

# Petition to the Scottish Parliament

*‘Review of openness, transparency and the admission of mistakes at the Scottish Criminal Records Office.’*

*Allan J Bayle - United Kingdom*  
*David Grieve - United States of America*  
*Pat A. Wertheim - United States of America*  
*Arie Zeelenberg - The Netherlands*

*18 September 2002*

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**“Consistency is not only expected, it is demanded  
by our methodology.**

**Of course examiners will all agree, if they are  
adhering to the methodology:  
it either matches, doesn't match, or one cannot tell  
either way.**

**Rarely is the problem, other than the McKie case,  
that examiners maintain their opinion of an  
erroneous identification.”**

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**‘Defending Against the Critic's Curse’  
Glenn Langenburg  
Forensic Scientist  
Latent Print Examiner  
Minnesota Bureau of Criminal Apprehension, USA.**

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## **Petition to the Scottish Parliament.**

### ***Review of openness, transparency and the admission of mistakes at the Scottish Criminal Records Office.***

We the undersigned work as professionals in the field of fingerprint identification.

We believe that the current position adopted by the Scottish Criminal Records Office (SCRO) to support their erroneous fingerprint identifications in the cases of Shirley McKie and David Asbury, that - “fingerprint evidence is a matter of opinion” – is unique in the world.

**This position, as articulated during and after the court cases, is untenable, even in the medium term, threatening to the reputation and integrity of Scottish fingerprint and forensic evidence, damaging to the science of fingerprinting world-wide and has the potential to seriously and adversely impact on the administration and fair delivery of justice in Scotland.**

While we believe that this position has been wrongfully used to cover up errors by experts within the SCRO its most important impact is to distract from proper action as proposed by Her Majesty's Inspectorate of Constabulary in the 2000 Primary Inspection Report on the Fingerprint Bureau of the Scottish Criminal Record Office in respect of restoring openness and accountability and instituting effective procedures for the handling of mistakes.

We maintain that such restorative action is not possible until there has been an honest admission of previous errors.

We do not believe that such a situation should be allowed to continue unchallenged and therefore have decided to petition the Scottish Parliament on the matter in order to respectfully suggest that the Parliament’s Petitions Committee or some other Committee of the Parliament undertake an enquiry into the topic to seek definitive evidence and information on the issues we raise.

We know that there is huge international interest in these cases and the world-wide fingerprint community has discussed them many times and continues to exchange information on them.

We believe that the best way to resolve the matters we raise is to commission a fingerprint expert of world renown to examine them and therefore respectfully suggest that the relevant committee of the Scottish Parliament seeks the assistance of the Royal Canadian Mounted Police to obtain the services of one of the world's foremost fingerprint experts, Staff Sergeant David Ashbaugh, in this regard.

The Scottish Parliament is also petitioned to commission Mr Ashbaugh to outline what lessons can be learned regarding openness and accountability within the Scottish Criminal Records Office and how procedures for handling mistakes as outlined in recommendations of Her Majesty's Inspectorate of Constabulary enquiry can best be developed.

We append details of Mr Ashbaugh's unique qualifications and citations in the fingerprint world and we also attach details of our own qualifications and experience. We confirm that we are also happy to do everything in our power to facilitate the petitioned review.

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*18 September 2002..*

*Allan J Bayle*

*Signed on behalf of the Petitioners*

<i>Allan J Bayle</i>	- <i>United Kingdom</i>
<i>David Grieve</i>	- <i>United States of America</i>
<i>Pat A. Wertheim</i>	- <i>United States of America</i>
<i>Arie Zeelenberg</i>	- <i>The Netherlands</i>

***Allan J Bayle - United Kingdom***

**Independent Fingerprint Consultant  
77, Great North Way,  
Hendon,  
London, N.W.4. 1PT.**

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**E-mail: ardonbayleasso@aol.com.**

- Forensic Scientist and Fellow of the Fingerprint Society.
- Member of the International Association for Identification.
- Member of the Society of Expert Witnesses.
- UK Register of Expert. (1975 to 2001)
- Until 2001 employed by Metropolitan Police Service, New Scotland Yard - Fingerprint Expert and Forensic Scene Examiner.
- Expert witness throughout UK and the Federal Court in Philadelphia.
- Lecturer at Scientific Support College, Metropolitan Police Training Establishment, Hendon - fingerprint and forensic training.
- Advisor to the ACPO led Project Board re fingerprint training which includes ridgeology and designing a ridgeology course for future experts in the UK.

***David Grieve - United States of America***

**Public Service Administrator (Latent Prints Training Coordinator)  
Illinois State Police  
Division of Forensic Services  
Forensic Sciences Command  
Southern Illinois Forensic Science Centre  
606 East College Street  
Carbondale, Illinois 62901**

**Telephone: (001) 618 529 6500, Extension 235**

**E-mail: JFIEditor@aol.com**

- Certified Latent Print Examiner, International Association for Identification.
- Certified Forensic Scientist, Illinois State Police.
- Lecturer and trainer.
- Accepted as an expert witness in state courts in Oregon, Washington and Illinois; US Federal Court; High Court of the Justiciary, Glasgow, Scotland.
- Attended 65 training courses and seminars across the world.
- Editor of the *Journal of Forensic Identification*, 1990 to 2002.
- Fellow of the Fingerprint Society of Great Britain.
- Distinguished Member, International Association for Identification, 1989.
- Inspector: American Society of Crime Laboratory Directors – Laboratory Accreditation Board.
- Articles published in the Identification News, Fingerprint Whorld, AFTE Journal, and Journal of Forensic Identification.
- Author, Illinois State Police, Forensic Sciences Command Latent Print Training Manual and Latent Print Procedures Manual.
- Burton J. Burkhe Award,, Illinois Division, IAI, 1990.
- Robert D. Olsen, Sr. Award, Kansas Division, IAI, 1990.
- Good of the Association, International Association for Identification, 1995.
- Meritorious Service Award, Illinois State Police, 1997.

***Pat A. Wertheim - United States of America***

**Criminalist IV.**  
**Arizona Department of Public Safety Crime Laboratory.**  
**6401 South Tucson Blvd.**  
**Tucson, AZ 85706**  
**USA**

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**E-mail: Foridents@aol.com**

- Began law enforcement career in 1973. Fingerprint trainer since 1981.
- Has taken all fingerprint comparison and identification courses taught by Texas Department of Public Safety Academy and by the FBI Academy and has attended 75 training courses overall.
- Has taught about 80 classes of advanced ridgeology comparison techniques in USA, England, New Zealand, and the Caribbean and this year in Australia and the South Pacific.
- Has taught every fingerprint expert working for over twenty-five major law enforcement agencies, plus numerous other experts. (over 2,000 students)
- Published numerous peer reviewed articles internationally and spoken at numerous international conferences and symposiums.
- Has presented 55 papers to professional organisations throughout the USA and in the UK, Israel, and Australia.
- Is a member of several representative bodies and has been a Distinguished Member of the International Association for Identification, is a Fellow of the Fingerprint Society and a member of the Canadian Identification Society.
- Has appeared for the prosecution and defence in a number of high profile cases at home and abroad including
  - ℤ John Patrick Eastlack case, Tucson, AZ: Capital Homicide charge based on fingerprints. (prosecution), 1989
  - ℤ Jeannie Tovrea murder, Phoenix, AZ: Capital Homicide with prosthetic glove defense. (prosecution), 1997
  - ℤ Shirley McKie case, Glasgow, Scotland: Erroneous identification, “16 point” challenge. (defense), 1999
  - ℤ Byron Mitchell case, Federal District Court, Philadelphia, PA: Daubert hearing consultant. (prosecution), 1999
  - ℤ Alan McNamara case, Manchester, England: Erroneously labeled latent lift challenge. (defense), 2001
  - ℤ Danielle van Dam murder (David Westerfield): Capital Homicide, San Diego PD. (prosecution), 2002

*Arie Zeelenberg – The Netherlands*

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National Police Force  
Criminal Intelligence Service  
Fingerprint Department  
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2700 KX Zoetermeer  
The Netherlands**

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**E mail: [dact.arie@12move.nl](mailto:dact.arie@12move.nl)**

- Head Fingerprint Department, National Police Force, The Netherlands.
- 30 years experience in latent fingerprints.
- Permanent Forensic Expert for the Court.
- Independent expert – Her Majesty's Inspectorate of Constabulary for Scotland's enquiry into the 'Shirley McKie' case.
- Author: "The Identification Process of Latent Fingerprints". (A handbook for analysis, comparison and decision making with latent fingerprints.)
- Lecturer in fingerprints at the national training centre.
- Chairman of the first Interpol European Expert Group on Fingerprint Identification designing outlines and requirements for the identification process of latents.
- Published several articles and delivered presentations at numerous international conferences and symposiums.
- Member of the International Association for Identification.

*Biography: David Ashbaugh*

**Authority for Staff Sergeant Ashbaugh to carry out commissions can be obtained by writing to:**

**The Commissioner,  
RCMP Headquarters,  
L.H. Nicholson Building ,  
1200 Vanier Parkway,  
Ottawa Ontario, Canada. K1A 0R2**

**David R. Ashbaugh** is a Staff Sergeant in the Royal Canadian Mounted Police. He is currently assigned to Forensic Identification Services and works from his residence in Black Creek, British Columbia. Staff Sergeant Ashbaugh is also the Director of Ridgeology Consulting Services, a company that specializes in friction ridge identification training for accredited police organizations. Staff Sergeant Ashbaugh currently sits on the Fellowship Board and the Editorial of the Canadian Identification Society, the Editorial Board of the Journal of Forensic Identification, the Forensic Identification Standards Committee and the Fingerprint Identification Sub-committee for the International Association for Identification. He is also a member of the Scientific Working Group on Friction Ridge Analysis, Study and Technology, which meets bi-annually at the Federal Bureau of Investigation Training Academy in Quantico, Virginia.

Staff Sergeant Ashbaugh has been a sworn police officer for 33 years and has served the last 26 years as a Certified Forensic Identification Specialist. He received his forensic training at the Ontario Police College in Aylmer Ontario. He completed an understudy program and was certified as a Forensic Identification Specialist by the Royal Canadian Mounted Police. Staff Sergeant Ashbaugh is a Life Member of the Michigan-Ontario Identification Association, a Life Member of the Canadian Identification Society, a Distinguished Member of the International Association for Identification, a Fellow of the Fingerprint Society of the United Kingdom, a member of the Forensic Science Society of the United Kingdom and a member of the Pacific Northwest Division of the International Association for Identification. He has presented expert evidence at the various levels of court in the provinces of Ontario, Manitoba and British Columbia in Canada, as well as, Federal Court in the state of Pennsylvania in the United States.

During the last 26 years, Staff Sergeant Ashbaugh has carried out extensive research into the scientific basis and identification process of the friction ridge identification discipline. In

1982, he coined the term 'Ridgeology' to describe a modern evaluative friction ridge identification process based in science.

Staff Sergeant Ashbaugh is the author of "Qualitative Quantitative Friction Ridge Analysis" (1999), that is accepted as the definitive source in the science of friction ridge identification.

He has published several papers on the subject and has lectured extensively in North America, as well as, in South America, Sweden, Finland and the United Kingdom. From 1989 to 1993, Staff Sergeant Ashbaugh was the Program Leader of the Ridgeology Project in the Forensic Identification Research and Review Section at R.C.M.P. Headquarters Ottawa. The Ridgeology research was instrumental in modernizing identification training in Canada. Currently, his Ridgeology philosophy and methodology are taught at both the Canadian Police College and the Ontario Police College, as well as, at some other training facilities throughout the world. This has resulted in Staff Sergeant Ashbaugh being frequently called upon as a lecturer and as a consultant on friction ridge identification cases or training needs both in the national and international arena.

Staff Sergeant Ashbaugh played a role in bringing about changes to the Canadian Identification of Criminals Act. He has contributed documents to the Province of British Columbia Criminal Justice Branch Database on Ridgeology and the Training Branch of the Province of Alberta Attorney General's Office. Staff Sergeant Ashbaugh assisted the Northern Territory University in Australia with preparing an Associate Diploma of Applied Science program for the Institute of Tertiary and Further Education. He is frequently called upon to consult with other Canadian Police Departments on Ridgeology and is an ad hoc national and international consultant for friction ridge identification training and operational cases.

Staff Sergeant Ashbaugh was a key witness for the United States Government during a Daubert Hearing when the friction ridge identification science was challenged in United States Federal Court in Philadelphia, Pennsylvania. He also played an active role in the Training the Trainers Program for the Association of Chiefs of Police Officers of the United Kingdom, at New Scotland Yard in London and the National Training Center for Scientific Support to Crime Investigation in Durham, just prior to the United Kingdom adopting the quantitative-qualitative friction ridge analysis process.

Staff Sergeant Ashbaugh earned the Progress Award in 1974 for his high academic achievements while at the Ontario Police College and was designated a Fingerprint Examiner by the Solicitor General of Canada in 1981. In 1991, the Canadian identification Society awarded Staff Sergeant Ashbaugh the Donald Dixon Memorial Award for his research and original paper on Palmar Flexion Crease Identification. In 1993, the Fingerprint Society of the United Kingdom named Staff Sergeant Ashbaugh the recipient of the Lewis Minshall Award for his research into Ridgeology. Also in 1993, Staff Sergeant Ashbaugh was awarded the Canada 125 Medal by the Governor General of Canada in recognition of his significant contribution to compatriots, community and Canada.

During the spring of 2000, Staff Sergeant Ashbaugh received a nomination for the Sir Edward Henry Award, by the Fingerprint Society of the United Kingdom, for his efforts to modernize the friction ridge identification science. Also in 2000, the Canadian Identification Society presented Staff Sergeant Ashbaugh with the Edward Foster Award for his significant contribution to the friction ridge identification science. Later in the year, Staff Sergeant Ashbaugh received a Commissioner's Commendation from Commissioner Zaccardelli of the Royal Canadian Mounted Police, for his research in ridgeology.

In 2001, the International Association for Identification awarded Staff Sergeant Ashbaugh the Good of the Association Award for his long service to the IAI and to the fingerprint community in general. His work with ridgeology, his skilled input into the Daubert Hearing and his untiring work on behalf of the fingerprint community, were cited in the award nomination. On February 18, 2002, Her Excellency the Right Honourable Adrienne Clarkson, the Governor General of Canada, awarded Staff Sergeant Ashbaugh the Meritorious Service Medal, for his work in creating the Quantitative-Qualitative Friction Ridge Analysis process.

Currently, Staff Sergeant Ashbaugh is coordinating an Advanced Ridgeology Training program for the Royal Canadian Mounted Police and carrying out other training assignments.

## Supporting Information

1. Authority for Staff Sergeant Ashbaugh to carry out the fingerprint commission requested can be obtained by writing to:

**The Commissioner,  
RCMP Headquarters,  
L.H. Nicholson Building ,  
1200 Vanier Parkway,  
Ottawa. Ontario, Canada. K1A 0R2**

2. The full contents of **'Her Majesty's Inspectorate of Constabulary 2000 Primary Inspection Report on the Fingerprint Bureau of the Scottish Criminal Record Office'** can be found on the Internet at <http://www.scotland.gov.uk/hmic/docs/fppi-00.asp>
3. The full contents of the **'Report of the Scrutiny of SCRO Fingerprint Bureau and Structure of the Scottish Fingerprint Service'** by the **ACPOS Presidential Review Group Change Management Review Team October 2000** can be found on the Internet at <http://www.scottish.police.uk.main/campaigns/interim/report.pdf>

This report considered all aspects of the HMIC's report and made comment and recommendation to determine the way forward.

Its findings on **'Openness and Accountability'** and the **'Admission of Mistakes'** are shown at pages 11 and 12 of this petition respectively.

4. The petition signatories are available to provide any further information required to assist and support their petition and can be contacted as shown in their biographies.

# REPORT OF THE SCRUTINY OF SCRO FINGERPRINT BUREAU AND STRUCTURE OF THE SCOTTISH FINGERPRINT SERVICE

ACPOS Presidential Review Group  
Change Management Review Team  
October 2000

<http://www.scottish.police.uk.main/campaigns/interim/report.pdf>

## Extract:

### 13.11 OPENNESS, ACCOUNTABILITY and ETHICS

13.11.1 A main thread of HMIC's Primary Inspection Report is the need for SCRO Fingerprint Bureau to move away from a historically introspective culture. In doing so it must become more open and engender the principles of transparency and accountability. The wider process of development already underway within the SCRO Fingerprint Bureau and many of changes consequent to HMIC's Primary Inspection Report will set the foundation for long term sustainable change, not only within the bureau, but also throughout the fingerprint service in Scotland.

13.11.2 That renewed emphasis includes many of the aspects already discussed in this report, such as CTS proficiency testing (Section 13.8), CRFP registration of experts (Section 13.1.1), ISO 9002 Quality Assurance system (Section 13.9.3) and redefinition of quality assurance responsibilities (Section 13.9.12).

13.11.3 Those aspects must be complimented by ongoing membership of groups which influence and consider fingerprint examination, evidence and the role of the expert, in a wider forum, both nationally and internationally. The reconvention of the 8FSG, continued membership of the CRFP's fingerprint sub-group (Section 13.10.1) and of the IEEGFI are all essential to that process. This interaction realises the potential of these groups to positively influence the fingerprint service in Scotland.

13.11.4 At Suggestion 19 HMIC suggests **that the adoption of a code of ethics should be an integral part of the change proposed for SCRO**. Whilst the efforts towards a more robust quality assurance system and the application of proficiency and competency testing are clearly linked to openness and accountability, the introduction of a code of ethics would outwardly demonstrate a willingness and intention, on the part of SCRO Fingerprint Bureau, to aspire to the highest standards of integrity and independence required of a fingerprint bureau (Chapter 2).

13.11.5 At their 29<sup>th</sup> European Regional Conference in May 2000, the IEEGFI discussed the issue of ethics as an imperative to fingerprint services and fingerprint experts. In concluding, the Group acknowledged the work of the CRFP in this area. As a consequence of that work, the IEEGFI has developed a 'Code of Ethical Good Conduct Guidelines for Forensic Practitioners' which should be an important consideration for all fingerprint bureaux. A copy of the Code is included at Appendix 'C'.

13.11.6 The CMRT is fully supportive of HMIC's direction towards a more open and accountable service and believes that such direction applies beyond SCRO to the whole fingerprint service in Scotland. A positive first step would be the introduction of a code of ethics and the IEEGFI Code provides a sound foundation for consideration, particularly given the close links with the CRFP. Adoption or adaptation of that code is being fully explored by the 8FSG.

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ACPOS Presidential Review Group  
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October 2000

<http://www.scottish.police.uk.main/campaigns/interim/report.pdf>

## Extract 2:

**13.12.18 Erroneous Identifications** - The essential element in dealing with erroneous identifications is transparency. When mistakes do occur, for whatever reason, it is imperative that they are dealt with in a rigorous fashion, which can withstand external scrutiny. If fingerprint officers conducting the verification fulfil their role in a methodical and independent manner, they should immediately establish that the initial identification was erroneous. This should be fully documented on a diary page (or on the enhanced Office Management System) before being taken to the Quality Assurance Officer, or other senior fingerprint officer, who should immediately bring it to the attention of the Head of Bureau.

13.12.19 An internal review should follow to determine the cause of the erroneous identification. A full written record of the review should be maintained. In most cases the most senior fingerprint officer in the bureau, providing he or she has had no prior involvement in the case, would undertake the review. Consideration should be given, where the situation dictates, to the use of external fingerprint experts.

13.12.20 The person who made the erroneous identification should be suspended from making further identifications until the cause of the error is established, taking account of the circumstances of the case and the individual's personal record. If the matter is satisfactorily resolved through training, or otherwise by tackling the reason for the error, the fingerprint officer can be permitted to conduct identifications again under close monitoring for a period to be determined by management. Full details should be entered in the individual's personal file.

13.12.21 Details of the erroneous identification and subsequent review should be entered on a log that allows full scrutiny by external auditors. As indicated above, the ISO 9002 process would require a 'Non-Conformance' notice to be raised in addition to any other action that may be initiated.

13.12.22 With regard to this process, HMIC suggests that **the Council for the Registration of Forensic Practitioners may provide a suitable reference point for benchmarking the policy and the independent review process to deal with disputed and erroneous fingerprint identifications** (Suggestion 12). The CMRT has discussed this proposal with the CRFP who have indicated that this is not a role the Council considers appropriate at this time in its development. However, this may change as it evolves.

13.12.23 It has been suggested by the NTC, Durham, that HMIC in England and Wales should have an Inspector dedicated to Scientific Support. It is unlikely that there would be scope for such a role in Scotland, but HMIC may wish to include scrutiny of fingerprint procedures as part of its regular inspection programme.

13.12.24 Should an erroneous identification be notified to the Procurator Fiscal, the Procurator Fiscal concerned or Crown Office should be informed as soon as this comes to light. In these circumstances it is recommended that a senior officer, making use of fingerprint experts from outwith the bureau, conduct an external enquiry into the sequence of events leading to the erroneous identification. This situation is obviously more serious, impacting on the criminal justice process, as the mark has not only been wrongly identified but also erroneously verified by two other experts.

13.12.25 While the importance of independent scrutiny is recognised, it is essential that an open culture be encouraged where mistakes of whatever nature are immediately identified and highlighted. If a fear exists that a genuine mistake will result in serious consequences, the outcome may be that individuals are less willing to bring departures from recognised procedures or bad practice to the attention of supervisory staff.