THE FINGERPRINT INQUIRY

SUBMISSIONS ON BEHALF OF SHIRLEY McKIE, IAIN McKIE AND DAVID ASBURY

INTRODUCTION

The Inquiry is to be commended on the thorough and diligent manner in which the evidence has been organised, led and analysed. Although there remain a number of issues raised by Iain McKie that have not been subject to any investigation by the Inquiry, there has clearly been an extensive and constructive discussion regarding the issue of fingerprint identification. The conclusions of the Inquiry are eagerly awaited not only by those practicing in the criminal justice field in Scotland, but also by a worldwide audience of fingerprint practitioners.

The key finding that is sought is one that prints Y7 and QI2 (Ross) were misidentified by SCRO experts and independent experts Malcolm Graham, Peter Swann, Martin Leadbetter and John Berry. After nearly 13 years the time is long overdue for a final judicial determination on these fingerprints to allow those who wish to do so to move on with their lives. Thereafter, it is hoped that the recommendations of the Inquiry will ensure that the process of fingerprint analysis is assured the degree of accuracy and integrity that is essential to allow it to play an important and effective role in forensic science. Further, they should address the failures that have been demonstrated in the wider criminal justice system in Scotland, and allow the damage that has been done to the public confidence in that system during the last 10 years to begin to heal.

In making these submissions, it is not proposed to rehearse the evidence led by the Inquiry, and while many issues have been raised during the course of the evidence only the key points are discussed below. In particular, in light of the thorough examination of witnesses by Counsel to the Inquiry, submissions will not address the individual analyses of Y7 and QI2 in any substantive way.

AIM OF INQUIRY

'The purpose is to open up and understand those events and to learn from them, in order to ensure that, for the future, Scotland has an approach to the identification, verification and presentation of fingerprints that everyone can trust.' [1]

Inquiry Terms of Reference:

- *To inquire into the steps that were taken to identify and verify the fingerprints associated with, and leading up to, the case of HM Advocate v. McKie in 1999, and*
- *To determine, in relation to the fingerprint designated Y7, the consequences of the steps taken, or not taken, and*
- *To report findings of fact and make recommendations as to what measures might now be introduced, beyond those that have already been introduced since 1999, to ensure that any shortcomings are avoided in the future.*

CONTENT OF SUBMISSION

Chapter 12 of the Inquiry Analysis of evidence highlights two critical questions, which are central for the Inquiry to answer, and are a pre-condition to addressing any other matters. They will accordingly be considered first:

1. Were Y7 and QI2 correctly identified?

2. How did the misidentifications occur? [2]

Thereafter, the following issues are considered:

[1] (Kenny MacAskill, Secretary for Justice): Scottish Parliament Written Answer 14 March 2008 (S3W-10920)

[2] The third question: "In particular, if there was any misidentification, how could four fingerprint examiners acting independently have made such an error?" shall be considered as part of the second.

3. How culpable was the mistake?

4. Failures made by COPFS

5. Actions taken to date

6. Recommendations

1. WERE Y7 AND QI2 CORRECTLY IDENTIFIED?

Counsel for the Inquiry has led evidence as to the comparison exercises in relation to Y7 and QI2 in a meticulous and comprehensive manner, and it is accordingly not proposed to rehearse or discuss the evidence in this area. The Inquiry will require to draw its own conclusions as to the credibility and reliability of those contending Y7 and QI2 were correctly identified by SCRO. In so doing, it will be crucial to consider each individual's demeanor, potential motivation and prior involvement in the case.

Ample evidence has been led throughout this inquiry from a broad range of international experts that prints Y7 and QI2 have been wrongly identified by the SCRO examiners. In addition there is a mass of documentary evidence stretching back to 1999 that comes to the same conclusion. The importance of this evidence cannot be underestimated. Most came from independent sources.

The sources of the material used varied from original material to internet images - all of which have been verified as being of a high enough standard to be used in comparison.

In response, the SCRO have found only four outside experts to support their theories, and during the course of the Inquiry it has become clear that even these experts do not fully agree with the SCRO experts. It is submitted that the evidence of Peter Swann, Martin Leadbetter and Malcolm Graham has been discredited.

Importantly the SCRO experts and their supporters have not been able successfully to rebut any of the evidence from the contradictors. For instance Arie Zeelenberg

evidenced 17 discrepancies in Y7, and other than a general expression that he was wrong, no evidence was produced to rebut his findings. While it is accepted that there was no demand for cross examination to test positive cases, there was equally no inhibition on so doing. Those representing SCRO at no time challenged the positive evidence of Mr.Wertheim; Mr.Zeelenberg; Mr.Shepherd; Mr.Grigg, to name but a few. As is a common feature, the attack was on the messenger, not the message.

Peter Swann

Peter Swann was initially instructed by those representing Shirley McKie to give an opinion as to the possibility that Y7 was a forgery or transplant. At that stage the possibility of a misidentification was not countenanced. The main content of his eight-page report dated 6th March 1999[3] considers and discusses the issues of forgery and transplantation, and the only parts that comment on the identification of Y7 are:

> *Page 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."*
> *Page 7: "confirmation that the mark on the door was the left thumb print of Shirley Jane McKie"*
> *In the conclusion: "being satisfied as to…. the positivity of its identification"*

There is no discussion of what analysis he carried out, whether any differences were noted and if so what the explanation for those may be. He states that he came to his initial view on Y7 by using a copy of the SCRO chart, and this was one of certainty that the SCRO identification was correct. He produced a chart to the Inquiry which he said in evidence was the one he received from Levy & McRae. He has since sought to retract this position, however the fact remains that Mr Swann claims he reached his view of certainty on the identification on the basis of charts – which have been accepted to be cropped, inaccurate and of poor quality. The most likely position would be that Mr Swann did not carry out a full and proper analysis of Y7, at any stage prior to the trial. Indeed, this was not his instruction. He provided a report on

[3] SG_0283

transplanting and forgery, having taken it as read that the identification was correct. In this respect, his explanation in his Operation Alba statement may thought to ring true:

> *"There was no requirement upon me to make any comparison, as the identification of the crime scene mark was not in question, everyone believed the mark to be Shirley McKie's"*[4]

Thus, when it transpired that this identification may not be correct, he perhaps felt he could not say he did not properly consider the mark when first instructed, and has since sought to defend his position. Further, his contact with Terry Kent may be thought to have been entirely inappropriate. The Inquiry is accordingly invited to disregard Mr Swann's evidence in its entirety.

Malcolm Graham

Malcolm Graham is in a position now where he is having to defend his initial opinion. He gave evidence that his consideration of Y7 might have only been between 13 and 15 minutes[5], and he was using the SCRO photographs which he said were 'exceptionally bad'. Even then, he could not meet the 16 point standard – although he did not mention this either in his report or when giving evidence. When giving oral evidence, Mr Graham may be thought to have been defensive, evasive and eager to criticise other experts, of whom he knew little. The explanation for the errors in his initial report was poor. Overall, the Inquiry is similarly encouraged to disregard Mr Graham's evidence. Mr.Graham was anxious to explain that he had not been examining fingerprints for some time. His reluctance to engage in a discussion about the prints in question is telling.

Martin Leadbetter

It is submitted that Mr Leadbetter was demonstrably biased against any expert who was of the view that SCRO made a mistake. His unsubstantiated accusations against a number of experts within his Inquiry statement were shown to be without foundation, and he withdrew many of his allegations when challenged. Not only does this demonstrate an unprofessional eagerness to engage in personal attacks without any factual basis, but must also give an insight into his motivation for agreeing with the

[4] CO_2141

[5] Evidence 9th July, page 90, line 17

SCRO identification. In terms of his oral evidence and his Inquiry presentation it was clear that while he agreed with the SCRO experts his reasons for doing so completely contradicted their evidence. Specifically in relation to his charting mark up of Y7 he was unable to explain a 10 point difference in ridge count between the latent and inked prints. It is submitted that his evidence should be disregarded in its entirety.

In summary, therefore, it is clear that there is no independent evidence of any reliability that can support the position of SCRO. The so called independent experts do not agree with each other; and do not in fact agree with SCRO apart from the bare ipse dixit that they consider the idents to be correct.

2. HOW DID THE MISIDENTIFICATIONS OCCUR

There were many factors that contributed to the misidentifications, and it is submitted that it is important to set the analyses of QI2 and Y7 in chronological context.

POLICE INVESTIGATION

This was a brutal murder of a vulnerable lady just after Christmas, and it was a crime that Strathclyde Police no doubt felt under considerable pressure to solve, and to solve quickly. Once David Asbury was identified as a potential suspect, it seems apparent that there was a clear drive to ensure his conviction.

The evidence before the Inquiry demonstrates clear deficiencies in the initial police investigation into the murder. The paucity of evidence against David Asbury meant that the case against him was founded on fingerprint evidence, and accordingly anything that could have an impact on the reliability of that evidence would have been damaging to the case. It is accordingly important to place the misidentifications of QI2 and Y7 in that context. Further, the failure properly to secure the locus meant that there was no reliable evidence as to who had been in the house, and when. This meant it was not only difficult to conclusively prove Shirley McKie's movements but other potential donors of Y7 could not clearly be established.

Confusion regarding whether was murder or suicide

There is evidence to suggest that there was a lack of clarity in the initial stages of the investigation as to whether the death had been a murder or suicide. The latter suggestion appears to have come from the pathologist and Marion Ross's cousin James Campbell[6].

Stephen Heath told the Inquiry[7] that he could not designate a death as a murder until after the post-mortem, however in his police notebook[8] he noted "*Initial impression suicide, no forced entry*". In evidence he did not accept that this was his view at the time, but rather he explained that this phrase merely summarised the opinions of others there (such as the pathologist and a relative of the deceased). He said that he secured the scene and treated the locus as he would have done had it been a murder[9].

While the majority of police witnesses indicated that there would be no practical distinction in relation to the way in which the investigation was handled, it is submitted that if the immediate understanding was that the death was not suspicious, this may have reflected the attitude towards preserving the locus, and the recovery of evidence. As an example, in terms of the thoroughness of the forensic investigation it can be seen from the log[10] that the forensic examiner Martin Fairley was present at the house between 8.31pm and 11pm. The following morning, Scenes of Crime Officers Graham Hunter and Stuart Wilson were sent away after only 35 minutes.

Although this may be a relatively minor point, it is suggested it gives an indication that the investigation was not being handled appropriately, right from the start.

Failure to secure and control locus

Support for the belief that there was initial doubt about suicide or murder is to be found in the conflicting evidence from officers who were at the scene very shortly after the murder as to who was responsible for ensuring the locus was kept secure and regulating access. This lack of consistency may be thought in itself to be a matter of

[6] Operation Alba statement of Stephen Heath, CO_1171
[7] 9th June 2009, page 19.
[8] AC_0004
[9] Inquiry statement, FI_0013, paragraphs 22 and 28.
[10] SG_0357

concern – if there was no clarity as to roles and responsibilities[11]. The extent to which the locus was secured and evidence preserved is a matter of considerable importance in relation to subsequent events.

Stephen Heath and his second in command, DI Alexander McAllister have different recollections as to the instructions that were issued in respect of securing the locus and there was a palpable lack of clarity in respect of who had responsibility for locus security.

The Inquiry has heard that during the night of 8th to 9th January 1997 a total of six police constables were present in the living room at the locus and the suspicion must be that they moved around the house to some extent.

In evidence, Scenes of Crime officer Michael Moffat suggested the atmosphere in the house at that time was like a 'carnival'[12], and Graham Hunter conjured a similar image by his claim it was like "Piccadilly Circus"[13].

If these failures are allied to the clear evidence that the maintenance of the log at the locus was haphazard and inaccurate then we have a clear recipe for contamination of fingerprint and forensic evidence.

Taking all of this evidence into account, it is submitted that the initial handling of the investigation was poor, and lacked structure. In a case that was to ultimately hinge mainly on fingerprint evidence, clear locus management from the earliest stage was critical.

In terms of the broader murder investigation it is important to note that there were a number of other suspects who (until David Asbury was arrested) were being treated very seriously by the police as suspects. The Inquiry has not considered in detail what other evidence was available, and why they were eliminated from the enquiry. Given that Mr Asbury's conviction has been quashed, and the main evidence against him

[11] And the confusion cannot be solely related to the passage of time, as inconsistencies are evident even from police statements and precognitions taken at the time.
[12] 11th June 2009, page 60
[13] Operation Alba statement, CO_1264

discredited, it becomes relevant to ascertain whether the cases against them have been fully followed up.

Failure properly to investigate allegations regarding Gary Gray

Michael Moffat told the Inquiry that in the evening of 8th January, while preparing to lift the body of the deceased, he saw PC Gary Gray leaning on the bathroom doorframe. Mr Moffat noticed shortly afterwards that PC Gray had a damaged glove. Mr Moffat gave evidence that he repeatedly tried to bring this incident to the attention of his seniors, however was confronted with aggression and perceived threats to stay quiet. Thereafter, he felt his career was blighted by the stance he had taken.

If Mr Moffat's testimony is accepted then demonstrates the unwavering assumption that the print belonged to Shirley McKie's and that no opposition to this theory would be countenanced.

While it can now be stated that the fingerprint Y7 does not belong to Gary Gray, the question arises: why was there a reluctance to investigate this matter? At best this indicates a lack of care in finding out the truth; but at worst indicates a fear that the "truth" may be discovered – that the print was not that of Shirley McKie and was in fact that of Gary Gray. This is far from the attitude that the public are entitled to see in the investigation of serious crime.

SCRO RELATIONSHIP WITH POLICE

It is submitted that, notwithstanding the efforts of some witnesses to claim the SCRO worked independently from the police, the evidence has shown that in reality there was a close working relationship between them[14]. The Inquiry might like to consider that in practice a close working relationship between the police, IB and SCRO would not be improper and in fact could be said to be beneficial. Given that many of these officers were senior in service it would be perfectly natural for them to know each other.

[14] For example, Stephen Heath also made a 'courtesy call' to SCRO on 13th February, to 'thank people for their focus and work - evidence on 9th June, page 44 line 22

The problem is not their working together but their denial that they were doing so, that they knew each other and that they could in any way be influenced.

At times the evidence of ex-SCRO officers such as Robert Mackenzie and Hugh Macpherson suggested they considered themselves intricately involved with the investigative process[15]:

In relation to the Marion Ross inquiry, SCRO were told about progress of the investigations, and even attended at the locus. The relationship with the police was of particular relevance in the time after David Asbury's arrest, at a time when the circumstantial case against him must have been of concern to the police. Over this period although DI McAllister was responsible for liaison with the SCRO Mr Heath made two visits to the SCRO within 5 days of print QI2 being identified, and he did not doubt that SCRO would have been told that the tin was significant[16].

It is within this context, that the note 'ident required' should be considered. It is perhaps not surprising that the Inquiry has not heard any evidence that any officer felt that this phrase indicated any positive instruction to identify this print, however, in light of the relationship with the police and the SCRO's knowledge of the case this note is perhaps demonstrative of a particular 'corporate' mind-set in relation to the investigation.

Given the factual background within which QI2, and subsequently Y7, came to be analysed, it is then important to consider what systems were in place within SCRO to regulate the fingerprint analysis.

CULTURE AND LACK OF PROCEDURES WITHIN SCRO

There is little doubt that the Inquiry has revealed written and oral evidence that in 1997 there were many issues at play within the SCRO that it could be argued

[15] As an example, in evidence on 27th October (page 38, line 11), in relation to the decision to identify all marks to 16 points in a case, Mr Macpherson said: "*What would have happened if -- I'm not talking about this case -- but in some other case where there's a murder committed and a person comes in on an elim form, it's identified and I don't do anything for it for six weeks? What happens if somebody that person goes out and murders someone else or rapes someone else?"*

[16] Inquiry statement of Stephen Heath, FI_0013 paragraph 224

contributed to the mistakes. In his Report carried out for the Criminal Investigation[17] James Mackay found the SCRO to be a somewhat different organisation to the one portrayed by their staff to this Inquiry. He reported on several occasions about the arrogance he found within the SCRO, and these comments have been echoed by a number of witnesses to the Inquiry, such as Geoffrey Shepherd[18], Peter Ablett[19] and Richard Luckraft[20].

There has been evidence that the senior experts like Hugh Macpherson and Charles Stewart were held to be above reproach, and the Quality Circle minute[21] shows evidence that the younger experts were unhappy with being asked to 'push the points' but that their complaints were not being taken seriously.

In addition, cultural and possible psychological and emotional issues like those identified by Dr Dror were clearly at play and help explain how such errors could be made.

There seems to have been a belief by staff within SCRO that they were the 'best in the world' and that senior experts were 'World Class'[22], and Sheriff Frank Crowe conveyed a similar impression, when he commented that the SCRO considered themselves to be "an elite"[23]. There was also an apparent pride that SCRO officers through they could work with prints that other experts or bureaux would discard as unsuitable[24].

In addition to these cultural issues, there were issues related to poor management, morale, procedures and equipment that could fairly be said to have the ability to contributed to the errors.

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[17] CO_0005
[18] FI_0082 - paras 71 to 74
[19] FI_0083 – paras 24/25
[20] FI_0113 – para 3
[21] DB_0554
[22] 23rd June, page 115
[23] Inquiry statement, FI_0048, paragraph 27
[24] As an example of this, see the precognition of Fiona McBride taken in 2003, SG_0187 – where she comments that experts who disagreed with SCRO findings were generally those who "did not have the same skills base as SCRO", and in relation to Arie Zeelenberg she thought he was "not used to working with such poor prints".

Various differing accounts were given as to whether there was a distinction between an elimination and an identification, and how many officers would be used. The diverging evidence of the SCRO officers in itself demonstrates a clear lack of procedures and an inconsistency in practice.

A large volume of prints was recovered and processed during the Marion Ross inquiry, and there different accounts in relation to what standard marks were identified (or eliminated) to. Some SCRO officers[25] maintain the position that all of the prints were identified to a 16 point standard by 4 experts, while other officers[26] gave evidence that they had never heard of such a procedure, and appeared surprised by the suggestion.

Hugh Macpherson claims he was the one who decided in the circumstances of the case to apply this standard. It is submitted that no clear, logical or satisfactory explanation has been given by any witness from SCRO as to how this decision was made, for what reason and how it was implemented. There is no documentation that supports Mr Macpherson's version of events, and indeed the photograph of XF[27] can be interpreted to show a two stage process - whereby David Asbury was initially eliminated (in black) and then identified as a suspect (in red).

The Inquiry has also heard evidence of pressure being applied to experts who were unwilling to sign identifications to a 16-point standard, and there being a general culture where fingerprint identifications were 'pushed to 16-points'[28]. Further, there was evidence that it was common practice for a senior officer to be the first to examine a mark - in relation to this murder inquiry Hugh Macpherson was the first officer to examine the prints[29] QI2 and then Y7, with both marks then being place on the comparator for others to check. Initials were added to show who had checked it. Evidence has been heard at this Inquiry to show this practice was common place[30].

[25] Such as Mr Macpherson, Mr Dunbar and Miss McBride
[26] Mr Padden, Mr Foley, Mr Geddes and Mr Bruce.
[27] CO_1987
[28] While Greg Padden would not go as far as to say there was direct pressure, he used terms such as "you had to get to 16 points" (evidence on 23rd June, page 86), and that if 16 points were not reached there could be 'eye-rolling' and 'exasperated noises' within the SCRO office
[29] Statement of Alister Geddes, FI_0031, paragraph 60
[30] FI_0031, paragraph 55

The so-called 'blind-test' on 17th February 1997 was organised by Alan Dunbar. Robert Mackenzie sought to suggest to the Inquiry that his exercise was merely an *ad hoc* training exercise – one that had never been done before, or since. It is submitted that his account of this incident is not credible, and supports a conclusion that he fully realised what an inadequate and inappropriate procedure this was. His comments on the blind test during evidence could also be understood to demonstrate a degree of personal arrogance, in that he implies he would not have put himself in the situation of allowing other officers to come up with different conclusions[31]. Mr Mackenzie's account of the exercise is clearly incompatible with that of Mr Dunbar – and it is submitted that Mr Dunbar should be accepted.

Although some officers could not find 16 points, and others were not content to reach a view at all - the message that was disseminated after the blind test was that no officer had come back with a different finding, and all persons who had carried out a comparison of Y7 were happy with the identification[32].

In terms of the process itself, it is submitted the Inquiry should find that it was entirely irregular and inappropriate - some officers felt pressurised, and marks were left on the comparator[33]. The Inquiry may wish to draw an adverse inference from the fact that the other officers who took part in the 'blind-test' have not come forward to give their view (whether supportive of their colleagues or not) and their identities have not been established by SCRO/SPSA.

Accordingly, there is little doubt that the Inquiry has revealed written and oral evidence that in 1997 there were many issues at play within the SCRO fingerprint bureau that it could be argued contributed to the mistakes.

[31] 1st October, pages 95/96

[32] Although not spoken to during the Inquiry, this was evidence given to the Justice 1 Committee by Alan Dunbar and Hugh Macpherson.

[33] See the evidence of Greg Padden.

3. HOW CULPABLE WERE THE MISTAKES?

It is submitted that consideration should be given to the gravity of errors that have been made at different stages. They may have been attributable to simple mistake, incompetence or deliberate actions amounting to criminality – or a combination of all three. However, while there may have been systemic failures that allowed the errors to be made, it is submitted that as time moved on the actions of individuals took on more relevance and the extent of culpability for the errors increased.

There is a considerable body of written and oral evidence including the MacKay and Gilchrist reports given to the Inquiry that would tend to suggest that the misidentifications were not caused by simple mistakes or incompetence. The SCRO experts' work one year either side of 1997 was peer reviewed by the PSNI, and the ongoing verification of their work ordered by the Lord Advocate found it to be 100% error free.

It is submitted that four competent experts, working independently, could not make two misidentifications in the one case.

Initial error

XF was identified as belonging to David Asbury on 21st January, and he was then arrested and the case against him was presented to the Procurator Fiscal. Mr Heath said that he was told by the PF at that stage that the case was fairly circumstantial[34]. Thereafter the tin was submitted to SCRO for analysis, as has been noted previously, it can be seen that Mr Heath visited SCRO twice during this period and it is alleged that pressure was brought to bear on the experts to effect an identification. Part of QI2 was identified as belonging to Marion Ross on 31st January, and this must have been perceived by those involved to have 'sealed' the case against David Asbury.

This is a print that no expert in the world outside of the SCRO experts and their 4 supporters have even been able to identify to Marion Ross. This is a print that by common acknowledgment bears no relation to hers. It is not even a case where

[34] This was confirmed by John McMenemy in evidence on 11th June at page 107, line 13

independent experts can identify enough points that could lead to the claim that this was only the SCRO experts 'pushing the points' to 16.

This is a print of such poor quality that it could not never be accurately assigned to anyone. It is fictitious and arguably deliberately so.

It is submitted that it is possible to isolate the 'identification' of QI2 (Ross) as the point in time where criminality may have started . This was the print that tied the murder victim into the suspect and was crucial to proving his guilt. The central question is did any SCRO experts(s) knowingly make a false attribution of print QI2 to Marion Ross?

Y7 was identified two weeks after QI2 .

It is suggested that a reasonable inference is that the initial examination by Hugh MacPherson was treated as an elimination of a police officer, in itself not an unusual occurrence, was done to a standard of less than the full 16 points and was immediately phoned out to the police without further checks.

It was only when Shirley McKie vehemently denied being at the house that the identification was thrust into the spot-light and the additional checks made. The timelines as shown in the MacKay report would tend to support this theory.

10/02/97
Work sheets indicate mark Y7 was examined by MACPHERSON at unknown time and identified as MCKIE S34.

11/02/97
MACPHERSON shown at unknown time as telephoning MCALLISTER S47 informing that the mark Y7 has been identified as MCKIE S34.

11/02/97
At unknown time MCALLISTER S47 speaks to MCKIE S34 and instructs her to submit a statement regarding her presence at the crime scene. She is adamant that she was not there.

11/02/97
HEATH S98 asks MCALLISTER S47 to liaise with the Identification Branch and SCRO to verify the identity of mark Y7 although he has no doubts himself.

11/02/97
On an unknown time and date GEDDES S126 is asked by MACPHERSON to verify mark Y7 as MCKIE S34. GEDDES S126 declined to sign form as he could only find 10 points.

11/02/07
MCALLISTER S47 contacts MACPHERSON and discusses mark Y7 regarding MCKIE's S34 denial. MACPHERSON states that there is no possibility of an error, mark Y7 was her thumb print.'

12/02/97
At unknown time MCBRIDE is asked by MACPHERSON to examine mark Y7 with the elimination prints of MCKIE S34. She identifies mark Y7 as MCKIE S34 left thumb.'

In addition there is a complete lack of SCRO documentation to refute Mr MacKay's findings.

If an error was made at the initial stage, then it may have been thought difficult for SCRO officers to admit that – because this would have cast the rest of their work in the case into doubt, and with that they could have been responsible for putting the case against David Asbury in jeopardy. If of course QI2 had been falsely attributed then there would have been even better reason to have the 'mistake' covered up. Accordingly, there was a motivation for the SCRO officer to deny they had made any mistake in relation to Y7.

Refusal to accept mistake

Even if it were accepted however that the initial misidentifications were errors, facilitated by the circumstances and procedures in place at that time, the fact that the

errors were consistently re-made and justified in the intervening years means the actions of individuals were of a more deliberate and culpable nature. If the initial identifications were mistakes made by competent experts, each time the marks were reconsidered the 'innocence' of the error must diminish, although there is no doubt the unhealthy culture along with evidence of an arrogance that has been highlighted at this Inquiry are major factors as to why four experts made such catastrophic errors.

One of the most telling pieces of evidence against the SCRO experts at this Inquiry and before is their refusal to concede they could be mistaken. A vast amount of independent evidence has been produced over the past twelve years pointing to the SCRO officers being wrong in their identifications and countless opportunities to reconsider their opinions and yet there has been no acceptance of even the possibility they might be wrong. In relation to the experts within Scotland that have engaged in this debate, it is submitted that the Inquiry should make reference to and to publicly commend the actions of the Edinburgh and Aberdeen experts who had the courage and integrity to speak out.

There were a number of stages over the intervening years when SCRO had an opportunity to realise and acknowledge the mistake in the initial identification. It is submitted that if an 'honest' mistake was made initially, in the pressure of the murder investigation and raised temperatures of the subsequent dispute between Shirley McKie and her superiors, this should have been apparent to those officers who were tasked with carrying out the preparation of the prosecution case against Shirley McKie. In particular, it should have been evident to a competent officer that there were differences between the mark and Shirely McKie's print that required explanation.

It is submitted that there were opportunities at the following stages for the mistake to be discovered and admitted:

1. When asked to reconfirm the initial identification
2. When mark re-photographed
3. When new set of eliminations taken
4. When Deputy Head and Quality Assurance Officers examined.

5. When Shirley arrested and a further set of prints taken.
6. When three initial court charts prepared
7. When new charts prepared for civil case
8. When new chart prepared for Inquiry
9. When hearing concise clear contradictory evidence during the Justice 1 Enquiry.
10. When hearing concise clear contradictory evidence during this Inquiry.

A further indication of the level of culpability is the preparation of the charted enlargements for Shirley McKie's trial. From the evidence presented to the Inquiry, it is now accepted that the charts were inaccurate and of poor quality. The image of the crime scene mark was cropped such that it did not show the top of the mark. The SCRO experts have sought to explain their use of the deficient enlargements, and have indicated they were intended as illustrations only, and were never meant to be relied on as accurate images of their analysis. However, it may be thought relevant to consider that this point was not made clear to the precognoser or Sean Murphy before the trial. It was not mentioned during evidence, in chief or in cross, and so would not have been apparent to the jury. It may be thought that the 'innocent' explanation for the use of such poor quality charts would be more credible had it been one given form the outset.

The Inquiry should carefully consider the submission by Hugh MacPherson, Alister Geddes and Fiona McBride of a new chart of print QI2 (Asbury) claiming to identify 17 points in sequence and agreement with David Asbury's print. This was presented to the Inquiry during Mr Macpherson's oral evidence. The PSNI subsequently stated that having examined this chart they could only find 10 points in sequence and agreement. It is submitted that the preparation and submission of this new chart in the face of overwhelming evidence of their previous two errors and the PSNI initial report on the QI2 (Asbury) print points to more than incompetence.

Knowledge of defence challenge

With regard to the extent to which the SCRO officers were aware of the proposed defence challenge before Shirley McKie's trial, there is a clear conflict between the evidence of Sean Murphy, and that of Charles Stewart and Hugh Macpherson. It is

submitted that the evidence of Sean Murphy should be accepted. The purpose of this meeting was to allow the Crown's experts an opportunity to consider defence evidence and to give the prosecutor ammunition which he could use to cross the defence witnesses. To a prosecutor of the competence and experience of Sean Murphy it is suggested that he would take all the time required to ensure that he was satisfied with the position of his own experts. He stated that his reason not to consider any adjournment was because the SCRO officers were 'confident'. Facing a trial of this gravity, complexity and notoriety then it is entirely to be expected that the prosecutor would afford his experts as much time as they required in order to be ready to proceed. The suggestion by Mr Stewart and Mr Macpherson that this was a brief meeting, with a scant look at Pat Wertheim's production is derisory. Even if this was the case, one must ask why they did not ask for more time. Similarly, it is not credible that these officers did not pass this information on within the SCRO office.

Sean Murphy states in his Operation Alba statement[35] that not only did the SCRO experts spend most of an afternoon considering the defence production, they brought out a number of criticisms of Pat Wertheim's approach and advised that they would take the productions away to consider more closely.

A source of 'independent' evidence, which supports Sean Murphy's account is the minute of the meeting after the trial[36], which notes that while the late arrival of the defence evidence had been a major problem, it had been known about before the 'precognition' of Charles Stewart and Hugh Macpherson[37] and the only mention of this point made by SCRO is a question by Charles Stewart as to whether it would have helped if SCRO had had two or three days to study and explain the defence evidence[38]. Had Mr Stewart and Mr Macpherson only been afforded the briefest of glimpses at the defence evidence, it would seem extraordinary that they would have failed to mention it at this meeting.

[35] CO_2036
[36] CO_0034
[37] Although not explained in evidence, it is to be assumed this is a reference to the meeting between Sean Murphy and the two experts.
[38] See page 4 of the minute.

Fiona McBride asks the Inquiry to accept that she knew nothing about the proposed defence challenge to the SCRO identification until she heard Pat Wertheim give evidence – when she almost 'fell of her seat'. Not only does this account make absolutely no logical sense, it goes against the other evidence heard in the case. For example, Greg Padden stated that there was 'office chat' about the identification of Y7 being disputed, and was being contested by an American expert who was "not well trained"[39].

The Inquiry may consider that the reality of the situation was that SCRO did not take the defence challenge seriously. They saw Pat Wertheim and David Grieve as inexperienced, inferior and 'charlatans' who did not merit serious consideration. Their stance before the Inquiry demonstrates a continuing failure to acknowledge the possibility that other experts may be right and is another example of the SCRO arrogance – whether individual or institutional.

It is further submitted that the inquiry should take this evidence into account when considering the extent of individual responsibility or culpability in relation to the misidentifications. It is submitted this was an attempt to seek to blame Sean Murphy for the deficient court performance, and subsequent not guilty verdict.

Contact with Les Brown

Les Brown gave evidence that his contact with the SCRO officers was initiated by Fiona McBride, and he met with Miss McBride and Mr Geddes. Although the detail and level of information given to Mr Brown remains unclear, it is submitted that contact with a member of the public such as Mr Brown in this context was unprofessional and inappropriate. These SCRO officers would have no locus to investigate or comment on the murder investigation of Marion Ross. Given the subsequent false and salacious stories that were peddled by Mr Brown, the Inquiry is urged to make a finding that such contact was utterly inappropriate.

The Inquiry is also invited to make a finding of fact in relation to the evidence from Les Brown. Mr Brown chose to involve himself in the circumstances surrounding the

[39] Inquiry statement, FI_0008 at paragraph 14

prosecution against Shirely McKie, and despite claiming his interest is in the murder of Marion Ross, he has maintained a support for the SCRO witnesses and devoted his time to making false and unsubstantiated allegations. No supporting evidence has been found by the Inquiry, and it is submitted his allegations should be found to be lacking in substance and his evidence should not be accepted in any respect.

4. FAILURES BY COPFS

No independent expert instructed in relation to identity

At various stages during the preparation stage of the case against Shirley McKie, mention was made of obtaining an independent expert report. In her analysis section of the precognition[40], Denise Greaves queries whether Crown Counsel may wish to consider the instruction of an independent expert. She then goes on to mention forgery and transplantation, and further asks whether Crown Counsel would wish an expert in that field – the obvious conclusion being that the former point was referring to a more general independent expert with regards to the identification itself.

Gillian Climie wrote to Denise Greaves on 30th January 1998 saying that an independent expert should indeed by instructed, and the report should cover the identification of Y7 on the basis of English practice[41]. Terry Kent was instructed, although his report of 13th May 1998 does not address the issue of identification – indeed he specifically notes that he is not qualified to comment on identity[42]. The letter of instruction that he was sent (on 12th March 1998) only asks him to comment on identity if he is able to do so[43] – this is not explicitly requested. When Mr Kent's report was sent to Crown Office, the lack of comment on identity of Y7 was not mentioned[44].

It is submitted that the diligent work and contentious professionalism displayed by Gillian Climie should be acknowledged by the Inquiry.

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[40] CO_2561, at page 4
[41] Which it was suggested may have been more stringent: CO_3473
[42] CO_0296, at page 33, paragraph 33
[43] CO_3474
[44] See letter from Denise Greaves to the High Court Unit, dated 15th May 1998

Lack of management of case at Crown Office

Gillian Climie dealt with the initial handling of the McKie case, in early 1998. Thereafter, she moved to the Appeals Unit at Crown office at the beginning of October 1998. Miss Climie did not recall any involvement with the case until she was handed the case papers near Christmas 1998. Due to the pressure of other work, Miss Climie had to work on the case at home, outwith working hours. Clearly no proper accommodation was made. While Miss Climie presented as a diligent and thorough person, it cannot be thought appropriate that this is the way the case should be handled. It would seem that there was a clear lack of ownership of the case within Crown Office, and it may simply have been forgotten about until the impending time-bar was noted shortly before Christmas 1998.

Preparation for trial

The evidence of James Kerr was critical to the case against Shirley McKie, and in particular the timing of his claimed sighting of Shirley at the house. Sean Murphy stated that he considered this eye-witness evidence placed Shirley at the scene at the correct time[45] - which he took, on the basis of the information given to him in the precognition and after clarification by his junior, to be before 1.15pm. However, Mr Kerr gave evidence at the trial that he had seen Shirley at the house nearer 5pm – at which time she had legitimate reason to be there. His Crown precognition[46] Mr Kerr states that Shirley McKie was at the house at "about 1.30pm", and that he left the house about 3pm. If his evidence to the Inquiry[47] is to be accepted, he seems to have been unaware of the importance of his evidence and he was not asked in great detail about the timing of his sighting. In particular, it would seem that he was not shown a copy of the log, which may have prompted him to raise the issue of its inaccuracy prior to the trial[48].

It would seem on any view that the precognition of Mr Kerr before the trial was inadequate. Either he was not questioned in sufficient detail regarding the times of his attendance at the house, and not been shown the log – or the precognoser had not pressed him such that his obvious inconsistencies were apparent. Had Sean Murphy

[45] FI_0070, paragraph 12
[46] CO_2592
[47] Particularly in the morning of 18th June
[48] Supra, page 28/29

realised that he was going to have to base his entire prosecution on the fingerprint identity, he may have taken a little more time to fully consider the proposed evidence from Pat Wertheim and David Grieve.

Post-trial investigation

It was noted by Denise Greaves in the analysis section of the precognition that a not guilty or not proven verdict in the case against Shirley McKie would have "catastrophic implications for any future case which relies on fingerprint evidence"[49]. In the eventuality of the unanimous not guilty conviction, this view does not appear to have been shared by anyone else within COPFS.

The meeting between SCRO experts, officials and Sean Murphy on 20th May 1999 was set up at Harry Bell's request, and there was no follow up action, other than 'learning points' and the report that was to go back to Crown Office was that there "no problems with the integrity of the system"[50].

On 9 June 1999 Iain McKie wrote to the then Lord Advocate, Lord Hardie[51], outlining his concerns surrounding the trial and the expert evidence offered by SCRO. Specifically he wanted to know if a) the SCRO experts were still acting as experts on behalf of the Crown, b) an independent review had been carried out of all their work been carried out and c) what actions were being taken to ensure there was no repeat of the errors. He asked for confirmation that an enquiry would be carried out and that the results would be published. Iain McKie received a response on 12 July 1999[52], which stated:

> *'It is the Lord Advocate's duty to look into matters of apparent concern arising from the prosecution of crime generally and from individual prosecutions in particular. I can confirm that various issues raised by this case have been the subject of investigation by the Lord Advocate, including of course the issue of the conflict between the evidence of the Crown and defence witnesses as to the interpretation of fingerprint evidence. The Lord Advocate does not propose to publish the details of his investigations.'*

[49] CO_2561, at page 4
[50] Per the minute of the meeting, CO_0034, page 5
[51] DB_0576
[52] DB_0718

There was no inquiry. The only discussion of events at the McKie trial was the meeting on 20th May, which had been held at the behest of SCRO[53]. It was not until the Frontline Scotland programme that any action was taken by the Crown to investigate or independently check the identifications in the case. Indeed, Frank Crowe wrote to Harry Bell the day after the programme (19th January 2000)[54] to ask whether the identification had been confirmed by a senior SCRO officer and an expert from another force.

When Lord Boyd of Duncansby was asked to account for the failure to take any action until the airing of the 'Frontline Scotland' programme, his comment was that Mr McKie was "just one individual". It is submitted that this is not only an entirely inappropriate and insufficient justification, it also displays an astonishing failure to grasp the true public interest in the issues raised by the prosecution.

Failures in Gilchrist report

It is submitted that the investigation carried out by Bill Gilchrist presented a wasted opportunity in that he abrogated responsibility for taking a decision on the true identify of the contentious prints and left all sides in a state of limbo. The clear reading of the report is that the prints were misidentified.

This against the background of the MacKay report that is quite unequivocal in concluding that criminal acts were committed by some or all of the SCRO experts who 'identified' prints Y7 and QI2

After the submission of his report, in his letter to the then Deputy Crown Agent, Frank Crowe, Mr Gilchrist made the startling admission: "I tend to be unduly swayed by the last expert to whom I have spoken"[55], and he went further that this in evidence by saying that he was <u>most influenced</u> by the last expert he spoke to[56]. He goes on in his letter to Frank Crowe to say that he tends to the view that:

[53] See Inquiry Statement of Harry Bell, FI_0043, paragraph 6
[54] CO_1947
[55] CO_0006, page 2
[56] Evidence on 23rd June, at page 76, line 19

> "every expert who is certain as to whether it is or is not Shirley McKie's fingerprint is wrong."[57]

There has never been any suggestion that the Y7 is insufficient for comparison purposes, and so quite simply, this position is not only wrong, but it demonstrates a reprehensible failure to properly address the issue. He did not consider the weight to be attached to each side of the argument, or the potential motives at play. As a senior member of COPFS entrusted with carrying out a thorough investigation of the actions of SCRO, it is submitted that this demonstrates an abrogation of responsibility of a serious nature.

Failure to properly consider the Gilchrist report

Danish experts Kristian Rokkjaer and Frank Rasmussen were engaged to examine a number of prints in relation to the Marion Ross case. They went to the Procurator Fiscal's office in Kilmarnock in on 21st July 2000 with the then Deputy Crown Agent Frank Crowe, and examined a number of prints, including QI2, both 'Ross' and 'Asbury'. Their conclusions were that QI2 'Ross' did not originate from Marion Ross, and that no determination could be made regarding QI2 'Asbury' due to the quality of the photograph[58]. They also concluded that two further prints identified by SCRO as those of David Asbury, QE2 and QL2, had insufficient characteristic detail to give an identification. The Crown Office took no action in response to these findings.

Further, the Gilchrist report disclosed that a number of SCRO officers had not been able to identify Y7 to the 16 point standard, and that this information had not been passed on to the Crown or the Defence. When he gave evidence to the Inquiry, Scott Pattison acknowledged that this point had simply been missed, and no action taken. When Gillian Climie became aware of the divergence in opinion, it is clear that she was astonished that the Crown were not advised of this. As regards the difference such information it could have made in the case against Shirely McKie, she stated that in her view the whole case was 'periled' on one fingerprint, and had she known of any disagreements within SCRO then she would have looked at the case more critically –

[57] CO_0006, page 2
[58] CO_0030

and may have sought an independent view[59]. It is accordingly not over-stating matters to say that had this information been given to the Crown, Shirley McKie may not have faced prosecution.

Despite the conclusions of the Mackay and Robertson investigation, and the terms of the Gilchrist report, matters remained more or less stagnant within COPFS in relation to the issue of fingerprint evidence until March 2009.

Failure to address implementation of NNS

The SFS, and SPSA attempted to keep COPFS involved in the gradual moves being made towards the introduction of the Non-Numeric Standard (NNS) in September 2006, however it is apparent from the evidence to the Inquiry that COPFS failed to take any satisfactory steps to ensure that their prosecutors were either aware of the change, or the impact it could have on the preparation or presentation of cases. Crucially, fingerprint experts were not being precognosed.

The circular explaining the introduction to the NNS was only introduced in March this year, and the reason for this has been given as 'administrative error'. No action has been taken to ensure that such an error could not happen again. It is firstly submitted that it is an issue of concern that it is possible to have such an important change overlooked merely due to an oversight in administration and secondly it is suggested that this is not only an unsatisfactory reason but it demonstrates the lack of priority that this issue receives within COPFS.

Disclosure

The wider issue of disclosure of potential disagreements between fingerprint experts is not one that has been specifically addressed by COPFS. It is not mentioned in the Crown Office circular, and reliance is simply placed on the procedures said to be in place in relation to the general duties of disclosure. There is a misplaced assumption that fingerprint officers will disclose information of any diverging opinions.

[59] Evidence on 2nd July, at page 101

It is submitted that since the trial of Shirely McKie COPFS have demonstrated a chronic institutional failure to accept responsibility and address the key issues raised by the case and subsequent events.

5. ACTIONS TAKEN BY SPSA

While there has been a move to the non-numeric system in Scotland, it is submitted that the institutional and systemic failures that lead to the initial misidentifications, and the subsequent consequences for all sides of the debate have not been addressed. It is evident from the evidence given to the Inquiry that neither the SPSA or COPFS appreciate the gravity of the issue, or the extent to which confidence has been and continues to be lost in their systems. It is difficult to see whether there is any procedure in place now that would avoid the same thing happening again.

It is submitted that efforts made since the HMIC's 2000 report to resolve the emerging problems with fingerprinting in Scotland have only been partially successful and that this Inquiry has revealed a number of serious issues that require to be resolved.

Since its creation on 1 April 2007, there has been a political struggle for control of the organisation with political and police allegations of an attempt by the then Chief Executive David Mulhern to wrest power away from the police and to centralise it within his organisation. This struggle ended with Mr Mulhern leaving his post in 2008 by mutual agreement. This post has never been filled.

Running parallel to this, the ongoing fingerprint controversy which failed to be resolved by the Justice 1 Enquiry and the government decision to launch the ongoing judicial inquiry. In addition plans to centralise laboratory facilities and close Edinburgh and Aberdeen labs caused a great deal of uncertainty among staff.

While it is suspected there was a degree of complacency among the SPSA management and other parties charged with launching the new organisation and implementing change there is little doubt that these major uncertainties were

unsettling to everyone in the new organisation. This 'power struggle' has exacerbated the situation for the fingerprint service.

When looking to the overall performance of the SPSA fingerprint and forensic services regard should be had to the 2006 'Action Plan for Excellence' which was drawn up in anticipation of the formation of the SPSA on 1st April 2007.

The Justice 1 Committee in its final report detailed the work carried out in drawing up the Action Plan, and at the time of its launch the Minister for Justice saw the Action Plan as central to the future of fingerprinting in Scotland.

As part of the work on the Action plan Sir David O'Dowd, former HM Chief Inspector of Constabulary for England and Wales, was asked to re-visit the HMIC's 2000 25 recommendations and 20 suggestions to provide a current assessment of the position in respect of the current fingerprint service current practice. The O'Dowd Report's[60] main finding was that in subsequent HMIC inspections some of the original recommendations had been prematurely discharged as completed and that a number of serious issues still remained.

There were noted to be integration problems between the four bureaux and this Inquiry has highlighted that these difficulties remain. It is worryingly clear from the Inquiry evidence to date that the gulf between the bureaux is widening and that there is a complete failure by the existing management to address these problems openly and proactively.

The evidence of the SPSA Forensic Director Tom Nelson that the organisation had absolutely no contingency plans in place to respond to this Inquiry's conclusions was particularly worrying and shows little real understanding of these integration issues.

Despite changes of management very little seems to have been done to address some important issues like culture change, resolving disputed identifications and settling

[60] PS_0036

issues surrounding recommendations to centralise the service and close laboratories outside of Glasgow and Edinburgh.

The findings of independent reports by the 'Independent Counselling and Advisory Services Limited (ICAS), Roger Shearn and Arie Zeelenberg in respect of the continued failure to resolve the disputed identifications within the SPSA have still not been addressed. Further, the evidence heard about the December 2007 meeting between the Director of Forensic Services Tom Nelson and 60 members of the Edinburgh Forensic lab highlights just how extreme the morale problems are within the service.

Other concerns about just how effectively the non-numeric system has been introduced by the SPSA and COPFS and apparent issues with the presentation of and explanation of fingerprint evidence to courts only serve to highlight the institutional failures by these two organizations. The Action Plan has still not addressed these issues and that there is a gulf between the public pronouncements of SPSA management that change has been successfully managed and the actual reality that in a number of important areas little has changed.

Should this Inquiry reach the definitive conclusion that SCRO Experts wrongly identified prints Y7 and QI2 these failures will become even more critical, as experts continue to work within the SPSA preparing and presenting evidence in our courts while still adhering to the opinion that their colleagues were correct in their identifications. Internally and externally the pressures on the SPSA to finally get its house in order will be overwhelming and cannot be addressed as previously by half hearted partial implementation of change recommendations.

6. RECOMMENDATIONS

The Inquiry is urged to consider making the following recommendations:

- **An interim report should be issued dealing with the identification of Y7 and QI2.**

We recommend that the Inquiry issue an interim statement on the validity of the two fingerprint 'identifications' as a matter of urgency.

We also recommend that consideration be given by the SPSA to immediately suspend from all operational duties all experts who are currently employed within the SPSA who still adhere to their 'opinions' as they are currently engaged in preparing and giving evidence in Scottish Courts and the danger of further miscarriages of justice are clearly possible.

Tom Nelson demonstrated that a failure to have addressed his mind to the potential outcomes of the Inquiry. It is beyond doubt that action will be required, no matter what the decision of the Inquiry and by failing to provide even the most basic information regarding what plan may be put in place, Mr Nelson demonstrates that the SPSA cannot be relied upon to take action.

It is accordingly suggested that the Inquiry consider publishing an interim report in relation to the restricted issue of the identifications of Y7 and QI2. This should be published, with an invitation to SPSA to provide a full action plan as to what they intend to do and the timescale. It will then be a matter for the Inquiry to consider the adequacy of their proposals.

Given the change of position re the fingerprints in this case, the SPSA has stated it will accept the decision of this Inquiry as being the definitive finding with regard to the fingerprints. Therefore the day the decision is announced will then become 'day 1' for the SPSA - the starting point for dealing with the aftermath of the announcement. Accordingly, it is recommended that the Inquiry issue the interim statement on the validity of the two fingerprint 'identifications' as a matter of urgency.

- **Temporary Closure of Glasgow Fingerprint Bureau**

We recommend consideration be given to the temporary closure of the Glasgow Fingerprint Office as happened in Boston in 2004 until such times the recommendations have been implemented, and appropriate training and measures have been put into place.

There has been a total and repeated failure over the last 12 years to effectively implement the many recommendations made to increase the effectiveness and efficiency of the fingerprint bureau. From the 2000 HMIC's Enquiry onwards there is evidence of these failures.

The Justice 1 Enquiry carried out a critical analysis of the SCRO management in 1997 and succeeding years and outlined a number of criticisms of the internal and external management structure.
http://www.scottish.parliament.uk/business/committees/justice1/papers-06/FinalPDFversion-volume1.pdf (Para. 418 to 432)

Its final report was clear on the management and morale issues that remained to be addressed and we would submit still exist today.

- **Implement a 'Change Review Team' to oversee recommendations**

For two years the SPSA has accepted that fingerprint Y7 was misidentified, and the recent announcement that the SPSA has now officially changed its position from 'misidentification' to that of 'unsafe' means there can be little confidence in allowing the SPSA management to be in charge of implementing any recommendations the Inquiry makes, given their failures in the past to deal with issues.

It is suggested that the Inquiry bring in an outside independent 'Change Review Team' to oversee recommendations made by this Inquiry, not only in respect of SPSA but also for COPFS. It is further suggested that as part of any independent

implementation team that there is a complete review of SPSA practices and procedures.

- **A clear plan to be devised and published in relation to how the culture will be changed within SPSA**

There has been a total failure over the last 12 years to effectively resolve the misidentifications, and for anyone to accept any responsibility for the errors. The cultural difficulties have not been addressed, and independent assistance should be sought to ensure that appropriate changes are made and staff with divergent views are integrated into the organisation. As an example, the Boston fingerprint office was closed temporarily in 2004, to allow for the implementation of necessary changes. Such measures may require to be considered.

- **Ensure those who misidentified the prints are effectively and efficiently handled by the SPSA.**

There has been evidence from within the SPSA to suggest that staff have been effectively trained in the non-numeric standards, and use recognised standards for identification. This is achieved using the ACE-V methodology. However there are serious concerns over the effectiveness if such training. If such measures were in place as claimed it is difficult to understand how current SPSA expert Alister Geddes was able to chart 17 characteristics in print QI2 Asbury if he had been following recognised procedures.

- **Allow the case to be used in training within the SPSA so others can learn from the mistakes.**

In 2006 Mr. Zeelenberg advised the SPSA the best way to move forward was with a change in culture. He explained the best way for this to happen was by using the fingerprints in training and for the organisation to learn from the mistakes.

- **Currently there are no formalised procedures for scenes of crime examination. To look at the way scenes of crime examinations could be standardized throughout Scotland.**

Since the Marion Ross case the suggestion has been that much work has been undertaken to ensure there are standardised practices and procedures relating to fingerprint examination in Scotland, however there are major concerns that no such procedures currently exist for Scenes of Crime examination. Clearly little importance was placed on Scenes Examination in Scotland, despite this Inquiry highlighting major flaws with the forensic examination during the Marion Ross investigation.

- **Training of experts**

The Inquiry has heard clear evidence of differing applications of the non-numeric system. The SPSA has stated that under the non-numeric standard:

> *'The fingerprint expert will be able to offer a fuller explanation of how they arrived at their conclusion by discussing all the features revealed rather than simply focusing only on the number of points.'*

However the evidence of the Scottish fingerprint officers at this Inquiry in relation to fingerprint evidence may lead to a conclusion that experts within the SPSA have great difficulty in being able to articulate their findings as claimed. This was particularly highlighted to the Inquiry by the oral evidence of SPSA expert Edward Bruce. One particular area highlighted during this Inquiry is the inability of certain experts to demonstrate and explain discrepancies in a fingerprint. Experts have been able to claim that prints are subject to movement, distortion, double touches, and multiple touches without providing the Inquiry with any reasonable explanation or proof of their expert opinion.

- **Presentation of evidence**

This Inquiry has highlighted the gulf between the testimony of the international experts and UK experts in relation to the presentation of Fingerprint Evidence. This needs to be addressed, perhaps by the introduction of further training carried out by foreign experts.

- **Competency testing.**

Currently all SPSA experts undertake an annual competency test. However Joanne Tierney indicated to the Inquiry that this test is not one that can be failed. It is

recommended that consideration be given to the introduction of a test which is open and transparent and allows for a true reflection of an experts competence.

- **Record keeping and note taking**

Consideration should be given to developing a system whereby a written record can be kept of the analysis and comparison of fingerprints. It is submitted that if an expert is proceedings properly through the ACE-V process, a suitably constructed form should not be overly onerous to complete and would not only assist in subsequent recollection, but can be disclosed to the defence to highlight any possible challenges that may be made.

- **Disclosure to the defence**

COPFS should be asked to issue immediate guidance to SPSA regarding their duties of disclosure, and ensure that appropriate procedures are in place to allow for all relevant information to be passed to the Crown and Defence. Thereafter, in light of the concessions made by both organisations that urgent work is required in relation to this matter, they should be instructed to devise and publish an action plan, with clear timescales. Consideration may be given to a formal protocol with SPSA.

- **Visits to external agencies in order to learn from their procedures etc**

Given the international dimension to the science of fingerprint examination, it is recommended that SPSA consider undertaking a programme to visit external bureaux and learn from their practices and procedures. This should be undertaken by fingerprint staff and not by management.

- **Independent experts to look at the authorisation/accreditation of independent fingerprint experts (in particular to their ongoing competence)**

There is concern that there appears to be no recognised system to monitor the competency of ‘independent’ fingerprint experts. There should be a recognised system to monitor and officially register ‘independent’ experts which should include a code of conduct along with a disciplinary procedure.

- **Differences: clarification of the no-discrepancy rule**

The Inquiry has heard diverging views as to the significance to be attributed to unexplainable differences. The two approaches would appear to be:

a) if there are any unexplained differences between a mark and a print, no conclusion of identity can be made;
b) if there are sufficient characteristics in agreement, then if there are any unexplainable differences – there MUST be an explanation, because the prints must have a common source.

Those witnesses who sought to argue for the second approach were those agreeing the identification of Y7 and QI2. It would seem to be clearly the case that an unexplainable difference, such as a difference in ridge count or bifurcation in the wrong direction, must mean there can be no-identification. The rule on this aspect of the analysis process should be made clear.

- **Review the authorisation process regarding experts.**

In Scotland the authorisation process is laid out in Section 280(5) of the Criminal Procedure Scotland 1995. The head of the respective fingerprint bureau applies to the Scottish Executive/Government for an expert to be 'authorised' and after consultation with the Crown Office and after certain criteria are fulfilled authorisation can be granted. Concern about this process was triggered by the understanding that at least three experts who supported the Y7 and QI2 'identifications continued to work within SPSA and prepare and give court evidence. There is still considerable confusion about expert authorization, and there are real dangers in the Scottish Government and the Crown Office rubberstamping experts for authorisation on the recommendation of the SPSA. Further, once authorised there appears to be no procedures to rescind it.

CONCLUSIONS

The fingerprint profession across the world is looking to the Inquiry to uphold all that is best in the profession, and it is vital that the Inquiry is the catalyst for the changes that are necessary for the public to regain trust in the Scottish fingerprint service.

While this may be a Scottish Public Inquiry, it is evident from the evidence and widespread involvement in the process that the International fingerprint community is closely following the Inquiry, and eagerly awaits the decision.