

## **Whistleblowing**

<http://shirleymckie.com/documents/Whistleblowing1.pdf>

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**'No act, not even silence, is without consequences.'**

By David Grieve

**Ethical dilemmas** are the result of principles in conflict, an apt description of what has gripped many fingerprint examiners in the UK and Scotland. As Pat mentioned, I have presented a scenario during a discussion of ethics as to what is the right thing to do when an incorrect conclusion of a latent print is discovered. This discussion is not limited to first discovery, but, as in the SCRO situation, when the agency that made the error refuses to acknowledge the incorrect conclusion. I present this as a discussion topic involving the absolutism of the Kantian model, which I believe is appropriate for fingerprint work, for the consequences of making a latent print identification can dramatically affect the lives and liberties of others, thus requiring a more rigid set of values. Approached from the Kantian model, all examiners have a duty toward others where strict adherence to the highest standards is an imperative. The duty toward others, especially in the realm of justice, demands imposed standards, not voluntary compliance to personal values. When presented with injustice, the examiner has the moral and legal obligation to do all that is possible to right the wrong. The mechanism for doing so is what Kant called the greatest asset of the human existence, the exercise of free will. No one, according to Kant, is predestined to do good or evil, participate or ignore, to be moral or immoral. Free will is the execution of choice in how we act or react, what we stand for or against, what values we cherish, and how we conduct our lives.

Kant warned that ends never justify means, but the apparent climate within Scotland, specifically within law enforcement, the fingerprint service and, to a large degree, the government itself, ignores this axiom. Those who subscribe to the fallacy that injustice is a necessary evil to achieve justice fool no one. Years ago, I was informed that ethics are caught, not taught, and the actions, or rather inactions, of major public institutions seem to verify this perspective. Entities that have not established and enforce ethical standards only promote a lack of ethics in their staff, and there appears to be no shortage of these. The statements of SCRO, Strathclyde Police and, unfortunately, the majority government, are reactive, not proactive, meanderings with no consistent core value. What is offered as pragmatism is in reality cheap rationalization that allows wrong to continue. Studies into debacles such as Enron demonstrate that a lack of ethics at the top

invariably promotes even more horrendous violations of good conduct along the chain of command. To get along one must go along, and some people respond to this with exceptional zeal.

The appeal of unethical behavior is that it is frequently easier to execute than doing the right thing. It really takes little courage to lie, to steal, to deny, to ridicule, to stonewall, to threaten, to cajole, to browbeat, and to cultivate an atmosphere of fear. Perhaps there is a little bit of bully in all of us, but some people seem to relish subjugating and humiliating others, perhaps as pay back from some school yard incident long ago. Reading Mr. Russell's letter caused me to wonder who took his lunch money from him when he was a kid. But as Kant stressed, even the biggest bully can take away another's free will. The individual who surrenders to unprincipled or unethical demands gives away that precious gift, perhaps with some reluctance at first, but with repeated abdication, the yielding of free will becomes easier and easier until there is no will left. And that is the tragedy of this sordid mess.

I believe there are very few, if any, examiners in the UK who have not viewed the SCRO erroneous identifications and have formed their own conclusions. Something of this notoriety so deeply affecting the profession serves as a magnet to be observed and determined individually. The room was packed in St. Louis to see the Mayfield presentation, a natural and normal response to an admission of error. The fact the SCRO has never retracted their identifications of Shirley and David Asbury, adds to the intrigue, and with the images readily available to examine at [onin.com](http://onin.com) for years, no examiner worth his or her salt would have missed checking to see what was the fuss. Therefore, the silence among the fingerprint community within England, Wales and Scotland is not from ignorance of the matter but a deliberate decision, one counter to the duty towards others imperative of Kant. I cannot believe that all Scots, English and Welsh examiners would independently exercise their free will to remain mute about the matter, for this has not occurred elsewhere in the world. Therefore, the only alternative is that this silence has been imposed on them by others, that examiners have faced the conflict of following the imperative or facing punishment or discharge, and therefore free will has been surrendered. The examples of Allan Bayle and the Lothian and Borders 14 support this determination, and I, too, have been contacted confidentially about this deplorable situation. But the distinction must be made that as offensive as bullying may be, victims of such tactics are willing participants.

Whistleblower laws are designed for situations such as this, when those in authority misuse public trust, when unethical conduct is condoned or even encouraged, and when retaliation is the anticipated result of someone bringing unethical behavior to the attention of management. The need for such protection reveals just how prevalent unethical conduct has become, even among agencies that exist to protect the public, but, instead, develop a "them versus us" mentality. Discipline is maintained by a system of brutality and punishment, teamwork is limited to agreeing with those in charge, and input is confined to an inner circle. However, those bent on silencing

dissent do more than abuse authority. In addition to the tactics of threats and intimidation, an attempt will be made to neutralize the ethical conflict with five statements so often repeated that they become more messages from the pulpit than anything resembling true information. There is no surprise that all five neutralizers have been uttered by SCRO, both officially and in hallways, and these are the strongest indication that the wrongdoing is, indeed, intentional.

First is the denial of responsibility, such as the absurd contention that SCRO got it right all along. The concept of "sides" was not an original thought posted by Dave Charlton, but has been the main thrust of SCRO since the beginning and led to the ridiculous statement that matters of "opinion" have no right or wrong. As mentioned on CLPEX, the denial of responsibility now includes some magical "key" to getting started in this comparison of the mark to Shirley's left thumb print, some mystical sorcerer's stone that empowers the ridge features to transform into agreement. I testified that trying to find agreement between the two impressions is like comparing a horse to a giraffe. Any commonality is artificial, and, in the end, one is still a horse and the other is a giraffe.

Second is the denial of injury, and I have heard this one often repeated in the refusal of professional organizations to get involved. Shirley was acquitted, thus she was not harmed. Asbury was released from prison and not charged again. To further enhance the contention there was no injury, the guilt of Shirley and David are still whispered regardless of a lack of evidence. Shirley managed to outwit the entire Strathclyde Police Force as she circumvented the integrity of the crime scene and entered the Ross home for lurid reasons. How else would her thumb print be there? As to David Asbury, there are those who have commented on his guilt as the rationalization as to why the Ross case has not been reopened. In short, no one was hurt except, of course, Marion Ross.

Third is the denial of a victim, and in this pursuit, Shirley is portrayed as a scheming shrew who is only in this for the money and she was from the beginning. This was offered as the explanation why the topic was removed from the IAI Board of Directors agenda. Asbury now can be explained in the same light, as if anyone in his right mind would devise a plan that involved willingly being sent to prison for some eventual payday. Mr. Russell went to great pains to repeat this assertion, that there are no victims and any compensation for an injury that did not occur would be a travesty.

Fourth is condemnation of the condemners, and Mr. Russell is not alone in his spraying of venom. During these six years, Pat Wertheim and I have gone from being cowboys, untrained at that, to now being Internet experts, joined by many others throughout the world who have spoken out. According to Mr. Russell, we cannot hold a candle to the folks from SCRO, or more condemning, aren't worthy of cleaning their toilets. But the most insidious part of the campaign to neutralize the conflict is the final step, the appeal to higher loyalties. Our loyalty is requested because an agency knowing its work will be independently reviewed did flawless work putting bad guys away. I agree that independent review would have detected incompetence, but this review was not designed to

discover deliberate action. Nevertheless, I am amazed at how effective this neutralizer has been. Sub-judice demands silence, the good of the profession requires no comment, or, what was used on me, the need to avoid embarrassing a "sister agency." Well, those who run SCRO are no professional relatives of mine, nor are they related to any conscientious examiner. This righteous stand may have been used often, but the appeal is hollow. No appeal to higher loyalty asks one to be dishonest, no loyalty demands silence about wrongdoing as a means of protecting the profession, and no decision to hold the next Society meeting in Scotland is an altruistic gesture to the nobility of education.

Taken one at a time, these neutralizers may be accepted with just a small amount of gullibility as justification to remain silent. However, when observed as a package, the combined statements form the complete defensive cycle of classic denial. They also represent an emptiness of moral value within a system that has no provision for the importance of ethics, let alone truth or justice.

Iain McKie ponders the role of the whistle blower and whether those breaking ranks with the status quo would make a difference. The answer is an emphatic yes. The anathema to moral decay and corruption is the whistle blower, the person who makes the conscious decision that continuing loss of free will is too high a price to pay and summons what is left of the valuable commodity to speak out. Whistle blowing is so feared by those who have abandoned principles and values that any means will be used to deter the first person from speaking up. Retaliation will undoubtedly occur, especially with a lone voice, but such tactics cannot prevail indefinitely. Fred Whitehurst spoke out about certain FBI practices eventually prevailed, although it was an arduous task, and received full retirement along with a most generous settlement. More important, Fred's whistle blowing caused much needed reform that has been beneficial to all. A contrast of how the FBI handled previous instances of wrongdoing with the Mayfield case is an example of how one person can make a difference.

Ethical conflict does have a method for inquiry. The model I use contains four steps: (1) determine the facts; (2) decide which principles involved are authoritative; (3) ensure that the identified principles truly apply to the situation; and (4) ascertain one's own mind. As I am frequently informed, the first step is perhaps the most difficult, for isolating fact from rumor and innuendo requires objectivity just as demanding as doing latent print examinations. Yet without that objectivity, neither can be done with reliability. One fact must be considered before the process begins. No act, not even silence, is without consequences.

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