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Our Reference: DAR/DS/84221 26 04
Your Reference:
Date: 28 April 2005

Colin Boyd QC
Lord Advocate
Crown Office
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OPEN LETTER TO THE LORD ADVOCATE
DISCLOSURE: FREEDOM OF INFORMATION ACT, 2000

Dear Lord Advocate,

Her Majesty's Advocate

V.

Shirley Jane McKie

Shirley Jane McKie

V.

The Scottish Ministers and

Scottish Criminal Records Office

Her Majesty's Advocate

V.

David Asbury

Council for the Registration of Forensic Practitioners

(upon the Complaint of Shirley Jane McKie and Iain McKie)

V.

Peter Swann

I continue to represent Peter Swann, one of the most eminent Fingerprint Experts in the UK. Mr. Swann is the former Head of West Yorkshire Police Fingerprint Department, Home Office Advisor and has 48 years experience of undertaking fingerprint work. Mr. Swann is an Independent Fingerprint Expert, who has given evidence for both the Crown and the Defence in some of the most high profile Criminal Trials, to include murder and terrorism. One of the most respected Fingerprint Practitioners in the world provided the following Testimonial:

Mr. Swann is probably the most experienced Fingerprint Consultant operating in Great Britain, and he has an unblemished reputation for honesty and professionalism when providing Expert Testimony.

In the event, on 12 May, 1998 Mr. Swann was retained by Shirley McKie and her father Iain McKie as a Defence Expert. At that time, Ms. McKie was a Detective Constable serving with the Strathclyde Police. Ms. McKie had been charged with Perjury in respect of evidence given by her as a Crown Witness in the Trial Her Majesty's Advocate v. David Asbury. Mr. Asbury

was tried and convicted for the murder of Marion Ross, a spinster, whose body had been found at her home, 43 Irvine Road, Kilmarnock on 8 January, 1997. In connection with the Criminal Investigation into the murder of Marion Ross, Fingerprint Experts within the Scottish Criminal Records Office (SCRO) had identified a match between Exhibit Y7, a Door Standard inside the Murder Scene, and the left thumb impression of Ms. McKie. Ms. McKie had, therefore, unlawfully entered the Scene of the Crime, where Marion Ross had been murdered. On 28 May, 1997 during the Trial Her Majesty's Advocate v. David Asbury at the High Court of Judiciary in Glasgow, Ms. McKie denied on Oath having entered the Crime Scene Asbury was convicted of the murder and Ms. McKie was subsequently charged with Perjury. On 14 May, 1999 at the High Court in Glasgow, Ms. McKie was acquitted of Perjury.

As stated, Mr. Swann was Ms. McKie's Defence Fingerprint Expert from 12 May, 1998 onwards. Over the course of the last five years, Shirley McKie and Iain McKie have made serial Complaints against Mr. Swann, in an attempt to prevent him making any disclosures as to his Expert Evidence in connection with her Defence of the Perjury Charge. Mr. Swann is a Fellow of the Fingerprint Society and in such capacity was subjected to Disciplinary Investigation, upon the Complaints of the McKies. On 8 August, 2003 the Chairman of the Fingerprint Society wrote to Mr. McKie notifying him as to the outcome of a meeting of the Fingerprint Society's Disciplinary Committee, held on 14 June, 2003. The Chairman stated:

The Committee did not consider that there had been a breach of the Society's Codes of Professional Conduct and Practice, so as to warrant any further action.

Mr. McKie responded by accusing the Fingerprint Society of having "arrogantly dismissed" the Complaints on behalf of his daughter. On the day that the McKie's Complaints were dismissed by the Fingerprint Society, new Complaints were made by them, this time to the Council for the Registration of Forensic Practitioners (CRFP). Mr. Swann was Registered as a Forensic Practitioner with the CRFP. Again, the Complaints of the McKies were by reference to the alleged disclosure by Mr. Swann of his Expert Opinion, concerning the fingerprint of Ms. McKie. In the event, two Charges were brought against Mr. Swann by CRFP, to be Tried by a Disciplinary Tribunal Chaired by Philip Butler, a Barrister and Recorder in England. The CRFP Disciplinary Proceedings constituted continuing attempts to suppress the Evidence of Mr. Swann, effectively to gag him. whilst the McKies were using the Regulatory Bodies in England to gag their own Fingerprint Expert, they were pursuing a "Campaign" in Scotland, claiming that there had been a miscarriage of justice and calling for "openness" within the Fingerprint Community. The McKie "Campaign" was, however, nothing more than a vendetta. The McKies enjoyed great media support, particularly from a BBC Team, headed by Shelley Joffre. Working with the McKies, Ms. Joffre and her colleagues produced four Documentaries, two by Frontline Scotland and two by Panorama. Each of the Documentaries was biased, grossly misleading and involved editorial decisions not to report the Expert Findings of Mr. Swann. Ms. McKie also has extensive support within the Scottish Parliament and names over 40 MSPs who are protecting her interests. The McKie Parliamentary and media Campaign is intended to force the Scottish Ministers to pay over £1million compensation to Shirley McKie. In this connection, Ms. McKie is currently suing the Scottish Ministers, on the basis that they are vicariously responsible for the named SCRO Experts, who had "falsely... dishonestly.... criminally... and maliciously" identified her fingerprint, as matching the mark on Exhibit Y7 from Marion Ross' home. Ms. McKie's Civil Case will be tried in the Court of Session in February 2006. Her specific Claim is for £750,000, together with interest running at 8% a year expenses and costs. All payments awarded to Ms. McKie would come out of the pocket of the Scottish Taxpayers.

David Asbury's conviction for the murder of Marion Ross was quashed in the Court of Appeal, Edinburgh on 14 August, 2002. On 24 April, 2005 Mr. Asbury made Press Statements disclosing that he would also be suing the SCRO, seeking £¼ million interest and expenses. Asbury's Case is that the SCRO Fingerprint Experts false identified Marion Ross' fingerprint on a tin, which had been found at his home by Investigating Police Officers. Asbury further disclosed that he would be suing the same four Fingerprint Experts as McKie, duly naming Hugh MacPherson, Charles Stewart, Fiona McBride and Anthony Joseph McKenna. The media again published the names of the four SCRO Fingerprint Experts, reporting that they were the same four who had misidentified McKie's print. Asbury and McKie relied upon the same "Experts", Allan Bayle and an American, Pat Wertheim.

On 30 November 2004, I wrote to you in your capacity as Lord Advocate and duly provided you with Evidence and documentation. I did so in my capacity as Peter Swann's Lawyer, in order to serve the Administration of Justice and to prevent what were clearly the gravest miscarriages of justice in Scotland. In Scotland, of course, the two "victims" are portrayed as Shirley McKie and David Asbury. However, nothing could be further from the truth. The victims are the family and friends of Marion Ross and the four named Experts within SCRO.

Having given notification to the proper Authorities in Scotland, that is to say to you, in your capacity as Lord Advocate, and Cathy Jamieson MSP, in her capacity as Minister for Justice, I would have been prepared to maintain confidentiality. However, within this last week, I have witnessed the most appalling conduct by the McKies and the "Experts". Those "Experts" have alleged "dishonesty", "Perjury" and "corruption" on the part of SCRO and the four employees concerned. One of the McKies' "tame" MSPs, Michael Russell has openly published allegations of "Perjured Evidence" on the part of the SCRO employees. Members of the Scottish Parliament have repeatedly sought to serve the interests of the McKie Campaign and at the same time, have undermined and damaged the Administration of Justice in Scotland and the international reputation of Scottish Fingerprint Experts. Indeed, I note that yesterday, yet another Member of the Scottish Parliament crawled out from under his stone to put down the following Question in the Scottish Parliament:-

Alasdair Morgan: To ask the Scottish Executive what its reaction is to the reference by Michael Jackson's Defence Attorney to the Shirley McKie Case and its implications for fingerprinting worldwide and his statement that false positives in fingerprint identification have become a matter of concern following "a botched 1999 Murder Investigation in Scotland".

Morgan went on to ask a second Question, raising issue as to "the international reputation of Scottish Forensic Services in response to adverse comments relating to the performance of Scottish Criminal Records Office Fingerprint Experts" by Michael Jackson's Defence Attorney. A few days earlier, Fergus Ewing MSP wrote personally to you stating:

I have sought to take an interest in the Shirley McKie Case. Though not Constituent, her Case raises serious issues of national concern. In my view hers is the most clear Case of unremedied injustice at the hands of the State since the Scottish Parliament was re-convened and the failure to provide that remedy is a stain on the system of justice, and all of those who preside over it.

That material, together with defamatory allegations against the SCRO, is invariably published by Iain McKie and posted on the internet site **shirleymckie.com**. In the circumstances, having given the required notification, it is my intention to place into that public domain the true facts and Evidence in respect of the McKie Case. On that basis I attach:

- 1. CRFP Statement of Facts.**
- 2. Witness Statement of Iain Arthur James McKie dated 29 May, 200 together with Exhibit LAJM.1 The Expert Report of Peter Swann dated 16 March 1999, entitled Fingerprint Evidence in Her Majesty's Advocate**
- v. Shirley Jane McKie and Exhibit - IAJM.2, Supplementary Expert Report of Mr. Swami dated 16 March, 1999.**
- 3. Witness Statement of Shirley Jane McKie dated 10 June, 2004.**
- 4. Witness Statement of Shelley Joffre dated 3 June, 2004.**
- 5. Statement of behalf of Peter Swann dated 25 November, 2004.**
- 6. Correspondence commencing 30 November 2004 to Colin Boyd QC, The Lord Advocate.**
- 7. Correspondence commencing 4 February, 2005 to Mark Thompson Director General of the BBC.**

In the Court of Session Proceedings, it is Shirley McKie's Case that no Fingerprint Expert outside of SCRO has ever found there to have been a match between her left thumb print and Exhibit Y7, the mark found at the Scene of Marion Ross' murder. It is Shirley McKie's Case that the SCRO Fingerprint Experts were so grossly incompetent and dishonest, that they

conspired together to report that they had identified her fingerprint, when it would have been obvious to any Expert that it could not have been her print. In the Court of Session Pleadings served by Ms. McKie and her Legal Team. she alleges that the SCRO Experts used “false evidence” against her; that “they knew it to be false”; that they were “dishonest”; that they were “investigated with a view to their being prosecuted for Perjury”; that there was “criminal conduct by the said SCRO employees sufficient to justify Criminal Charges being brought” against them; and that the four SCRO Experts acted “maliciously” to have Shirley McKie prosecuted. Ms. McKie had the same allegations pursued on her Appeal, heard before Lord Wheatley, Outer House, Court of Session. His Lordship had declined to strike-out the averments pleaded on behalf of Shirley McKie, leaving them to be pursued at Trial. Ms. McKie’s averments included:-

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

In the event, Ms. McKie specifically pleaded in her Court of Session Case that:

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

However, that was a false statement. In the event that Ms. McKie repeats that statement whilst giving evidence at her Trial in the Court of Session, she will commit Perjury. In this connection, Peter Swann was the Expert who was asked to provide an opinion on the comparison of the prints, prior to Ms. McKie’s Trial for Perjury. Mr. Swann stated with absolute certainty that there was a match between the prints. Thus, the mark on Exhibit Y7, the Door Standard in Marion Ross’ home, the Scene of her murder, matched the left thumb print of Ms. McKie.

Shirley McKie and Iain McKie had been closely involved with the Retainer of Mr Swann, as the Defence Fingerprint Expert in the Perjury Trial. On 14 May, 1998 Mr Swann reported to Ms. McKie’s Solicitors:

I have, as you are no doubt aware, met both Mr. McKie and his daughter and talked of the Case at some length and am aware, therefore, of the questions they both raised concerning events that have followed.

The McKies had spent the better part of a day at Mr. Swann’s Offices in Wakefield. On 2 March, 1999 as the McKie Defence Fingerprint Expert, Mr. Swann travelled to Glasgow. At 11.30 a.m. on 2 March, 1999 Mr. Swann attended the High Court of Judiciary, Glasgow, accompanied by Shirley McKie’s Solicitor. Mr. Swann undertook Inspection of Prosecution Exhibits and his Findings were subsequently set out in his two Expert Reports of 16 March, 1999. In the event, having undertaken Expert Inspection on 2 March, 1999 Mr. Swann thereupon attended upon Consultation with Donald Findlay QC and Victoria Young, Leading and Junior Counsel for Ms. McKie, with her Solicitor also being present. Consultation with Shirley McKie’s QC and Defence Lawyers was a very brief one. In a contemporaneous record, Mr. Swann recorded the exchange as follows:-

Donald Findlay QC : Have you seen the mark?
Peter Swann : Yes, I have seen it in situ on the Door Standard.
Mr. Findlay : Is it genuine?
Mr. Swann : Yes it is.
Mr. Findlay : And whose is it?
Mr. Swann : It’s the left thumb impression of Shirley McKie.

The Consultation was immediately terminated by Donald Findlay QC, who left, accompanied by Miss Young.

In his Expert Reports of 16 March, 1999 Mr. Swann stated his Findings in wholly unequivocal terms:—

Having examined Exhibit 102, the Door Standard, being satisfied as to the genuineness of the developed mark thereon and the positivity of its identification as the Left Thumb of Shirley Jane McKie, there is only conclusion that I can arrive at, that is that she must have been there (the Murder Scene) at some stage and left her mark where found. Taking into account all the circumstances, this is the only conclusion one can arrive at...

Mr. Swann's Expert Evidence contained confirmation that the mark on the Door Standard, the photograph of the mark in the production and of the left thumb impression of Shirley Jane McKie on the Fingerprint Form were all the same subject. The Expert Evidence was consistent with Ms. McKie having been on the bathroom side of the door at the Scene of the murder of Marion Ross. In his Expert Evidence, Mr. Swann expressly refuted any suggestion that there had been a "deliberate deception" or "cover-up" by the SCRO Experts. Mr. Swann gave the following Expert Opinion:

From a purely logical approach by a Fingerprint Person, the thumb print in question is present on the Exhibit, I have no doubt as to its genuineness not indeed have I any as to ownership of it.

Mr. Swann has never withdrawn nor deviated from the Expert Findings made by him, as set out in his two Reports of 16 March, 1999 and as notified to Queen's Counsel, Counsel and the Solicitors representing Shirley McKie in the Perjury Trial **Her Majesty's Advocate v. Shirley Jane McKie**.

Furthermore, and as stated, whilst the McKies were directly involved with all four BBC Documentaries, the BBC Investigative Journalists, headed by Shelley Joffre, never disclosed or reported the existence of Mr. Swann's evidence, agreeing with SCRO. That was notwithstanding the fact that Mr. Swann was the McKies' own, Independent Fingerprint Expert. It has been established that in respect of at least three of the Documentaries, the BBC Production Team were in possession of the two Expert Reports prepared by Mr. Swann, but failed to disclose their existence. Furthermore, prior to the broadcasting of the fourth BBC Documentary, Ms. Joffre had secured an "on the record" interview with Mr. Swann confirming that he maintained his Expert Opinion. Ms. Joffre did not disclose Mr. Swann's statement in the ensuing broadcast. The BBC's Frontline Scotland and Panorama Broadcasts were grossly misleading and inherently biased. Notwithstanding the fact that you had direct knowledge of the falsehoods being promulgated by reference to the McKie Case, you went on to deliver a lecture to the Howard League for Penal Reform in Edinburgh (19 February, 2002), in which you stated: -

First we must pay tribute to the role of the media in uncovering injustice. Britain has a long and proud tradition of Investigative Journalism and the Criminal Justice System has not been immune from their attentions. The BBC Frontline Scotland Programme on the Case of Shirley McKie, the Strathclyde Police Officer who stood Trial and was acquitted on a Charge of Perjury, changed public perceptions of her Case. More importantly it helped uncover what were at best serious defects in the analysis of fingerprinting at the Scottish Criminal Records Office and forced the Authorities, including myself, to act to ensure that such a Case would not happen again.

That was a spineless speech in which you were doing nothing more than pandering to the McKies and currying favour with the media in Scotland. Consequent upon the false allegations promulgated by Shelley Joffre and her Team, as well as the McKie Campaign, you acquiesced in the suspension from employment of all four SCRO Fingerprint Experts. During their suspension from employment at the SCRO, the work of each named Expert was independently checked and verified, undertaken by a Team of New Scotland Yard Experts. All Cases handled by the SCRO Experts over a 2 year period were subject to scrutiny and audit. No mistakes or errors were noted or found. As Lord Advocate, you were directly responsible for the ensuing Criminal Investigation of the four SCRO Fingerprint Experts. As you will recall, Iain McKie claimed the credit for having forced the Scottish Authorities to conduct a Criminal Investigation, with view to the SCRO Experts being Charged with Perjury or Conspiracy to Pervert the Course of Justice. However, there was never any Evidence to support such an Investigation. The only Evidence ever seen by you provided verification that the SCRO Officers had discharged their duties with competence, professionalism and integrity. During the independent verification of the work of the SCRO Officers, you personally received

notification that by reference to 1,700 Cases, they had not made a single error. Indeed, the audit undertaken by New Scotland Yard served to demonstrate and reinforce the reputation of SCRO within the International Fingerprint Community. However, for reasons of political expediency or otherwise, you have elected not to defend the reputation of the four Experts within SCRO who have been subject to repeated, wholly unwarranted attacks by the McKie and Asbury "Campaigners". As a direct result, the reputation of Scottish Fingerprint Experts, which was second to none in the world, is now damned by what is known as "the Scotch Botch". You have thereby given an open platform to foreign Fingerprint Experts and, indeed, Internet Experts who repeatedly attack fingerprint standards in the UK in circumstances where they would not be offered employment, even to clean the toilets at SCRO.

For many years, Shirley McKie and Iain McKie have relentlessly pursued complaints against Mr. Swann, in a sustained attempt to gag him and in particular, to prevent his making any disclosure in respect of his Expert Findings, positively identifying her fingerprint. Until 2003, the McKies pursued their Complaints through the Fingerprint Society, alleging Professional Misconduct and Breach of Confidentiality on the part of Mr. Swann. In 2003, the Fingerprint Society dismissed the McKies' complaints. However, on the day of dismissal, the McKies made further allegations of Professional Misconduct against Mr. Swann, this time through the CRFP. The CRFP had greatly benefited from the McKie Campaign and the Statutory Investigations triggered by it. Inter alia, one windfall for CRFP was the mandatory ruling that SCRO employees should Register with CRFP. Mr. McKie was in contact with Alan Kershaw, Chief Executive of the CRFP, for some months, before any disclosure was made to Mr. Swann. In the event, the CRFP charged Mr. Swann with Professional Misconduct, by reference to the Complaints of Shirley McKie and Iain McKie. The two Charges were Breach of Confidentiality and Breach of Legal Professional Privilege. Two of the other Witnesses relied upon by the McKies and CRFP were Shelly Joffre of the BBC and Allan Bayle, the McKies' keenest Supporter. Bayle is described as "the UK's Leading Fingerprint Expert" and having been responsible for the conviction of the Lockerbie Bomber. Both claims were untrue.

I have referred you to the Statements of Facts and the Witness Statements served by CRFP in connection with the Disciplinary Tribunal Proceedings against Mr. Swann. I placed you on notice that in the Court of Session Proceedings, Ms. McKie had pleaded that prior to her Perjury Trial, "no Expert who was asked to provide an opinion on the matter of comparison of the prints..., stated that there was a match between the prints". I then referred you to the Witness Statements of Shirley McKie and Iain McKie in the CRFP Proceedings. Each of those Witnesses had signed Statements of Truth. The McKies were Exhibiting Mr. Swann's two Expert Reports in CRFP Disciplinary Proceedings in England, whilst denying the existence of such Evidence in the Court of Session, Scotland. Furthermore, and as you know, in giving evidence on Oath during her Perjury Trial Her Majesty's Advocate v. Shirley Jane McKie, Ms. McKie repeatedly denied knowledge of any other Fingerprint Expert examining the Exhibits on her behalf. Indeed, I cited verbatim the relevant Extract from the Transcript of Evidence, in respect of Ms. McKie's Cross-Examination by the Advocate Depute during her Perjury Trial. At the time when I first gave notification to you, Mr. Swann was awaiting Trial before the CRFP. Notwithstanding the content of the Statement issued on behalf of Mr. Swann on 25 November, 2004 or, indeed, my subsequent disclosure of the Court of Session documents, the CRFP pressed ahead with the Disciplinary Proceedings against my client. Indeed, in January, 2005 Professor Evelyn Ebsworth, Chairman of the Governing Council, CRFP personally issued the Convening Order, requiring Mr. Swann to be Tried by the Disciplinary Tribunal on Charges of Breach of Confidentiality and Breach of Legal Professional Privilege, upon the Complaints of Shirley McKie and Iain McKie. Unfortunately for the CRFP and even more unfortunately for the McKies, we welcomed the prospect of a Trial before the Disciplinary Tribunal. That was, of course, because we had secured an Order from the Disciplinary Tribunal Chairman that the Hearing should take place in public, at a venue in London, and that Shirley McKie and Iain McKie would be required to attend, in order to give Evidence on Oath. A number of eminent Fingerprint Experts were to be called to give Evidence on Mr. Swann's behalf The Prosecution had been provided with full details of our Defence, to include the Statement of 25 November, 2004. Full particulars were also delivered in our ensuing correspondence.

As you are further aware, in December, 2004 the CRFP's Lawyers wrote urgently to Shirley McKie, seeking her response upon those allegations made by me, on behalf of Mr. Swann. Those were the allegations set out in the Statement of 25 November, 2004 and duly

corroborated by production of the Court of Session Pleadings. However, Ms. McKie failed to respond or to provide any answer in respect of the allegations made on behalf of Mr. Swann. Instead, in February, 2005 Iain McKie demanded an urgent meeting with the Legal Representative of the CRFP and its Chief Executive. Shortly after that meeting, CRFP gave me written notice that all Charges against Mr. Swann were withdrawn. We were told that the Hearing of the Disciplinary Tribunal, fixed for 6 June, 2005 was vacated. A second Hearing, that is to say my Application for Disclosure of Mr. McKie's "response" was similarly vacated. Following upon the CRFP's withdrawal of the Charges against Mr. Swann, we have spent the better part of a month, trying to force them to hold the Disciplinary Tribunal Hearing on 6 June. In this connection, I had give Notice of a proposed Application for Formal Dismissal of the Charges and Costs. The Chairman of the Disciplinary Tribunal and CRFP would have been prepared to allow Mr. Swann's Application to be made, subject to two conditions. Firstly, the Application was to be made to the Chairman of the Disciplinary Tribunal. Secondly, it was to be made in private. Whilst we were prepared to have the Application made to the Chairman, instead of the full Disciplinary Tribunal, we demanded that it should be at a Public Hearing. The response of CRFP has been to revoke the Proceedings and to stand down all Members of the Disciplinary Tribunal, to include cancelling the nomination of the Chairman. All of that has been undertaken to prevent our securing a Public Hearing. Both CRFP and the McKies knew that we would use any Public Hearing in order to place all of this material into the public domain. However, and as stated, the Proceedings have now been withdrawn and we have been denied the right of any Hearing. On any appraisal, that is a disgraceful state of affairs. However, at the same time as we were being denied a Hearing, to prevent disclosures against Shirley McKie, their Expert, Pat Wertheim was publishing the following statement:-

And now, in an effort to mask the odour of corruption, the SCRO has offered to host the 2006 Annual Conference of the Fingerprint Society. While the overwhelming majority of Fingerprint Examiners in the Fingerprint Society will readily acknowledge the erroneous identification (Shirley McKie) in private and voice outrage that the situation has gone uncorrected, in public they remain silent. The few exceptions, people who have publicly spoken out in support of Shirley McKie and against the SCRO have been punished and silenced. But in a bazaar move that gives credibility to the SCRO and denies the existence of problems there, the Fingerprint Society Executive has accepted the SCRO's offer and plans to hold its 2006 Conference in Glasgow.

Mr. Wertheim refers to the fact that each of the four SCRO Experts were alleged to have "Perjured themselves". He then made various references to "dishonest Examiners" and "the temptation to fabricate Evidence". It was, of course, Mr. Wertheim who gave Evidence at Shirley McKie's Perjury Trial. According to the fairytale promulgated by Shelley Joffre, Ms. McKie found her Fingerprint Expert by searching the Internet. In the BBC Frontline Scotland Documentary Finger of Suspicion, Ms. Joffre told the viewers:-

Following her arrest Shirley was suspended from her job as a Detective. She used the time to do her own investigation at the local Library. Just two months before her Trial Shirley typed the words "Fingerprint Expert" into an Internet search. Those two words were to lead her to a remarkable discovery. Shirley McKie's search on the Internet brought her here, to Oregon, 4,500 miles away on America's West Coast. She made contact with an internationally renowned Fingerprint Expert, who was to provide her with the breakthrough she needed. By e-mail Pat Wertheim agreed to come to Scotland to compare the Crime Scene mark with Shirley's fingerprints.

Mr. Wertheim subsequently declared that he was able to verify the misidentification of Shirley McKie's print in 60 seconds. On a bad day, he refers to 90 seconds but clearly, when you are that gifted, half a minute is neither here nor there. However, whilst Ms. McKie's story about an Internet search to find a Fingerprint Expert is highly entertaining, she seems to have forgotten Peter Swann, the Independent Fingerprint Expert instructed by her. In the circumstances, given that the McKies are publishing allegations of "corruption", "dishonesty" and "conspiracy" against SCRO Officers and making sustained attempts to undermine the Administration of Justice in Scotland, it is disgraceful that Mr. Swann should remain gagged, particularly at the instigation of the McKies. In the circumstances, on 26 April, 2005 I gave the following notification to the CRFP and its Lawyers:-

For my part, I have the gravest concerns as to your clients' conduct in connection with these Proceedings and in particular, the way in which they have sought to serve the interests of plain McKie and Shirley McKie. During the course of these Proceedings, various issues have been identified, to include Perjury, Perverting the Course of Civil Justice and Abuse of Privilege. In the circumstances, I hereby give notice that the conduct of the McKies will no longer be protected by their misuse of legal professional privilege and confidentiality. On that basis, I will proceed on the basis that it is in the public interest, to facilitate the Administration of Justice, that the facts and matters notified by me should now be placed into the public domain. Furthermore, in order to monitor and report upon the CRFP's conduct in pursuing Disciplinary Proceedings against my client, I am setting-up a Panel of Observers. In this connection, Dr. Chris Pamplin, Editor of the UK Register of Expert Witnesses has kindly accepted nomination to sit on the Panel of Observers. I am also arranging to speak with Dr. Ian Gibson MP, Chairman of The Science and Technology Committee of the House of Commons, in order that arrangements might be made for a Member of that Committee to be seconded to the Panel of Observers. I will also be in communication with Lord Lofthouse of Pontefract, in order that he might report the Panel's findings in the House of Lords. I will, of course, notify CRFP of other Panel Members, once appointments have been confirmed.

As stated, CRFP and the McKies have done everything in their power to prevent any Public Hearing before the Disciplinary Tribunal or Disciplinary Tribunal Chairman, so as to avoid disclosure by Mr. Swann. CRFP have gone on to revoke the Convening Order and to cancel the nomination of the Disciplinary Tribunal Chairman and all four Panel Members, to as to avoid them hearing the Swann Case. In the circumstances, the disclosure of Mr. Swann's Expert Evidence in respect of the McKie fingerprint is now in the public interest.

At this stage, we have the appalling spectacle of McKie claiming over £1 million, to be paid by the Scottish Taxpayers, and Asbury claiming £¼ million. Both the McKies and their friends in the media have been relentless in their attempts to "name and shame" the four SCRO Fingerprint Experts. The SCRO Experts are known to be under instructions that prevent them from commenting, even though every single day, more and more false statements are made, concerning their conduct. The families of each of the SCRO Experts have suffered even more. There have been no declarations of support from you and as stated, you have gone on to the public record as paying tribute to the McKies' media bandwagon, fronted by Shelley Joffre of the BBC. I consider that you have a number of serious issues to address. By reference to the McKie Case, David Asbury's conviction for the murder of Marion Ross was quashed. You were responsible for that decision and you issued a statement on 14 August, 2002 stating:

David Asbury was convicted at the High Court in Glasgow on 3 June 1997 of the murder of Marion Ross in January 1997. An important part of the Crown Case against David Asbury consisted of evidence identifying the Deceased's fingerprint on a tin recovered from the Accused's bedroom. .in light of the contradictory Evidence over the fingerprint impression on the tin, the Crown is satisfied that it would not be appropriate to rely on that Evidence, and without that Evidence there is insufficient Evidence against Mr. Asbury. The Crown did not therefore seek authority to bring a new Prosecution.

However, your duty as Lord Advocate was either to oppose the Appeal or to make Submission to the Appeal Court for the re-Trial of David Asbury. Indeed, you had before you overwhelming Evidence that would have supported the re-Trial of David Asbury. However, whilst you effectively supported the Asbury Appeal, you failed to give disclosure that wholly unequivocal Expert Evidence was held, prepared at the highest levels of SCRO, establishing that the mark on the tin, that is to say Mark Q12, which had been recovered from Asbury's home was, indeed, the right fore fingerprint of Marion Ross. You failed to notify the Appeal Court that SCRO Experts, in confirming that Mark Q12 was the fingerprint of Marion Ross, had identified 29 ridge characteristics in sequence. You knew that 14 ridge characteristics would have constituted verification in compliance with the National Fingerprint Standard for identification in Scotland. In the event, as a result of the unopposed Appeal, David Asbury, the man convicted by a Jury of the brutal murder of Marion Ross, was allowed to walk out of Court, into the street, without any re-Trial. Mr. Asbury would say that he was innocent.

Clearly, he should have been permitted to secure the vindication which could only follow from re-Trial before a Judge and Jury.

You are, of course, also aware that the fingerprint of Shirley McKie was positively identified as a match with Exhibit Y7 by a second Independent Fingerprint Expert, Malcolm Graham, who had been instructed by the Asbury Defence Team. Having watched one of Shelley Joffre's Documentaries, Mr. Graham sent the following communication to another Fingerprint Expert:

I do want to comment on the Case of Shirley McKie. In your programme you stated that everyone who examined the Fingerprint Evidence against Ms. McKie came to the conclusion that the four Scottish Criminal Record Officers were wrong. That is not true. I examined the Evidence for the Defence in the Charge of Murder against David Asbury. Ms. McKie was a Detective in this investigation. Scottish Criminal Records Officers, in the course of checking fingerprints for elimination purposes in the murdered woman's house, identified one of the fingerprints as Ms. McKie's. That had not been an issue at the time. I was examining the Evidence against David Asbury but as Ms. McKie had approached the Defence Lawyer acting for Asbury and alleged that be colleagues (Police Officers at Kilmarnock) had planted her fingerprint at the Murder Scene, the matter became very important. If the Police had "planted" her fingerprints at the Scene, there was a suggestion that they may also have planted Asbury's fingerprints. My conclusions concerning Ms. McKie were that her fingerprint could not have been planted on a door frame in the house. I was also satisfied that it was her fingerprint. I made that clear in my report to Asbury's Defence Lawyer and also gave Evidence to that effect at the Murder Trial. When Mr. McKie asked me to act on behalf of his daughter, I made it quite clear to him that] was satisfied his daughter's fingerprint had been found in the house. although if there was any assistance I could give, I would be pleased to help. Mr. McKie does not mention me because his assertion that SCRO was involved in a conspiracy against his daughter would have no credibility. I did not know any of the Fingerprint Officers involved. I would also make the point that there are others who agree with the identification of Ms. McKie' fingerprint. Mr. McKie had produced a list of more than a hundred individuals who have put their names on his website. I do not know who they are or what qualifications they may have, but few if any of them have seen the actual fingerprints. They have probably seen just poor pixelated image on a computer monitor.

Mr. Graham subsequently had a letter published in The Herald on 23 May, 2002 in which he castigated Mike Russell MSP and some of the other MSPs who were making wild allegations as to the suffering of Shirley McKie. Mr. Graham went onto state:-

The real injustice is that four Fingerprint Experts from the SCRO were suspended, not for mistakenly identifying a fingerprint, nor for incompetence, but because of an allegation of serious criminal conduct was made against them. An Internal Inquiry has cleared them of any wrongdoing, and they are now permitted back to work. They are prohibited from commenting about the Case because an Appeal is pending in a related Case. It is surely their rights that have been infringed. Each party in a dispute has an unalienable right to be heard and to prepare their Case thoroughly — except the four victims at the SCRO. Why should four people who expressed an honest opinion be pilloried? Perhaps some fair-minded MSP can take up their Case so that an equitable debate can take place with both sides represented and hopefully without rancour. Mr. Russell has a long list of Fingerprint Experts who have an opinion that agrees with the Judgment of the Court. There are other Experts who disagree, and support the opinions of the Experts at the Scottish Criminal Records Office. An opinion held by a large number of individuals is not necessarily the correct one.

Iain McKie has declared to the Fingerprint Society that he received an apology from one of its Fellows and that he was awaiting one from another Fellow (Mr: Swann). However, neither Mr. Swann nor Mr. Graham have ever withdrawn their Evidence on the McKie fingerprint

Iain McKie and Shirley McKie made repeated allegations of criminal offences against the four SCRO Experts. The McKies' allegations and Shelley Joffre's BBC Frontline Scotland Documentary secured the suspension of all four Experts from their employment, Iain McKie also published statements, claiming the credit for the Criminal Investigation against the four

SCRO Experts, which was headed by William Gilchrist, Senior Procurator Fiscal. As a result of the actions of the McKies and intense media publicity, facilitated by Ms. Joffre, the four SCRO Experts faced dismissal from their posts, as well as the prospect of being Charged, Prosecuted and, if convicted, imprisoned for "Perjury" and "Perverting the Course of Justice". The McKies and Joffre could not, of course, go wrong since they had the Lord Advocate making speeches in Edinburgh paying tribute to their Investigative Journalism. Whilst you were making your speeches and giving David Asbury the key to the Prison door, the four SCRO Experts were treated as Lepers. Whilst they were allowed to resume their employment and, indeed, were never Prosecuted, they have been prohibited from resuming their normal duties. Even in respect of their present duties, the four SCRO Experts have undergone repeated attacks by Allan Bayle, Pat Wertheim, Iain McKie and Shirley McKie. In the BBC's Panorama Documentary Fingerprints on Trial, Shelley Joffre reported that "remarkably", whilst the four SCRO Fingerprint Experts were "wrong" "no action is to be taken against them". That was a reference to the decision not to bring Criminal Proceedings against the four SCRO Experts. Ms. Joffre immediately had Shirley McKie's reaction to the failure to bring Criminal Proceedings against the SCRO Officers. Shirley McKie cried out:

It's absolutely shocking and its disgusting and after everything that's happened to me over the last 5 years. Its just.... It's the last straw. . . .1 mean its just a major, major kick in the teeth for me.

However, in her dramatic response, Shirley McKie failed to mention one very significant fact and that was, of course, that her own Independent Fingerprint Expert, Mr. Swann had identified a match between her print and Exhibit Y7 and further, that he had been in full agreement with the SCRO Experts. Ms. Joffre was also aware of the facts and had before her the copies of Mr. Swann's Expert Reports. The broadcast was grossly misleading. Since the McKies' Independent Fingerprint Expert had agreed with the SCRO Experts, both Joffre and McKie knew that there was absolutely no basis upon which Criminal Proceedings could have been countenanced against the four Crown Experts. That did not, of course, stop Joffre from wailing about the victimisation of McKie. However, Joffre and McKie clearly had an agenda and to date, it has been very successful, indeed. Thus, Shirley McKie is demanding over £1million from the Scottish Ministers, to be paid by the Scottish Taxpayers. Shelley Joffre is bound to get another two or three Documentaries out of the McKie Case. Iain McKie is on an endless Lecture Circuit, both within the UK and abroad, undermining the SCRO and the Administration of Justice in Scotland. David Asbury has had his conviction for murder quashed and is looking forward to his £1/4 million.

Had the SCRO Experts been Prosecuted, there would have been the gravest miscarriage of justice. As Lord Advocate, you are responsible for the conduct of all Prosecution Cases in Scotland. In the circumstances, did you, as Lord Advocate, intervene, in order to prevent the Prosecution of the SCRO Experts? That is of course, implied by the McKies. However, you and I both know the truth and that is, of course, that the Procurator Fiscal did not Prosecute the four -SCRO Experts as a result of the Evidence given to him by Mr. Swann.

Notwithstanding the McKies' claims to "confidentiality" and "legal professional privilege", my client, as a Forensic Expert, has an overriding duty to the Court and to the Administration of Justice. On that basis, on 16 June, 2001 my client attended at the Offices of the Academy of Experts in London and was interviewed by William Gilchrist, the Senior Procurator Fiscal. Mr. Swann viewed the Procurator Fiscal's "Expert Evidence" and demonstrated that it was "fatally flawed". Mr. Swann thereupon demonstrated that the mark on Exhibit Y7, the doorframe from the Scene of Marion Ross' murder, matched the left thumb print of Shirley McKie. Mr. Swann conclusively established that the SCRO Officers, in identifying a match between Exhibit Y7 and Shirley McKie's thumb print, had acted honestly, professionally and with the utmost competence. Mr. Gilchrist concluded the interview by stating that upon his return to Scotland, he would not be able to put in an adverse report against the SCRO Experts, that it to say that he could not recommend their Prosecution. In the absence of Mr. Swann's intervention, there is little doubt that the SCRO Experts would have been subject to a show Trial in Scotland. Mr. Swann went on to take further action to notify the Authorities in Scotland and inter alia,, made written Submission to both the Chief Constable and the Minister of Justice.

It is a matter of record that Iain McKie and Shirley McKie have done their utmost to inflict professional damage upon Mr. Swann, with the intention of gagging him and preventing disclosures. The fact that CRFP brought Charges against Mr. Swann calls into question the

fitness of that Organisation to regulate Forensic Practitioners, particularly since it operates on Home Office Funding. What is even more disgraceful is that the Governing Council of the CRFP includes a number of eminent figures, one of whom is William Gilchrist, Senior Procurator Fiscal. Even though the CRFP were given written notification of the allegations made against the McKies, to include the making of false statements in the Court of Session Proceedings, the CRFP continued with the Disciplinary Tribunal Case against Mr. Swann. It was only with the prospect of a Public Hearing in London, running to 10 days, with inevitable disclosure, that the Proceedings were withdrawn. As stated, CRFP have subsequently done everything within their power to prevent any Hearing taking place, even depriving Mr. Swann of the right to make Application for Costs. It is significant that Mr. Swann has been at risk of ruinous financial costs in defending the CRFP Proceedings which had, of course, been instigated upon the Complaints of Iain McKie and Shirley McKie.

I deeply regret your failure to fully support and defend the SCRO Fingerprint Experts Those Experts have, at all times, acted with the utmost integrity, professionalism and unparalleled competence. Instead, you have allowed a number of third rate, publicity seeking MSPs to attack the SCRO employees, both abusing their positions in the Scottish Parliament and through highly defamatory statements published by the media. In a remarkable offer, I gave you notice that I had advised Mr. Swann that he was under duty to give evidence in the Scottish Proceedings, that is to say the Court of Session Trial in February, 2006. I put forward that offer on the basis that the sole, overriding criteria was whether the High Court Judge hearing the Case would be assisted by Mr. Swann's Evidence. Clearly, in a Case of Malicious Prosecution, where the McKies are alleging that SCRO employees conspired to pervert the Course of Justice by falsely identifying Shirley McKie's fingerprint, the Judge would inevitably be assisted by the Evidence of the McKies' Independent Fingerprint Expert, having regard to the fact that he was instructed prior to the Perjury Trial. There is no property in a Witness, whether in an Expert Witness or otherwise. I provided you with Legal Authorities and Precedent, which would have enabled the Scottish Ministers to have called Mr. Swann to give Evidence. However, you have repeatedly ignored and, indeed, even failed to acknowledge the notification that in the interests of justice, Mr. Swann should be called to give Evidence in the Court of Session. In circumstances, where the McKies and their Experts are alleging that SCRO has "the odour of corruption", I am not prepared to accommodate what is clearly some form of alliance between the Crown Office and the McKies. Clearly, my client, Peter Swann cannot make the necessary disclosures and I have therefore, elected to do so. For the record, therefore, I am responsible for the present disclosure and Mr. Swann must not be made the subject of further attempts of Disciplinary Action, whether by the Fingerprint Society or CRFP. As you will recall, in promulgating highly defamatory allegations against the SCRO Fingerprint Experts, Iain McKie invariably cites Abraham Lincoln:

To sin by silence when they should protest makes cowards of men.

I agree, hence the disclosure of our Evidence on the falsehoods of the McKie Campaign. The McKies should be reminded that a second statement was also attributed to Abraham Lincoln

You can fool all the people some of the time, and some of the people all the time, but you can not fool all the people all of the time.

Yours sincerely,

DAVID A. RUSSELL