edinburgh and thereafter all such future conferences until 1987. Secretary of the Conference from 1977 to 1987.
- 1974 - Attendance at the first of 13 murders committed by Peter William Sutcliffe (the Yorkshire Ripper) and also the IRA bomb incident involving the death of soldiers and families on the M62 motorway. Fingerprinting of a number of cadavers.

1975 - Involved in the Leslie Whittle Murder Enquiry, Staffordshire.

- During the following years attended all major crime scenes in the force area and also surrounding forces when services requested.
- Regularly attended all regional fingerprint and scenes of crime conferences, lectured to various CID courses at the force training school and accompanied Chief Constables at a number of ACPO Technical meetings.

1984 - Promoted to the rank of Superintendent and appointed Home Officer Adviser on fingerprints. This appointment involved research at home office establishments at Sandridge and Aldermaston into fingerprint development processes, working parties on future automated fingerprint systems, lectures at various establishments and liaison with a number of departments in the Home Office.

1987 - Retired from the police service and moved into private practice as an Independent Consultant.

- During the last 18 years have been instructed to examine and report on evidence in many high profile cases and given evidence when required. These cases included many of the terrorist cases in the UK, working for the DPP. Western Australia in the Perth Mint Case and also dealing with cases from the Far East, Middle East, Europe and the USA.
- Have dealt with several cases for the CCRC, Criminal Cases Review Commission.

- I am associated with several organisations:

Fellow of the Fingerprint Society  
Fellow of the Academy of Experts  
Member of the International Association for Identification  
Member of the Forensic Science Society  
Member of the Society of Expert Witnesses  
Registered with the Council of Forensic Practitioners

- I have, therefore, some 48 years experience in all aspects of fingerprint and crime scene work, having initiated and checked countless identifications, examined hundreds of crime scenes involving the recovery of finger and palm marks and been involved at the Home Office in the research and development of the many laboratory based processes for the examination of a wide variety of substrates. In order to continue to keep abreast of future developments, I maintain a library of all journals and technical publications relating to fingerprint work.

Peter M Swann  
June 2005

# FAXED LETTER

5<sup>th</sup> May, 1997

Dear Ms Dowdalls

reference to your letter of 1<sup>st</sup> May, and our telephone conversation of 5<sup>th</sup> May 1997 I have read the statements relating to the fingerprint evidence.

The sequence of events is as follows:

**08 January** - Body of Marion Ross found at 43 Irvine Road, Kilmarnock

**10 January** - Deceased fingerprinted at City Mortuary. Prints sent to S.C.R.O.

**22 January** - David Asbury arrested at 17 Castle Drive, Kilbirnie.

**22 January** - Marks & Spencers Tin found in bedroom at 17 Castle Drive

**22 January** - Marks & Spencers Tin Lodged with PC Stevens, productions officer

**23 January** - Deceased re-fingerprinted at City Mortuary. Prints sent to S.C.R.O.

**27 January** - Marks & Spencers Tin examined for fingerprints by SOCO McNeill and fingerprints found. These are marked QE2, QF2 QG2, QH2, QI2, QJ2, QK2, and QL2

All the fingerprints were photographed and sent to Scottish C.R. Office

**29 January** - photographs of fingerprints received at Scottish Criminal Record Office and the fingerprints identified.

## **With regard to the Marks & Spencers tin box**

According to the statements of SOCO McNeill (No.3) the fingerprints were marked and photographed, not lifted, and in the statements of the SCRO fingerprint department (Prod 100 & 101), photographs of the finger impressions were received. Therefore, these fingerprints will still be present on the tin box. It may be possible in the case of superimposed fingerprints, to determine which one is on top. Usually the print on top tends to obliterate to some extent the one below.

You ask if there is any possibility of contamination of evidence regarding the tin. If there is a fingerprint on the tin, then, either someone touched the tin, or there has been a deliberate act to place the print there.

## **Possibilities**

- 1) The tin belonged to the deceased, and it was stolen

- 2) If the accused knew the deceased, she may have given it to him at some time or he could have retrieved it from the bucket. That could explain her fingerprint on it.
- 3) The tin could have been taken to the mortuary and pressed against the deceased's hand.
- 4) A lift taken of the deceased's finger taken at the mortuary and placed on the tin.
- 5) A fingerprint lifted from somewhere else and placed on the tin.

Possibilities 4, and 5 would require considerable knowledge and experience and would probably need the acquiescent of others.

Productions in a serious case are closely guarded and can only be accessed by authorised personnel. A log detailing by whom and when removed, and when returned, is always kept.

#### **Fingerprinting of the Deceased**

Fingerprints and palmar prints are routinely taken of a murder victim for a) to identify her, and b) in the event of her fingerprints turning up in an incriminating place, for example in a vehicle, house, or elsewhere. If she was bare footed when found her sole prints would also be taken.

Quite frequently partial impressions are found which are from areas of the hand not covered in the routine fingerprinting, and a return visit is often made. There is nothing of significance in returning to the mortuary for further samples of fingerprints, hairs, saliva, etc.

I will meet with you on Wednesday 7<sup>th</sup> May 1997 at Kilmarnock soon after 9a.m.  
Should you have anything you wish to discuss prior to then please call me.

Yours sincerely

Malcolm Graham.

REPORT ON THE EXAMINATION OF FINGERPRINTS

*in connection with the case of*

**HMA -v- DAVID ASBURY**

**MALCOLM GRAHAM (59), forensic consultant,  
4 Dalrymple Loan, Musselburgh EH21 7DH.**

**Qualifications and Experience**

1. *Twenty nine years experience in the examination of crime scenes, and the identification of fingerprints.*
2. *Twenty four years employed in the identification bureau of the Lothian and Borders Police, the last eight years as the detective chief inspector in charge of the bureau. Duties included, among other things, the recruiting and training of fingerprint officers, the allocation and checking of work and reports, and quality assurance.*
3. *I was designated crime scene manager at major scenes of crime.*
4. *During police service was authorised by the Secretary of State for Scotland under the Criminal Justice (Scotland) Act 1980 to make reports on, among other things, the examination, comparison and identification of fingerprints.*
5. *Have given evidence in the High Court, lower courts and tribunals on many occasions as an expert witness in connection with my examinations.*

On/

On 1<sup>st</sup> May 1997 I was instructed by Mackintosh & Wylie, solicitors, to examine fingerprint productions in connection with the case against David Asbury, and provide a report.

On 7<sup>th</sup> May, 1997, with Ms. Lesley Dowdalls I attended at the procurator fiscal's office, Kilmarnock, where I received several books of photographs of fingerprints and joint forensic reports relating to the fingerprint identifications.

**Book marked "A"** (production 98) contains actual size photographs of fingerprints bearing identification marks XF, QD2, QE2, QI2 (part), QL2, XE2, XG2, XH2, XI2, XY5, WB, WD. I compared these fingerprints with fingerprints on the fingerprint form signed "David Asbury", and I agree with the identifications.

**Book marked "B"** (production 99) contains the same actual size photograph marked QI2 as that shown in the book marked "A". This photograph shows two fingerprints very close together. One has been made by the right middle finger of David Asbury, the other by the deceased Marion Ross's right fore finger.

I was asked to pay particular attention to fingerprints marked Q12 which had been found on the Marks & Spencers tin box. I removed the tin box from the sealed security bag and examined the surfaces of the tin. The box had been very well handled and fingerprints had been developed with fingerprint powder on the bottom, the sides and the lid. It was suggested to me that a fingerprint could have been removed from the /

the box prior to the application of powder. I saw no sign of that. There are fingerprint ridges almost everywhere on the box and a clean area from where a fingerprint had been removed would be very noticeable.

**Book marked "L"** contains two actual size photographs of fingerprints marked Y7 on a door frame. Both show exactly the same fingerprint; one is dated 16<sup>th</sup> January 1997 and the other is dated 18<sup>th</sup> February 1997. The fingerprint is a fragment of the tip of a left thumb. I compared it with the fingerprints of D.C. Cardwell and agree with the identification. I would think that, because of the fragmentary nature of the fingerprint on the door frame, the second photograph was taken to try and enhance the mark.

I was asked to consider the possibility that the fingerprint on the door frame marked Y7 had been lifted from the Marks and Spencers tin and placed on the door frame. I can say with certainty that that did not happen for the following reasons:

- 1) The Marks and Spencers tin had been well handled and a clean area left after the removal of a fingerprint would be very noticeable:
- 2) The fragment of fingerprint on the door frame is an entity, surrounded by clear space. There are no extraneous fingerprint ridges. The surface of the tin box had no areas with a single print surrounded by clear space.
- 3) Transfer of a fingerprint can only be done before it has been developed with fingerprint powder. After development with powder it can be lifted off but cannot be /

be transferred.

- 4) Before the tin box was dusted it would be almost impossible to identify a suitable impression for transfer.

I was asked to consider the possibility that the fingerprint of Marion Ross on the Marks and Spencers tin box, in close proximity to the fingerprint of David Asbury, had been placed there illegally. In my opinion the only way it could be done would be to press the deceased's finger on the box. I initially suggested that a lift could have been taken from the body and transferred to the tin box but, having seen the box, that could not have happened as it would have disturbed the area surrounding the fingerprint, and there is no disturbance.

**NOTE**

Fingerprints can be transferred from one surface to another with use of adhesive tape but it can only be done before powder has been applied. Considerable knowledge and skill is required to find a suitable latent impression and transfer it in a manner that the fingerprint officer will not find suspicious when he develops the mark.



Shirley McKie v. Strathclyde Joint Police Board

Precognition  
of

**Malcolm Graham**

4 Dalrymple Loan  
Musselburgh

(0131 665 5138)

I am aged 67, and have been retired since 1991. I served 30 years in the police service, 24 years of them in the identification branches of the Lothian and Peebles Constabulary and later the Lothian and Borders Police. I was authorised by the Secretary of State to provide expert fingerprint opinions. At the time of my retirement I had been the officer in charge of the identification bureau for eight years with the rank of Detective Chief Inspector. Since my retirement I have been in private practice providing among other things, expert fingerprint reports in criminal cases.

I advertised my services in the Law Society Journal. My involvement with the David Asbury case came following a telephone call from the agent for the defence, Ms Lesley Dowdalls on 1<sup>st</sup> May 1997. She sent me police witness statements and I was asked to comment on certain aspects of the case in relation to circumstances surrounding the identification of fingerprints. I faxed her a reply. On 7<sup>th</sup> May 1997 I met with her and the defence counsel at Kilmarnock Sheriff Court and was instructed to analyse a number of productions with a view to checking the fingerprint identifications by the S.C.R.O.

On my arrival I was informed that there had been a development in the case, in that a police officer, Ms Caldwell (Ms McKie), had approached the defence and alleged that her fingerprint had been found at the scene of the crime. She claimed that her fingerprint must have been planted at the scene by her colleagues, probably transferred from a tin box she had found in Asbury's house. I was asked to examine that fingerprint and determine if it could have been planted. The materials I was provided with were: all books of fingerprints provided by SCRO; the tin box; 2 sets of photographed prints; and finger print forms bearing the fingerprints of Ms Caldwell, the late Mrs Ross and David Asbury.

I examined the articles in the productions room in Kilmarnock Sheriff Court but the lighting was very poor. I asked Ms Dowdalls if a better room could be found, and the procurator fiscal arranged a room with better lighting. I was reasonably well equipped to examine and compare fingerprints. I carried a case containing, among other things, a desk light, a low power /

power microscope, and two linen testers (magnifying glasses used by fingerprint officers to examine and search fingerprints). I spent about 2 to 3 hours examining the productions and making the fingerprint comparisons. The fingerprint found on the door frame in the house, and the fingerprints on the tin box were poor. If the prints had been better I probably could have done the comparison quicker. The one on the door frame was partly smudged near the tip and seemed to be a second touch or movement of the finger when in contact with the door frame. The fingerprint on the tin box had very fine ridges as can be expected from an old woman.

Following my examination I reported my views to the defence agent which essentially supported the Crown case. I cannot remember accurately, but although I had been cited by the defence for the Asbury trial I do not think I was called by them, rather I think I gave my evidence near the end of the prosecution case. I was in the witness box for a few minutes, about 10 minutes at the most. As I recall, I stated that the fingerprint was Ms McKie's and that it had not been planted.

Sometime in July 1997 Mr McKie called me on the phone. He wanted to obtain a copy of the statement I had prepared for the defence. I could see no difficulty in that, but I telephoned Ms Dowdalls as a courtesy. She told me that as my report had been paid for by the Legal Aid Board on behalf of Asbury I could not release a copy to Mr McKie. I wrote to Mr McKie informing him that I could not supply a copy of my report.

Mr McKie had been contributing to a web site under the name [www.onin.com](http://www.onin.com), and has had several letters published in the newspapers tending to suggest a criminal conspiracy by SCRO and others against his daughter. In February 2000, about 8pm I posted a statement on his web site giving support to the four SCRO fingerprint officers. In response to my entry on the web site Mr McKie telephoned me at 11pm that night. He was half threatening and half pleading with me to remove what I had posted. He threatened me that he would ensure that I would never work again, and that I had either been duped by SCRO or was involved in a conspiracy with SCRO against his daughter. I regret making the statement and immediately took steps that led to the removal of the post because it had caused unnecessary anguish to Mr McKie and his family.

I do not know any SCRO officers. On a few occasions I have attended at their offices to examine cases but I do not know, and have never to my knowledge met, anyone at SCRO.

Subsequent to The BBC Frontline programme, broadcast in June 2000 an article appeared in the *Scotsman* newspaper by a journalist, Mark Daly. His article had named me as being an expert whose expertise was called into question because I had backed SCRO's controversial findings. I wrote to him privately pointing out 1) the myth of the infallibility of fingerprints and 2) it was not mentioned in the programme that an independent expert agreed with SCRO's fingerprint identification, probably because that would undermine their perception of a conspiracy theory. I also pointed out that Ron Cook, a retired fingerprint expert /

expert was on the first programme supporting Mr Wertheim but did not appear on the second programme, although a different person lent him support. I thought the programmes were very unfair to SCRO because only one side of the case was presented and the SCRO officers were prevented from commenting on the case as an appeal was pending - accordingly no statement could be provided by SCRO to the programme makers.

There were several investigations underway in connection with complaints of serious criminal conduct by officers in the SCRO and other matters. I was interviewed by the Chief Inspector of Constabulary, police officers from Tayside Police (twice), and the Procurator Fiscal at Paisley.

About 13 July 2000 I was listening to the radio when I heard that the First Minister in the Scottish Parliament had made a statement concerning the McKie case to the effect that the fingerprint found in the house had not been made by her. The statement was quite explicit - the fingerprint was not hers. I considered that such a statement would not have been made without substantive evidence to support it. I immediately wrote a letter to Mr McKie expressing my regret.

With regard to fingerprint identifications, the normally understood view is that one has to find 16 characteristics in sequence in both fingerprints to make an identification. This is not the case. The 16 point standard is merely a recommendation from the Home Office based on a meeting with Police chief officers, fingerprint experts and home office officials which dates back to 1952. (As far as I know, there was no representation from Scotland.) The reason for the meeting was to prevent a recurrence of fingerprint experts arguing with each other in Court over the minimum number of characteristics necessary to prove a positive match. All fingerprint experts (in the UK) agree that 16 points is absolute certainty, but none agree as to the minimum number of characteristics. Therefore it was agreed that in the case of a single fingerprint, 16 characteristics would be used, and in the case of two adjacent fingers, neither of them having sixteen characteristics, the standard would be at least 10 in each.

The recommendation only applied to criminal cases. It does not apply to the identification of the dead, or elimination fingerprints, or for the identification of property. I would be satisfied if I found 10 matching points. Depending on the circumstances I think that an identification with a very high degree of probability could be made with 6 or 7 matching characteristics. In my experience I have never found fingerprints made by different people to have a sequence of eight matching points, and it is unusual to see five or six matching, although with current computerized systems it may be possible to set a minimum limit.

I was the officer in charge of an identification team tasked to fingerprint the dead bodies recovered at the Lockerbie incident, arrange to obtain fingerprint forms and other material for comparison purposes and identify the dead. Several of the dead were identified based on only a few characteristics. There were no minimum standard, and the identifications only /

only required two experts to agree and a third to confirm. There were no mistaken fingerprint identifications.

The identification of fingerprints is not a self evident fact, nor can it be considered an exact science, if there is such a thing. It must be realized that whereas a fingerprint taken from a suspect under controlled conditions will generally be in good condition, the fingerprint found at the crime scene will be imperfect in various ways including distortion through the flexing of the skin, fragmentation, blurring, and interference or contamination from the surface on which the fingerprint is found, or on the finger itself.

Determining whether two particular features correspond, or match, is a matter of disciplined judgment. Indeed, the decision as to whether a particular feature is even visible in a poor quality fingerprint is sometimes questionable and seldom is there complete agreement between experts on poor quality marks. It is not unusual for experts to disagree on the number of characteristics they can see in a fingerprint which is fragmented, distorted or contaminated. During a review of the sixteen point standard in 1987 a collaborative study was carried out by two prominent Home Office scientists. 130 fingerprint experts all examined photographs of the same ten fingerprint to mark comparisons. The number of points of comparison found by the experts varied widely and in one of the ten comparisons the number of points varied from 12 to 52. That tends to indicate just how subjective the comparison process is.

Mistakes are infrequently made in fingerprint bureaus but the system of checking identifications tends to prevent these seeing the light of day. The most common omission is a failure to identify a fingerprint because of fragmentation, distortion or contamination.

The production of illustrations to try and support an identification can be counter productive, as in this case. The scene of crime fingerprint, if it is poor, can look quite different to the fingerprint on the fingerprint form. In addition, the photographic quality of the SCRO illustrations leaves much to be desired, which is something I have remarked on in some of their other cases.

I have read the Minute of Amendment for the Pursuer.

With regard to **page 3** concerning the identification processes at SCRO, "*Mr Geddes declined to confirm there was a match between McKie's fingerprints and the fingerprint found on the door frame at the crime scene because he was only able to find ten points of similarity and not the sixteen that were then required.*" I think it is important to note that Mr Geddes does not suggest that the fingerprint was not that of McKie, but that he just could not find 16 corresponding characteristics. On **page 4** Bruce refused to make the comparison having found only 8 points of similarity. Foley, as with Geddes found only 10 points of similarity and refused to accede to the view that there was a match and McClure did not have enough light to even try and compare them. Never in my experience have I found ten sequential points in the fingerprints /

fingerprints from different people, nor have I ever met a fingerprint expert who has. I do not think there is a fingerprint bureau in the U.K. which has not eliminated fingerprints from a crime scene based on considerably fewer points than 16.

On **page 6**, line 7, is the passage *"no fingerprint expert, other than those within SCRO has maintained that the claimed match is a valid one."* I thought the matches were valid, and am still inclined to that view.

On **page 7**, three lines from the bottom of the page is the statement *"no expert who was asked to provide an opinion on the matter of comparison of the prints prior to the pursuer's trial, stated that there was a match between the prints."* I disagree with that. I was asked to provide an opinion, and my opinion was that the fingerprints of the late Marion Ross matched and the fingerprint of Ms McKie matched.

I am asked about my views on Pat Wertheim, and in particular his claim on the television programme that he realized within seconds that the fingerprints did not match. One could only exclude a match in seconds if they had different basic patterns. A fingerprint of that poor a quality would require a long and detailed examination before it could be either matched or excluded. It is my opinion that Mr Wertheim has homed in on the poor quality of the fingerprints and illustrations then selected areas of distortion or fragmentation to support his case.

There should be little difference in quality in a photographed impression to one recorded on a vinyl lift, provided the photograph is of good quality, and the fingerprint has been lifted without damage. Both are equally effective, however It is good practice in serious cases keep the fingerprint in situ if all possible.

STATEMENT OF JOHN EDWARD BERRY, dob 4th August 1926,  
RETIRED FINGERPRINT TECHNICIAN, HATFIELD,  
HERTFORDSHIRE, WRITTEN ON 9th December 2005.

My fingerprint career commenced at the beginning of 1955, therefore I have worked the Discipline for almost half the time the fingerprint system of identification has been used in the United Kingdom.

In 1991 I retired at sixty five years of age after working in bureaux for thirty seven years. During this period I specialised in the comparison of difficult scenes of crime imprints, my maxim being that there should not be a time limit on making a decision regarding identity.

From 1975 to 1991 I edited sixty four consecutive quarterly issues of FINGERPRINT WHORLD, the official journal of THE FINGERPRINT SOCIETY, having a world-wide circulation. Since retirement I have spent a considerable amount of time on fingerprint research, and have continued to publish my own fingerprint journal STRABISMUS, annually, and the twenty seventh issue is pending.

In 1989 I was awarded the BRITISH EMPIRE MEDAL by HM The Queen for 'services to fingerprints.'

In 1999 I noted the circulation by E-Mail of exhibits by Americans regarding a scene imprint found inside the house at the Ross murder, and the left thumb impression of Shirley McKie. The scene imprint bore a wide scrape bottom left to middle right, destroying valuable ridge detail. This damage was NOT on the scene imprint used by SCRO on their exhibit chart produced at the trial of Shirley McKie. The E-Mail circulation also included the left thumb impression of Shirley McKie. This was a plain impression, the chart used by SCRO showed a rolled impression. I consider that scenes of crime comparisons made world-wide since 1901 adhere to the accepted practice of using rolled fingerprint impressions for comparison purposes, because plain impressions show perhaps only half of available ridge detail. Rolled finger impressions, taken from nail to nail, show all available ridge detail.

In my opinion, the E-Mail circulation by the Americans was deceitful, not permitting fingerprint technicians throughout the world the benefit of examining the unscraped scenes of crime imprint and the rolled left thumb impression, which Grieve and Wertheim had seen when examining the SCRO exhibits. It would have been a legitimate exercise if the exhibits circulated had been the original SCRO material, but underhand for the Americans to circulate their own substandard exhibits.

I spent a considerable amount of time studying the E-Mail exhibits because I thought the damaged scene imprint to be complicated, requiring careful examination with the plain left thumb impression. Eventually I found that the scene imprint, when placed at the murder house, had been swivelled sixty degrees to the left, and this extreme distortion could only permit comparison if the plain left thumb impression was also moved sixty degrees to the left.

The DAILY MAIL of 24th October 2000 published an excellent rolled left thumb impression of Shirley McKie, which permitted me to collate important ridge detail missing on the E-Mail circulated left thumb impression.

I found that the distortion on the DAILY MAIL left thumb impression was sixty six degrees and when I accordingly moved it sixty six degrees to the left, and the scene imprint and the DAILY MAIL impression were correctly aligned detailed comparison

was permitted.

Subsequently I prepared photographic enlargements of the damaged E-Mail scene imprint and the DAILY MAIL left thumb impression, showing sixteen ridge characteristics in agreement and common to both, and I duly forwarded this exhibit to the appropriate Scottish Authorities.

Peter Swann visited me in Hatfield on 15th November 2005, Martin John Leadbetter was also present. Mr. Swann permitted me to examine his exhibits in relation to the murder scene imprint and Shirley McKie left thumb impression, and I fully accord with his findings.

9.12.05.  
✓

CV for John Edward Berry.

Born 4th August 1926 in Birmingham.

Educated at Yardley Grammar School, Birmingham.

Called up for Army service on 19th October 1944.

Joined Parachute Regiment in 1945.

Officer training at Alton Towers, commissioned to 2/Lt in Manchester Regiment in June 1946.

Promoted to War Substantive Lieutenant in November 1946.

Served in British Army Occupation of the Rhine, stationed at Wuppertal, Germany until demobilised in November 1948.

Joined Royal Ulster Constabulary in December 1948.

Joined Fingerprint Bureau early in 1955.

Promoted to Sergeant in 1960 upon reaching expert status.

Retired from RUC in April 1975 on pension.

Joined the Hertfordshire Constabulary Fingerprint Bureau as a civilian fingerprint expert in April 1975.

Edited The Fingerprint Society journal FINGERPRINT WHORLD from July 1975, the journal eventually being circulated to over one thousand members in seventy countries.

Awarded the BRITISH EMPIRE MEDAL in 1989 by HM THE QUEEN for 'Services to Fingerprints.'

In 1991 wrote definitive forty page article on THE HISTORY OF FINGERPRINTS, published in the USA. Reprinted in 2001.

Retired from the Hertfordshire Bureau in 1991 upon reaching pensionable age, also relinquishing editorship of FINGERPRINT WHORLD, after 64 issues.

During career in Fingerprints investigated many major crimes from fingerprint aspect, being awarded numerous commendations.

From 1979 to date edited own Fingerprint journal STRABISMUS, 26th annual issue recently circulated.

Since retirement main interest has been fingerprint research.

6<sup>th</sup> June.. 05.





## STATEMENT

**Martin John LEADBETTER FFS RFP Dip.Eur.Hum., BA (Hons)**  
**(Date of birth 6<sup>th</sup> April 1945)**

1. I have been employed full time in fingerprint work since October 1966 when I was first appointed Fingerprint Officer at the Metropolitan Police Fingerprint Bureau, New Scotland Yard. I am currently employed as a Forensic Scientist by the Forensic Science Service in London and am contracted as a Fingerprint expert to work for the City of London Police. Prior to these current appointments I have also been employed by the Gloucestershire as Fingerprint Expert, the Hertfordshire Police as Deputy Head of the Fingerprint Bureau and more recently from 1995/2005 was Head of the Fingerprint Bureau for Cambridgeshire Constabulary. I am competent in all aspects of fingerprint analysis, development and identification. For the past twenty five years it was part of my responsibility to make the final check on identifications effected by junior members of staff, a task I am currently also undertaking, both with the FSS and the City of London Police. Additionally, whilst employed by the Metropolitan Police I was a trained scene examiner.

I am a fully qualified fingerprint expert and my name appears on the national Register of UK Fingerprint Experts (No.1110) and I am a Registered Forensic Practitioner with the Council for the Registration of Forensic Practitioners (No.12).

I am a Life and Distinguished Member of the International Association for identification; a Founder, Life Member and Fellow of The Fingerprint Society and a Member of the British Academy of Forensic Sciences. I was previously Secretary of The Fingerprint Society and Assistant Editor of the Society's journal, *Fingerprint Whorld*.

I have been a serving member on the ACPO Fingerprint Evidential Standards Project Board (1996/2001); Member of the ACPO National Fingerprint Board (2001/2005); Chairman of the ACPO Ridgeology/Third Level Detail Sub-Group (2003/05) and member of the ACPO Fingerprint Standards Sub-Group (2001/05). In addition, I am on the Editorial Board of the *Journal of Forensic Identification* and was a member of the Board of Directors of the International Association for Identification.

2. From 1988/91 I was seconded to the first Home Office Automatic Fingerprint Recognition Team, during which time my work took me to fingerprint bureaux in the USA and France. From 1991/1995 I was employed in the private sector by Morpho Systèmes, Fontainebleau and during this time was responsible for training fingerprint officers overseas and in the UK and visited more than 30 countries.
3. I have known Mr Peter SWANN both as friend and colleague for more than thirty years and know him to be a competent and experienced fingerprint expert who enjoys the confidence and respect of the fingerprint fraternity both in the UK and abroad.

4. Although never officially involved in the McKie case I have kept a vigilant eye on its Development and have had the opportunity of examining some of the fingerprint material involved. I would stress that at no time have I ever seen any original material. However, some of the material availed to me has enabled me to conduct a professional analysis. I am also aware that certain images relating to the McKie case have been, from time to time, published electronically on the Internet. I do not consider that these images are reliable for reaching an accurate and conclusive decision on the McKie marks. I am also aware that a questionnaire survey was published on the Internet inviting fingerprint examiners worldwide to state that the latent mark published had not been made by Shirley McKie. Although approximately 180 examiners worldwide stated that they did not consider the mark to have been made by Shirley McKie, only one police employed UK fingerprint expert to my knowledge, Mr David FAIRHURST, appended his name, he being an officer who initially failed his Advanced Fingerprint Course. In my opinion any examiner coming to *any* decision on the identity of these images basing his/her opinion solely on the Internet material would be extremely foolhardy.

The McKie latent mark is extremely complex and for an examiner to come to an accurate and conclusive decision, considerable expertise and experience are required, and above all, the decision should not be made in haste, as considerable time is needed to unravel all the mark's deceptive complexities. I was therefore both appalled and astounded to hear Mr Pat WERTHEIM, USA announce that in less than ninety seconds he had been able to come to the conclusion that the mark had not been made by Shirley McKie. In a subsequent BBC TV *Panorama* programme, Mr WERTHEIM announced that he'd come to this decision in less than a minute. I am also aware that very few UK fingerprint examiners who have seen any appropriate material have been prepared to state whether or not Shirley McKie has made the mark. And this is for a very simple reason. As stated previously the mark is extremely complex and considerable time is required to reach a safe decision. The majority of UK examiners have not had the time available to fully analyse the mark, thus they, quite sensibly, 'sit on the fence'. I find it quite inconceivable that Mr WERTHEIM could have reached his decision in such a short while, as he himself advocates the use of the ACE-V process for fingerprint analysis (Analyse, Compare, Evaluate and Verify). Indeed, in his *Scientific Examination Report*, dated 30<sup>th</sup> March 2000, Mr WERTHEIM needs five and half pages of A4 to explain why the mark has not been made by Shirley McKie, yet all this information had been assimilated miraculously by Mr Wertheim in less than a minute.

In his report, [Para. 10] Mr WERTHEIM states: ".....Regardless of the number of points found to be in agreement, a single dissimilar point is accepted to prove exclusion. If both the mark and the inked print were made by the same finger, then there cannot be even a single point present in one print but absent from the other." I find this statement coming from a qualified examiner to be quite unbelievable. All of us involved in fingerprint identification will from time to time make identifications where there are legitimate dissimilarities, but provided there is a logical and feasible

explanation for the discrepancy an identification can still be infallible and safe. The skill in deciphering these anomalies is that which distinguishes a competent expert from a cowboy practitioner. I can produce several examples where there is not only one dissimilarity but several, yet there can be no doubt as to the accuracy of the identifications.

In the same report [Para.11] Mr WERTHEIM describes, as though it is something miraculously new, how the expert must ".....consider the shapes of the ridges and features, ridge path deviation and the total sequence of features." How else could an examiner analyse the prints/marks under scrutiny. And yet all this Mr WERTHEIM achieved in less than a minute. He also states ".....a feature that clearly exists in one print but is clearly absent in the other is proof of exclusion. Utter rubbish and completely misleading. The features to which Mr WERTHEIM here refers are those other than conventional ridge characteristics and as such are even more prone to non-appearance due to their miniscule size and being less engraved within the ridge structure.

It is my opinion that Mr WERTHEIM, if indeed he *did* indeed come to his erroneous decision in less than a minute, made a severe professional miscalculation and one that he is now not prepared to reverse due to the damage it could cause his reputation. Another possibility could be that he does not have the professional experience and expertise required to analyse these particular images with total accuracy. I do not make this second statement glibly, for having visited many fingerprint bureaux within the USA I am aware that the level of training in general is far, far below that of the average UK trained fingerprint examiner. In the UK we have a very long, strong and respected fingerprint service, indeed one that is much revered outside our shores. I can state this categorically having visited many fingerprint bureaux overseas and the UK training Schools continue to receive students from foreign police forces each year.

As for expertise of Mr ZEELENBERG, (Dutch Fingerprint Service) I am unable to make any informed judgement. I can however state that in the 80s a survey, known as the Evert/Williams report was conducted under the aegis of the Home Office. In the survey, several pairs of fingerprints/marks were circulated to UK fingerprint Bureaux, the idea being that selected experts would compare the pairs and come to a conclusion as to whether they were a) identical; b) not identical and c) reached the required standard for use in court, i.e. disclosed a minimum of 16 ridges characteristics. The results were quite unexpected and all the UK fingerprint experts did well, although there was, not unsurprisingly, considerable variance on how many characteristics individual officers could determine. The survey was then sent to some overseas fingerprint bureaux, including The Netherlands and the Dutch were only able to confirm a single identical pair, yet UK examiners were able to find nine matching pairs.

5. In closing I wish to state that I have examined the charted material produced by Peter SWANN and am in agreement with his findings. I have also examined similar

charted material produced by Mr John BERRY BEM FFS and again I completely agree with the conclusions reached by this examiner.

Should the need or opportunity arise I would be prepared to add further to this statement.

Martin John LEADBETTER

6<sup>th</sup> December 2005

**MARTIN JOHN LEADBETTER FFS RFP BA (Hons)**

## **Curriculum Vitae**

### **1. Personal:**

Date and place of birth: 06/04/1945, London

Current address: 2 Priory Lane LITTLE WYMONDLEY Hertfordshire SG4 7HE UK

Telephone number: 44 (0) 1438 359292 Fax: 44 (0) 1438 759113

Email: [leadzart@btopenworld.com](mailto:leadzart@btopenworld.com)

### **2. Education/Qualifications:**

1957/1962 Sir Christopher Wren Technical School, London W.12  
Open University 1992/1998

General certificate of education

Associate and Licentiate diplomas Trinity College of Music, London

Bachelor of Arts + Honours degree, (Upper 2<sup>nd</sup> class) Open University

Diploma in European Humanities, Open University

Diploma in Music, Open University

Three credits gained towards Bachelor of Science degree, Open University

### **3. Employment:**

1966/1972: Fingerprint Officer, Metropolitan Police, New Scotland Yard, London

1972/1974: Fingerprint Expert, Gloucestershire Constabulary, Cheltenham, Glos.

1974/1991: Deputy Head of Fingerprint Bureau, Hertfordshire Constabulary, Herts.

(1987/1991: Secondment to UK Home Office National AFR Working Group)

1991/1995: Morpho Systèmes, later Sagem SA, Fontainebleau & Paris

1995/2005: Head of Fingerprint Bureau, Cambridgeshire Constabulary,  
Huntingdon, Cambridgeshire – retired August 2005

2005/present: Forensic Scientist, Forensic Science Service, Lambeth Laboratory,  
London, SE1

Fingerprint Expert, City of London Police HQ, London EC1

Academic Tutor to the Forensic Science Courses (BSc. & Msc) London  
South Bank University, London SE1

Director Competency Testing Services Ltd (CAS), Braintree, Essex, UK

### **4. Experience:**

Qualified as Fingerprint Expert in 1972.

Experience in *all* areas of fingerprint identification, including crime scene examination, bench-marking of AFIS systems, Fingerprint Bureau management, report writing, court presentation and witness skills, AFIS User Training. Knowledge of Sagem, Printrak, and NEC AFIS systems. Particular knowledge and skills in palm print identification. Author of numerous publish papers and article on finger/palm

print identification. Co-author of AFIS Operational Requirements. Provided presentations and papers.

#### **5. Official posts held:**

Head of the Fingerprint Bureau of Cambridgeshire Constabulary.  
Member of the ACPO National Fingerprint Board of England & Wales.  
Member of the ACPO Standards Working Group of the National Fingerprint Board.  
Chairman of the UK Bureau Practitioners' Sub-Group  
Past Chairman of the Third Level Detail Sub-Group

#### **6. Professional Organisations:**

Distinguished/Life Member of IAI (International Association for Identification).  
Founder/Life Fellow of The Fingerprint Society  
Past Secretary & Assistant Editor of The Fingerprint Society  
Member of The British Academy of Forensic Sciences  
Registered Forensic Practitioner – CRFP (Council for the registration of Forensic Practitioners).  
On the UK National Register of Fingerprint Experts  
Holder of the Lewis Minshall Award 1978

#### **7. Additional experience:**

While with Sagem was involved in more than twenty bench-marks in various countries of the world.

Speaker at numerous national and international conferences, including the UK National Fingerprint Conference, Fingerprint Society Meetings, IAI Annual Conferences (USA & UK), First Scottish National Fingerprint Conference and in various other countries, most recently at the Centenary Conference of the National Hungarian Police Service, Budapest. Co-organiser of the 1986 IAI Conference, London.

Member of the UK team, along with Dr Fred Preston (PITO) and Mr Bruce Grant (NSY) who were invited to Sarajevo, Bosnia to assist the European Union Police Mission design and implement a national AFIS system for that country.

Have worked with police personnel in the following countries: Netherlands, France, Germany, Hungary, Austria, Ireland, Russia, Ukraine, Canada, USA, Columbia, South Africa, Egypt, UAE, Kuwait, Qatar, Bosnia, Italy, Greece, Finland, Spain, India, Bosnia, Pakistan, Iran and Cyprus.

Implemented the first palm AFIS facility within the UK in 1997.

March 2005 and currently, Member of the European Union Biometric Strategic Task Force assisting in the VIS programme, '*Biometric Matching System*'.

## **8. Publications:**

Contributor to the following journals/magazines:

Fingerprint Whorld/Journal of Forensic Identification/Security News/Police Review/Medicine, Science & the Law. (See attached bibliography).

Author of unpublished crime novel: 'Deep and Crisp and Evil (2004).  
(See attached bibliography)

## **9. Hobbies/Interests:**

Composer of more than 160 works, including three symphonies, concertos for clarinet and violin, more than 60 songs, pieces for various orchestral ensembles, chamber and instrumental music and choral music, both sacred and secular.

Publishers: Fentone Music; Boosey & Hawkes and Con Moto.

Author of a crime novel, "*Deep and Crisp and Evil*" as yet unpublished.

Wine, cooking, travelling, art, books and fingerprint and crime history.

Member of the Corporation of the Royal Albert Hall

Member of the Performing Right Society

Member of the Mastermind Club of Great Britain and first editor of the Club's journal, "*PASS*".

Listed in the '*International Who's Who in Music*'

**Council for the Registration of Forensic Practitioners**  
**Disciplinary Tribunal hearing in the case of Mr Peter Swann.**

**Statement by Ms Shirley McKie**

I, Shirley Jane McKie, of 5 Wood Place, Troon, Ayrshire, a retired police officer, will say as follows:

1. I am aware of, and support, the complaint against Mr Peter Swann made to the Council for the Registration of Forensic Practitioners by my father, Iain McKie.
2. Mr Swann has never requested, and neither I nor any person authorised by me has ever given Mr Swann, permission to reveal any details of the fingerprint examinations he was authorised to carry out on my behalf in 1998.
3. The alleged breaches of confidentiality and professional privilege by Mr Swann outlined in the statement which my father has made for the purposes of the Disciplinary Tribunal's proceedings have had a detrimental effect on my psychological and emotional health. I am particularly concerned that Mr Swann has apparently broken client confidentiality.

I confirm that this statement is true to the best of my knowledge and belief.

Signed:

Shirley McKie

Dated:

10 June 04



**Council for the Registration of Forensic Practitioners**  
**Disciplinary Tribunal hearing in the case of Mr Peter Swann**

**Statement by Mr I A J McKie**

I, Iain Arthur James McKie, a retired police officer, of 27 Donnini Court South Beach Road, Ayr, will say as follows:

1. In February 1997 Marion Ross was murdered at her home in Kilmarnock. The same month David Asbury was arrested and convicted of her murder.
2. Following his trial, one of the witnesses, my daughter, Shirley McKie, who was then a police constable with the Strathclyde Police, was arrested and charged with perjury for stating that she had not been inside the house at the scene of the murder at any time. The evidence against her was a fingerprint found in the house, which was verified by four experts at the Scottish Criminal Records Office (SCRO) as belonging to her.
3. In 1998 Shirley's lawyers engaged Peter Swann to examine the fingerprint productions in the case. He agreed with the SCRO experts that the relevant mark had been made by my daughter and he submitted reports to that effect. I produce copies of those reports, attached and marked "IAJM 1" and "IAJM 2".
4. In May 1999 Shirley was found "Not guilty" of perjury in the High Court in Glasgow. Peter Swann was not a witness at her trial.
5. In March 2000 The Association of Chief Police Officers of Scotland asked Her Majesty's Chief Inspector of Constabulary (HMCIC), Mr William Taylor, to carry out an inspection of SCRO. Mr Taylor called in two further internationally recognised experts.
6. The HMCIC's report, published in June 2000 contained the independent expert's 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."

7. Following publication of the report, an apology was issued to Shirley in the Scottish Parliament by the Justice Minister.

8. The publicity arising from the case has been enormous, and I have encouraged some of this publicity because of the important issues raised and my belief in the need for more action to improve standards of fingerprint identification, particularly at the SCRO.

9. In addition I have delivered various presentations including one to the Fingerprint Society in March 2002 in Cardiff, outlining the evidence in my daughter's case. Mr Swann was present at my address.

10. At various times over the past three years I have been informed that Mr Swann has been making statements in public claiming that he was correct in his identification of the fingerprint in question as belonging to my daughter.

11. Shirley and I believed that the reports by Mr Swann at "IAJM 1" and "IAJM 2" were confidential in nature, and would not be divulged to anyone other than in a court of law when under oath. Neither Shirley nor her lawyers have ever given Mr Swann permission to release this information to other third parties, and he has never asked for permission to do so. For our part, my daughter and I have not named him nor publicly criticised him.

12. Specifically, Mr Swann has breached confidentiality as follows:

- a. On an unknown date in 2002, when contacted by Ms Shelley Jofre, a journalist, in connection with a BBC Panorama programme she was making, I understand that he discussed my daughter's case in detail with Ms Jofre. It is my contention that this conversation was potentially harmful to my daughter's reputation and civil case for damages against Strathclyde Police and the Scottish Criminal Records Office, and that

Mr Swann should not have entered into detailed discussions about the case and his analysis without Shirley's permission.

- b. At the Fingerprint Society Conference held at Oxford from 7 to 9 March 2003 I understand that Mr Swann canvassed a portfolio of enlargements purporting to prove that the identifications by the SCRO and himself were correct.

Mr Ron Cook, a fingerprint expert who attended this conference, is willing to attest to Mr Swann's actions. I consider those actions to be against the best interests of my daughter and to have contravened the principles of good practice for forensic practitioners published by the Council for the Registration of Forensic Practitioners (CRFP) in relation to professional confidentiality.

- c. At a conference on 'Lifting the Identification Profile – Centenary of Fingerprinting in Australia', held in Sydney from 26 to 28 November 2003 Mr Swann made further public statements about my daughter's case. Mr Allan Bayle, who attended the conference, is able to give evidence about this.

13. In breaching confidentiality on the occasions described above, I believe that Mr Swann also breached his duty, described in the CRFP's guidance to which I have referred, to preserve legal privilege in relation to his work in connection with my daughter's case.

I confirm that this statement is true to the best of my knowledge and belief.

Signed:

Iain McKie

Dated:

29.5.04



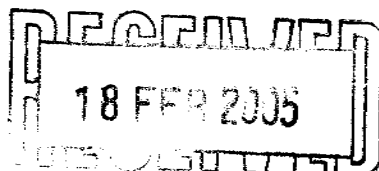
## CROWN OFFICE AND PROCURATOR FISCAL SERVICE

### Lothian and Borders Area

William Gallacher, Procurator Fiscal, Edinburgh

Procurator Fiscal's Office  
29 Chambers Street  
Edinburgh EH1 1LA

Messrs Towells  
Solicitors  
Thornhill House  
Thornhill Street  
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WF1 1NL



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Rutland DX: 550315 ED37  
william.gallacher@copfs.gsi.gov.uk  
<http://www.crownoffice.gov.uk>

Your ref: DAR/DS/84221 26 04  
Our ref: WJG/EM

14 February 2005

Dear Sirs

### **CRFP DISCIPLINARY TRIBUNAL: SHIRLEY MCKIE AND IAN MCKIE -V- PETER SWAN**

I refer to your letter of 30 November 2004 addressed to The Lord Advocate.

Any criminal investigation into the allegation that the McKies are responsible for making false averments in their pleadings in respect of the Court of Session civil litigation would fall to be instigated by my Office.

I have had an opportunity to consider the pleadings in this civil action and I have taken Crown Counsel's instructions on whether there is any basis for an investigation into these matters. Crown Counsel's conclusion, with which I agree, is that it would not be appropriate for this office to instruct a police investigation at this stage. The position can be reviewed at the conclusion of the civil proceedings, or if any further information comes to light. In this connection I note that the CRFP has sought a response from the McKies. I can confirm therefore that I would be happy to review the position in the light of any response.

Yours faithfully

WILLIAM J GALLACHER  
District Procurator Fiscal



INVESTOR IN PEOPLE

A Department of the Scottish Executive

**THORNHILL HOUSE**  
**THORNHILL STREET, WAKEFIELD WF1 1NL**  
TELEPHONE 01924 201444 FAX 01924 383735 MDX 15012



REGULATED BY THE LAW SOCIETY

Our Reference: DAR/DS/84221 26 04  
Your Reference:  
Date: 18 February 2005

William J. Gallacher,  
District Procurator Fiscal,  
Crown Office & Procurator Fiscal Service,  
**DX 550315**  
EDINBURGH 37

DAVID A. RUSSELL LL.B., LL.M.  
ANTHONY J. WOOD  
JAMES M. PARKIN LL.B., Notary Public  
NEIL G. PRATT LL.B.  
ANTONY HENSHAW LL.B.  
NAHEED MIRZA M.A., B.A.

**Associate Solicitors**  
SARA CROSS LL.B.  
MICHAEL H. THOMAS LL.B.  
DAVID A. CARTWRIGHT  
SIMON P. SMITH B.A.  
CARMINO J. MASSARELLA LL.B., B.Sc.  
DANIEL J GREEN LL.B.  
YASMIN A. IQBAL LL.B.

Dear Sir,

**(1) Court of Session:**  
**Shirley Jane McKie (Pursuer) v. The Scottish Ministers (Second Defenders)**  
**And Others**

**(2) High Court of Judiciary, Glasgow:**  
**Her Majesty's Advocate v. Shirley Jane McKie**

**(3) CRFP Disciplinary Tribunal:**  
**Shirley Jane McKie (First Complainant) and**  
**Iain Arthur James McKie (Second Complainant) v.**  
**Peter Swann (Defendant)**

We thank you for your letter of 14 February, received 18 February.

We have duly noted the advice of Crown Counsel and the corresponding position of your Office in respect of Criminal Investigation. For our part, we are pleased to signify our full agreement that the matter be reviewed by reference to the McKies' response and, in any event, upon conclusion of the Court of Session Proceedings.

As you may be aware, we have made a number of further Submissions to The Lord Advocate, Mr. Colin Boyd QC. In this connection, there have been a number of developments in respect of the Disciplinary Tribunal Proceedings, to include a refusal by the Solicitor Advocate representing the CRFP to give disclosure of the McKie response. Furthermore, and clearly upon Mr. Iain McKie's intervention, the CRFP are now attempting to have the Disciplinary Tribunal Proceedings adjourned. Upon the Hearing of such Disciplinary Tribunal, the McKies would be required to give evidence on Oath and further, would be subjected to intensive Cross-Examination on false statements pleaded in the Court of Session Action and promulgated in their "Campaign". In the circumstances, we have made an Application to the Disciplinary Tribunal Chairman for disclosure of the McKie response. Further, we have made Submission confirming that an Application for Adjournment will be vigorously contested. At this stage, we enclose for your consideration:-

**1. Letter dated 1 February to Mr. Andrew Wallis, Solicitor, Clerk to the Disciplinary Tribunal;**

2. **Letter dated 9 February from Mr. Jonathan Goodwin, Solicitor Advocate and Legal Representative of the CRFP;**
3. **Letter of Submission dated 10 February, made on behalf of Mr. Peter Swann.**

Mr. Philip Butler, the Chairman of the Disciplinary Tribunal is a Barrister who also sits as a Recorder in the Crown Court. Once we secure an Order for Disclosure from the Chairman, we shall take steps to copy the McKie response to your Office. Further Submission at that stage will, of course, be dependent upon the outcome of the CRFP's Application for Adjournment. In the event that the Disciplinary Tribunal proceeds, your Office may well wish to give consideration to one of its Officers maintaining a Watching Brief. Further, and in any event, we would ensure that the Proceedings before the Disciplinary Tribunal are recorded and transcribed by an Official Court Stenographer/Shorthand writer.

Finally, if the Chairman of the Disciplinary Tribunal refuses to make an Order for disclosure of the McKie response, then we shall proceed on the following basis. Firstly, we shall serve Notice on the Solicitor Advocate representing the CRFP, requiring him to disclose the McKie response to the Procurator Fiscal's Office. The duty to give such disclosure will be consequent upon the Solicitor Advocate's standing as an Officer of the Court and pursuant to The Law Society's Code for Advocacy. Secondly, we shall serve Notice upon Professor Evelyn Ebsworth, Chairman of the Governing Council of the CRFP, requiring him to instruct their Legal Representative to disclose the McKie response to the Procurator Fiscal's Office. In this connection, the Chairman and his Governing Council have a duty to give disclosure and further, under the CRFP Rules are expressly subject to a Code of Conduct based on **The Nolan Principles on Standards in Public Life**. Thirdly, we shall serve a Notice on the Chairman of the Disciplinary Tribunal, stipulating his duty to direct the CRFP's Legal Representative to disclose the McKie response to the Procurator Fiscal's Office. Such Application would be founded upon the Chairman's professional duties, both as a Tribunal Chairman, regulated by the Department for Constitutional Affairs, and as a Barrister and Judge, under the Bar Council's **Code of Conduct**. Whilst disclosure would thereby be withheld from us, it would ensure that the McKie response was served upon your Office. In this connection, all of those parties have an overriding duty to the Administration of Justice.

Yours faithfully,

**TOWELLS**

*Enc.*

Our Reference: DAR/DS/84221 26 04  
Your Reference:  
Date: 6 July 2005

DAVID A. RUSSELL LL.B., LL.M.  
ANTHONY J. WOOD  
JAMES M. PARKIN LL.B., Notary Public  
NAHEED MIRZA M.A., B.A.

William J. Gallacher,  
District Procurator Fiscal,  
Crown Office & Procurator Fiscal Service,  
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CARMINO J. MASSARELLA LL.B., B.Sc.  
DANIEL J. GREEN LL.B.  
YASMIN A. IQBAL LL.B.

BY FAX 0131 247 2826 & DX

Dear Sir,

**Shirley Jane McKie**  
v.  
**The Scottish Ministers and Others**

I refer to our previous correspondence in this matter. In this connection, you will recall having written to me on 14 February, 2005 stating:-

"I refer to your letter of 30 November 2004 addressed to The Lord Advocate. Any criminal investigation into the allegation that the McKies are responsible for making false averments in their Pleadings in respect of the Court of Session Civil Litigation would fall to be instigated by my Office".

You went on to state:-

"I have had an opportunity to consider the Pleadings in this Civil Action and I have taken Crown Counsel's instructions on whether there is any basis for an investigation into these matters. Crown Counsel's conclusion, with which I agree, is that it would not be appropriate for this Office to instruct a Police Investigation at this stage. The position can be reviewed at the conclusion of the Civil Proceedings, or if any further information comes to light. In this connection I note that the CRFP has sought a response from the McKies. I can confirm therefore that I would be happy to review the position in the light of any response."

As to whether it would be appropriate for your Office to instruct a Police Investigation, the appropriate stage would, indeed, be upon conclusion of the Civil Proceedings, that it to say the Court of Session Trial fixed for February, 2006. However, I have a duty to place before you the following documentation:-

**PAGES**

**DOCUMENT**

- |      |   |
|------|---|
| 1.   | Letter dated 14 February, 2005 from the Procurator Fiscal's Office, Edinburgh;  |
| 2-6. | Marked Extract from the Transcript of Evidence in respect of the Proceedings <i>Her Majesty's Advocate v. Shirley Jane McKie aka Cardwell</i> ; |
| 7.   | Extract in respect of a letter dated 1 February, 2005 from Iain McKie to Jonathan Goodwin, Solicitor Advocate;                                  |

8-26	Bundle of correspondence, Levy & McRae, Solicitors to Peter Swann.
27-30	Enlargements of the Fingerprint Exhibit (page 26);
31-37	Expert Report entitled <i>Fingerprint Evidence in HMA v. Shirley McKie</i> prepared by Peter Swann, dated 5 July, 2005.

Peter Swann's Expert report *Fingerprint Evidence in HMA v. Shirley McKie* dated 5 July, 2005 was prepared on my instructions and I am solely responsible for its disclosure and ensuing circulation. Furthermore, I am solely and exclusively responsible for giving disclosure of the correspondence and documentation appended to this communication. I give such disclosure to facilitate the Administration of Justice in Scotland and to prevent a grave miscarriage of justice. In particular, I have considered continuing disclosure to be justified, having regard to the fact that in the Court of Session Proceedings, the Pursuer, Shirley Jane McKie makes the following allegations against four named Defenders, namely, Hugh MacPherson, Charles Stewart, Fiona McBride and Anthony McKenna (Officers of the Scottish Criminal Record Office):-

"Deliberately sought to misrepresent the Evidence of identification by cropping the photograph of Y7"

"Degraded the photograph (Y7) to render it more obscure"

"Misrepresentation"

"Acted maliciously to seek to have the Pursuer convicted of a crime that she did not commit"

"Malice in the preparation for and giving of their Evidence"

"They accordingly deliberately misrepresented the position, which resulted in the Pursuer being prosecuted"

"Their conduct amounted to malicious prosecution of the Pursuer"

"Deliberate falsehood"

"Representation that the latent was that of the Pursuer was false and known to be false"

"They continued to maintain what they knew to be false"

"It is believed and averred that the SCRO Staff were deliberately seeking... to misrepresent the position thus continuing the dishonest approach that had been adopted..."

"That there was criminal conduct by the said SCRO Employees sufficient to justify Criminal Charges being brought against the said Employees".

As stated, those allegations are made against four – named Defenders in circumstances where each is a Fingerprint Expert in the employ of the Scottish Criminal Record Office. Since such allegations are entirely false, I have a duty to intervene and do so as an Officer of the Supreme Court.

In the Court of Session Proceedings, the Pursuer cites, and places reliance upon, her acquittal in the Perjury Trial *Her Majesty's Advocate v. Shirley Jane McKie aka Cardwell*. However, the Pursuer made no less than five false statements, whilst undergoing Cross-Examination on 11 May, 1999 by the Advocate Depute. In this connection, I attach an Extract from the Transcript of Evidence, upon which the five false statements have been marked (Pages 2-6). Ms. McKie, whilst on Sworn Oath, repeatedly denied having knowledge of any other Fingerprint Expert having examined Exhibit Y7 on her behalf, prior to Pat Wertheim. However, Ms. McKie had full knowledge that her retained Fingerprint Expert, Peter Swann had inspected Exhibit Y7, prior to Mr. Wertheim. I have, of course, already provided you with the Expert Report *Fingerprint Evidence in HMA v. Shirley Jane McKie* prepared by Mr. Swann on 16 March, 1999.



That Report was prepared following upon Mr. Swann's Expert Inspection conducted at the High Court of Judiciary, Glasgow on 2 March, 1999. Mr. Swann had been accompanied by Ms. McKie's Solicitor, Angela McCracken. The Inspection followed upon a meeting at the Offices of Ms. McKie's Solicitors, Levy & McRae. Immediately following upon the Inspection, Mr. Swann and Mrs. McCracken attended upon Leading and Junior Counsel for Ms. McKie, namely, Donald Findlay QC and Victoria Young. Extensive correspondence, incorporating the instructions of Levy & McRae, provides verification of Mr. Swann's direct involvement as Ms. McKie's Fingerprint Expert between May, 1998 and April, 1999. During that time, Ms. McKie, accompanied by Iain McKie, had travelled to Mr. Swann's Offices in Wakefield and spent the better part of a day with him. In December, 1998 Mr. Swann held a further meeting at his Offices in Wakefield, this time with Mr. H. Kerrigan QC and Mrs. Biggert, Ms. McKie's former Counsel.

In the circumstances, Ms. McKie had direct and extensive knowledge of Mr. Swann's work as her retained Fingerprint Expert and, of course, of the Inspection of Exhibit Y7 and related Exhibits and Charts during the Inspection at the High Court of Judiciary, Glasgow on 2 March, 1999. Of great importance is the fact that direct verification of Ms. McKie's knowledge is corroborated by Iain McKie. In this connection, I refer to a letter dated 1 February, 2005 from Iain McKie to Jonathan Goodwin, Solicitor Advocate (Page 7), in which the following statement is made:-

"In July 2000 I made a confidential Statement to a major Police Enquiry under the then Deputy Chief Constable of Tayside Police James MacKay. In the Report I made several references to Peter Swann and at page 23 stated:-

"In early March (1999) Peter Swann examined the Productions in Shirley's Case... Shirley and myself were not allowed to be present.... and we had no contact with Mr. Swann... The following week Shirley (was) told Mr. Swann had stated that the SCRO's identification.... was correct."

In the circumstances, I would refer you back to the Transcript of Evidence of 11 May, 1999 and Ms. McKie's five False Statements, whilst under Sworn Oath.

Subsequently, as Pursuer in the Civil Action *Shirley Jane McKie v. The Scottish Ministers and Others*, a series of false statements were pleaded, to include:-

"No Fingerprint Expert, other than those within SCRO, has maintained that the claimed match is a valid one. Numerous Experts throughout the world have been invited to comment to inquiries and none has stated that the latent matches that of the Pursuer."

"With reference to the averments in answer, and in particular the call placed, notwithstanding the fact that such information is confidential, no Expert who was asked to provide an opinion on the matter of comparison of the prints prior to the Pursuer's Trial stated that there was a match between the prints".

The false statements pleaded in the Court of Session Proceedings were subject to citation by Lord Wheatley in the ensuing Appeal Hearing. In the Judgment entitled *Opinion of Lord Wheatley*, Outer House, Court of Session, His Lordship declined to strike-out the following averment:-

"*Esto* any error had been made in the identification at the outset, it would have been obvious to any Employee of SCRO who had any reasonable experience of the identification or comparison of such marks, who was alerted to the suggestion that the fingerprint was not validly identified that the original identification was erroneous. The print comparison was such that there were numerous points of difference between the latent and the Pursuer's print. Any single point of difference would have alerted any Fingerprint Examiner of the fact that the prints were not a match, no matter how many points of similarity there were. Notwithstanding the obvious difference between the prints, the Employees of SCRO continued to maintain that there was a match."

Having cited that averment, His Lordship gave Judgment in the following terms:-

"I can see no reason why these averments should be taken out. Given that the action is one for malicious prosecution, there is nothing irrelevant or inconsistent about describing the actions of the Defenders in a manner which is normally associated with allegations of negligence, particularly as the Pursuer goes on to make averments of malice at a later stage."

His Lordship specifically declined to strike-out the following averment:-

"No Fingerprint Expert, other than those within SCRO, has maintained that the claimed match is a valid one."

His Lordship considered that the Pursuer, Ms. McKie should be entitled to pursue such allegation, on the ground that:-

"Part of the Pursuer's Case is that the differences between the two fingerprints were obvious and the averments complained of are undoubtedly relevant to a consideration of that issue."

In the circumstances, Lord Wheatley was directly misled in the Appeal Hearing. His Lordship had before him Pleadings which incorporated false statements.

I have copied this communication and the material documentation to the Lord Advocate.

Yours sincerely,

**DAVID A. RUSSELL**

*Enc.*

1 TUESDAY, 11th MAY, 1999.

2 EVIDENCE FOR THE ACCUSED CONTINUED.

3  
4 SHIRLEY JANE McKIE aka CARDWELL, (Accused) Sworn

Identification of false statements  
made by Shirley McKie, whilst on  
sworn oath, under cross examination  
by the Advocate Depute (Crown)

We hereby certify this to be a true  
and accurate copy of the original.

Signed

TOWELLS, Solicitors

ENCLOSURE : letter dated 6 July 2005  
to William Gallacher, District  
Prosecutor Fiscal, Crown Office.

FAXED BY DAVID RUSSELL

TOWELLS SOLICITORS  
THORNHILL HOUSE  
THORNHILL ST  
WAKEFIELD  
WF1 1NL

1 haven't.

2 So it is not simply a matter of a  
3 loggist perhaps telling untruths to help your position.  
4 They might also be telling untruths because of his own  
5 position? - Yes.

6 Now, let's move on a little bit.  
7 There are two possible scenarios here in general terms  
8 that we are talking about. Can I just try and be clear  
9 about this. Number one, if SCRO are right and it is  
10 your fingerprint in which case you haven't told the  
11 truth and some loggist hasn't. Alternatively, SCRO are  
12 wrong and you are right. Do you accept that as the  
13 two broad scenarios we are facing? - Yes.

14 You have said that you have been,  
15 understandably, extremely anxious over the last two  
16 years about this case? - Yes.

17 And you in due course instructed  
18 solicitors to represent you, didn't you? - Yes.

19 And you went to one of the better  
20 known firms? - Yes.

21 You wanted the best  
22 representation you could get? - Yes.

23 And as luck would have it you  
24 ended up with Mr. Findlay? - Yes.

25 At the end of the day. All right,

ADVOCATE  
DEPUTE  
(CROWN)

CROSS  
EXAMINATION  
OF  
SHIRLEY  
McKIE  
ON  
SWORN  
OATH

1 now may we take it from your concern that you would  
2 have been anxious throughout to know what was  
3 happening in the case? – Yes.

4 You would discuss matters with  
5 your solicitors? – Yes.

6 You would discuss matters with  
7 your Counsel? – Yes.

8 Understandably, you are  
9 concerned and you want to know what is happening? –  
10 Yes.

11 Can you tell the ladies and  
12 gentlemen how many people were asked to look at the  
13 print Y7 for the Defence before Mr. Wertheim? – I  
14 have no idea.

**FALSE  
STATEMENT**

15 Well, was it one, was it more than  
16 one? – You would need to ask my Counsel about that.

17 Is this not a matter that you would  
18 have been anxious to know about? – Mr. Findlay  
19 assured me he would do the job properly and to trust  
20 him and that is what I did.

21 At what stage did you first meet  
22 Mr. Findlay? – I can't remember the date.

23 Well, approximately? – A number  
24 of months ago.

25 Right, but this matter has gone on

1 for two years? – Yes.

2 And certainly from the point of  
3 your arrest you would have instructed solicitors? –  
4 Yes.

5 Did you instruct solicitors before  
6 that? – Yes.

7 At what stage did you instruct  
8 solicitors? – Within about a fortnight of my  
9 fingerprints being identified.

10 Oh, right, away back in 1997? –  
11 Yes.

12 And at that stage your solicitors  
13 would have started to look into the thing? – I don't  
14 know if they did at that point because it wasn't really  
15 clear what was going to happen.

16 Right. Well, at what stage do you  
17 think you solicitors started to look into things? – I  
18 don't know. You will need to ask my solicitors.

19 Do you seriously not know  
20 whether the print was shown to anyone before Mr.  
21 Wertheim? – I don't know who has examined the  
22 fingerprint.

FALSE  
STATEMENT

23 Do you know if anybody has? – I  
24 don't know who has.

FALSE  
STATEMENT

25 Do you know if anybody has,

1 regardless of their identity? - I don't know. You  
2 would need to ask my solicitor that.

**FALSE  
STATEMENT**

3 Well, did you not ask your  
4 solicitors? - Sorry?

5 Did you not ask your solicitors  
6 how things were progressing? - Yes.

7 And was there no discussion at  
8 any stage of other people looking at the fingerprint?  
9 - Well, there was discussion about obviously the  
10 fingerprint, people looking at the fingerprint but they  
11 don't discuss with me day-to-day who, what and why.

12 So you don't know whether or not  
13 anybody else looked at the print, is that your evidence?

14 - No, I don't know.

**FALSE  
STATEMENT**

15 Isn't the truth of this matter, Miss  
16 McKie, that at one stage you did in fact go into the  
17 locus for a look? - I have been at the locus twice and  
18 I have never been further than the porch.

19 Right, you are talking about the  
20 occasion when you went with DS Shields to look at the  
21 door and the occasion when you went to get the log? -  
22 That's correct.

23 We will come on to the details of  
24 that in a moment. On either of those occasions did  
25 you not go into the house? - No.