

**SUBMISSION OF DAVID RUSSELL ON BEHALF OF PETER SWANN, MARTIN
LEADBETTER, JOHN BERRY AND MALCOLM ROSS**

Note: This submission contains the same character assassination, gossip, innuendo and lies that have been contained in many of Mr. Russell's reports, letters and complaints over the years. The full submission is posted in good faith however and I suspect it tells us more about the author than about those he attacks so venomously. One matter to ponder as you read. Had the SCRO experts and Messrs Swann, Leadbetter and Berry been competent and spoken the truth none of this would have happened. They were truly the authors of their own misfortune and arguably bear some of the responsibility for the killer of Marion Ross never being brought to justice.

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<http://www.thefingerprintinquiryScotland.org.uk/inquiry/files/2009-11-27%20AM%20Transcript.pdf>

MR RUSSELL: Thank you, sir. I represent Michael Ross on his own behalf and on behalf of Marion Ross; Peter Swann, Shirley McKie's Independent Fingerprint Expert prior to her trial for perjury, Her Majesty's Advocate v Shirley Jane McKie; Martin Leadbetter; and John Berry. I make a statement on their collective behalf.

As you know, we have had profoundly serious misgivings concerning this Inquiry. We refused to sign confidentiality undertakings and consequently have never had access to the confidential core participants' database.

Sir, this may be the Fingerprint Inquiry but the fact remains it's very foundation rests on the commission of murder and perjury. In addressing the Inquiry yesterday Andrew Smith referred to the evidence of Pat Wertheim and Arie Zeelenberg and placed reliance upon the fact that: "They did not reduce themselves to personal attacks." And invited you to contrast that with: "The continual approach by the SCRO, aided by Mr Leadbetter and Mr Swann, which has been to attack anyone who disagrees with them."

Mr Smith added that the language used by Mr Swann and Mr Leadbetter was: "Not in any sense replicated in any statement or a report by those who support Ms McKie's position."

Mr Smith's statement was manifestly untrue. The McKie experts, Pat Wertheim, Arie Zeelenberg and Allan Bayle, have each launched personalised, grossly abusive and deeply offensive attacks upon the SCRO experts and any other expert who got in their way, notably Peter Swann and Martin Leadbetter. By way of example it was Wertheim who said the SCRO officers had about them the odour of corruption and alleged fraud on their part. It was Zeelenberg who made false allegations of criminality –

THE CHAIRMAN: I think there is difficulty for the stenographer picking up.

MR RUSSELL: Thank you, sir.

It was Zeelenberg who made false allegations of criminality trying to rally the so-called world Internet experts and it was Bayle who wrote that those experts who wrote that those experts who would not take up Shirley McKie's cause were no better than the Gestapo who herded the Jews into the gas chambers. These people are sanctimonious liars. Andrew Smith again yesterday afternoon alleged that in his presentations, to include those of this Inquiry, Robert Mackenzie's evidence triggered: "Serious questions over its veracity", -- and that his: "... desperation shows he is either deluded or, frankly, attempting to deceive. Either way he is, we say, utterly discredited."

That was, however, an inherently dishonest and unwarranted attack upon the integrity and character of Robert Mackenzie. However, I cite it for one good reason and that is to demonstrate how the McKies and their lawyers operate and have operated throughout. The fact is, however, that the character, professionalism, expertise and honesty of Peter Swann, Martin Leadbetter, John Berry, Robert Mackenzie, Fiona McBride, Allister Geddes, Hugh MacPherson, Terry Foley, Alan Dunbar and those at SCRO is beyond reproach, as has been 22 demonstrated before this Inquiry.

For their parts the Ms McKies and their lawyers are nothing if not consistent and an example of that is to be found in the letter of 14th July 2000 from Bill Gilchrist, Regional Procurator Fiscal, to Frank Crowe, the then Deputy Crown Agent. The letter is useful

because it shows that Mr Iain McKie and James Cassel, his solicitor, met with Mr Gilchrist and alleged that the conspiracy against Shirley, as they put it, essentially started with the Asbury case and it is recounted how McKie and Cassels made allegations of conspiracy and perjury, both in the Asbury and the McKie cases. It demonstrates how the McKies worked in tandem, in harness, with their lawyers.

That was back in July 2000 but yesterday afternoon Andrew Smith was, again, on the attack this time alleging: "That professionals, experts, those in the criminal justice system have lied here. The problem is we don't know when the lies stop and the truth commences." Mr Smith went on to say: "There are a number of victims in this matter, not just Shirley McKie and David Asbury." That again is the character approach of portraying Shirley McKie and David Asbury as victims, which is the last thing in this world that they are.

Mr Smith eventually got round to Marion Ross with an observation which ranked as sanctimonious hypocrisy of the highest order saying: "At the end of the day, the victim that remains above all is Marion Ross. To date no-one has been convicted of her murder and that is a tragedy."

However, we say that Mr Smith's client, David Asbury, was properly convicted of Marion Ross's murder on overwhelming evidence. The McKie/Asbury team, before this Inquiry, has even had to abandon the fiction that David Asbury's fingerprint on the gift tag of the Marion Ross Christmas present was a forgery. The only tragedy in relation to the murder conviction was that it was deliberately and dishonestly undermined by Iain and Shirley McKie, which was the grossest conceivable betrayal of their Police Service.

It was Mr Smith who alleged yesterday that: "Professionals, experts, those in the criminal justice system have lied here and that the problem is we don't know where the lies stop and the truth commences". Since Mr Smith poses the question as to not knowing, "when the lies stop and the truth commences", we can do no better than to refer him and this Inquiry to the evidence of Iain McKie on 15th October. The very specific allegation put to Mr McKie by Mr Moynihan which had been made by us was that Shirley McKie, "did not give a true account in her perjury trial". Mr McKie admitted that, notwithstanding her answers on oath

whilst under cross-examination by the Advocate Depute during her perjury trial, Shirley McKie was fully aware of Peter Swann's work as her Fingerprint Expert and that he had reported that mark Y7 was her left thumbprint. Mr McKie made his admission of 15th October in the face of overwhelming evidence which had been presented previously by us and others.

Andrew Smith told the Inquiry yesterday, however, that they didn't know, "when the lies stop in the truth commences". Applying that statement, it is clear that Iain McKie and Shirley McKie were fully aware of the fact that to adopt Mr Moynihan's question of 15th October Shirley McKie, "did not give a true account in her perjury trial". Useful guidance is to be found in the Perjury Act 1911, section 1 of which is couched in the clearest possible terms and is merciless: "If any person lawfully sworn as a witness in a judicial proceeding wilfully makes a statement material in that proceeding which he knows to be false or does not believe to be true and shall on conviction thereof on indictment be liable to penal servitude for a term not exceeding 7 years."

If, as is clear from the evidence and Mr McKie's belated admission of 15th October, that Shirley McKie was prepared to lie in her perjury trial concerning her Fingerprint Expert Peter Swann and his identification of mark Y7 as being her left thumbprint, then we say she would certainly have had no reservations about giving equally false testimony in the trial *Her Majesty's Advocate v David Asbury* concerning her entry into the crime scene of Marion Ross's murder.

Andrew Smith and the McKie lawyers themselves ask this Inquiry when do the lies stop and the truth commences? So I ask them why they collectively lied to the Scottish Parliament in their signed statement of April 2006 which must be contrasted with Mr McKie's evidence of 15th October 2009. The statement was, and it was signed by Andrew Smith and others:

"Shirley McKie advises us and we have no reason to doubt this that she was not aware of the opinion of Swann on the matters that she was asked about. At all material times her father was being advised of the developments and not all matters were communicated to her." That was a manifestly false statement. Adopting Andrew Smith's words from yesterday, "we don't know where the lies stop and the truth commences", but it doesn't end there. Andrew Smith and his team have for years contended that: "No expert who was

asked to provide an opinion on the matter of comparison of the prints prior to Shirley McKie's perjury trial stated that there was a match between the prints", that is to say, mark Y7 and Shirley McKie's left thumbprint. Again, a gross false statement.

That brings me full circle, sir, back to the disappearance of all of the legal files of Levy & McRae, Shirley McKie's solicitors in the perjury trial *Her Majesty's Advocate v Shirley Jane McKie a/k/a Cardwell*. On 13th November I communicated with the Inquiry and said: "The Chairman has been content to excuse both David Asbury and Shirley McKie from giving evidence on oath. It is, however, a matter of record that both Asbury and McKie have been of sufficiently robust health to entertain countless journalists and to record media interviews. Ms McKie was certainly well enough to attend the Court of Session in order to give evidence but then again the incentive of such appearance was the prospect of her claiming £1 million in compensation. Ms McKie was well enough to attend the Justice 1 23 Committee of the Scottish Parliament but quickly feigned outrage when her victim status was challenged. For her part, Ms McKie has publicly characterised the SCRO experts and others as spineless maggots and criminals. Ms McKie also made many poisonous allegations against Mr Swann. "However, whilst Ms McKie's health permits her to utter insults with the propensity of a fish wife she is apparently too ill to submit to cross-examination on behalf of those she abuses.

The Chairman is on notice that Ms McKie committed perjury in her perjury trial, *HMA V Shirley McKie*. As matters stand, the Chairman has been entirely content to revoke Ms McKie's statutory notice by reliance upon such testimony, notwithstanding the fact that it was perjurious, as was finally admitted by Iain McKie on 15th October 2009." "The Chairman conducted his investigation of Ms McKie's medical condition with inappropriate secrecy and entirely to the conclusion of those entitled to maintain an interest. Indeed, I am not even permitted to know the name of the medical practitioner who conducted Ms McKie's examination. "As matters stand, Mr Swann stated clearly at an early stage in giving his evidence-in-chief to the Inquiry that all exhibits received from Ms McKie's then solicitors, Levy & McRae, had been returned to them.

Since the Chairman will not allow the issue to be put to Mr McKie the question arises as to our right to secure corroboration through inspection of Levy & McRae's files. Such files will

inevitably have been passed onto the successor solicitors and having regard to the nature of the intervening civil proceedings will doubtless have been preserved. Would you, please, therefore confirm that such files have been obtained by the Inquiry and they will be made available to me in their entirety for inspection prior to Mr Swann's resumption of evidence. It is of course unacceptable to have Mr Swann re-examined as to the documentary instructions received from and returned to Levy & McRae when both that firm's file of papers and Ms McKie herself are being protected from examination within the Inquiry."

That was followed -- and I will say this fairly briefly -- by a communication to the Inquiry from me on 16th November where I took issue concerning the report that Levy & McRae's files had been lost and I said: "I would remind the Inquiry that in our submission of 14th November 2008 I raised this very issue: 'Thereafter the Inquiry should request the files of Levy & McRae in their capacity as solicitors for Shirley McKie in the case of HM Advocate v Shirley McKie. If Shirley McKie refuses to give authority for disclosure of Levy & McRae's papers, then that will be a matter to be addressed by the Chairman.'" Continuing the quotation: "In the circumstances and having regard to the passage of a full 12 months the question arises as to what steps were taken by the Inquiry to secure such evidence and more importantly precisely when. Immediately I have the Inquiry's response I will be in a position to further advise Mr Swann.

As matters stand, the loss of Levy & McRae's files, if confirmed, will constitute a flagrant attempt to pervert the course of justice as well as the further criminal offence of obstruction contrary to section 35 of the Inquiries Act 2005. Such offences will have been committed by or on behalf of Shirley McKie who, by her own father's admission, gave perjured evidence in the proceedings Her Majesty's Advocate v Shirley McKie."

As at 7.00 pm yesterday evening I received an update from John Grady who, in summary, gives an account of the way in which the file may or may not have been passed between four firms of solicitors representing Shirley McKie to include Levy & McRae, Hughes Dowdall, Cussells, Digby Brown and, as matters stand, the Levy & McRae files cannot be found. So between four firms of Scottish solicitors acting for Shirley McKie they claim to have lost all of her files from the perjury case.

For our part we do not believe a word of it. As stated, I first asked this Inquiry to obtain those files in December 2008 since I recognised the importance of them. So, sir, as matters stand Shirley McKie has not appeared before this Inquiry in order to give evidence on oath claiming that medical grounds prevent such appearance. At the same time all of her files from her perjury trial have disappeared, supposedly lost by one or more of her many lawyers.

I cite that in stark contrast to the positions of Peter Swann, Martin Leadbetter, Allister Geddes, Fiona McBride, Terry Foley, Robert Mackenzie, Hugh MacPherson, Alan Dunbar and others, all of whom have appeared before the Inquiry and presented themselves for cross-examination on oath and, no, we did not lose our files along the way nor did any of us commit perjury. Which brings me to another of Andrew Smith's victims, David Asbury. We ask where is he? This was his opportunity to give his evidence. Asbury has the same penchant as McKie and that is that they give their evidence through the press, through the media, through the BBC, through documentaries. They do not appear on the day.

What I say, sir, is that David Asbury has demonstrated the same traits of cowardice that led him to trick his way into the home of Marion Ross leaving behind his fingerprint on a Christmas present gift tag bearing the seasonal greeting: "To Katy love and best wishes, Marion". Knowing that he had left behind that fingerprint was one reason perhaps why it took David Asbury 38 seconds to answer the question: "Did you murder Marion Ross?"

So there we have it, sir. No David Asbury, no Shirley McKie and none of Shirley McKie's files from her lawyers. I would however point out one matter to Andrew Smith. Yesterday he raised comment as to the fact that John Berry had not appeared before the Inquiry. I would respond by pointing out three matters. Firstly, John Berry's 2005 signed statement was lodged with the Inquiry. Secondly, Mr Berry stands by his evidence to the Justice 1 Committee of the Scottish Parliament, a transcript of which was lodged with this Inquiry. Thirdly, Mr Berry stands by his identification of each mark in relation to Shirley McKie, David Asbury and Marion Ross as has also been evidenced by his signature having been endorsed upon a number of the original fingerprint charts previously lodged with the Inquiry. I point out, sir, that as I have previously advised this Inquiry Mr Berry remains terminally ill in consequence of metastatic prostate cancer. He remains in the Queen Victoria Hospital being

nursed and comforted by his devoted wife Diane and family. He has been seriously ill throughout the course of this Inquiry and, indeed, was gravely ill when he made the journey to the Scottish Parliament in order to give his evidence to the Justice 1 Committee. Martin Leadbetter visits Mr Berry on a regular basis and attests to his condition. We have put it at its bluntest, as perhaps the only way it can be put is that Mr Berry is nearing the end. If it was not for that, nothing, coach and horses would not have prevented Mr Berry coming before this Inquiry.

Malcolm Ross has also made a brief closing statement to the Inquiry. It is signed and dated 25th November. I say it is signed and dated because the last time I cited a statement from Mr Ross the McKie's Internet supporters suggested that I had made it up, which is their way, when they are not in Barlinnie Prison they are making allegations on the Internet.

What Mr Ross says is this:

"It has been quite clear from the outset with the very restricted Terms of Reference agreed between the Chairman and Government that any kind of justice for Marion Ross was going to be a pipe dream. Any misguided hope that the Inquiry would cast light into the shadows of the injustice perpetrated on the SCRO team and Marion Ross was quickly dispelled by this serial malfeasance of members of the law profession in Scotland, both in the Inquiry team and in those involved in the earlier facets of the McKie and Asbury cases. These malfeasances were manifest in the following ways: the untruthful declaration that the Inquiry lawyers were independent of Government; the cloak of obscurity thrown around the process of the appointment of advisers to the Inquiry; the failure of the Inquiry to deal with the blatant attempts of the International Association for Identification to pervert the course of justice by actions prejudicial to the evidence of Messrs Leadbetter and Swann or to investigate the role of other core participants and advisers to the Inquiry in the instigation of the proceedings of the IAI; the failure of the Inquiry to require the attendance as witnesses under oath of Shirley McKie and David Asbury; the failure to allow the interrogation of Lord Boyd of Duncansby on the matters concerning the disappearance of evidence vital to the identification of person responsible for the Marion Ross; the apparent conspiracy among lawyers involved with the McKie family over the years to ensure the disappearance of files detrimental to the McKies but beneficial to the course of justice; the failure of the Inquiry to

investigate and identify those responsible for the gross dereliction of duty in failing to apply for a retrial of David Asbury for the murder of Marion Ross. "If the primary underlying purpose of the Government behind the setting up of the Inquiry was to re-establish public confidence in the legal processes in Scotland, then the Scottish public has been let down by the Inquiry's abuse of its powers. The only thing that will be clear to the Scottish people is that justice is ill-served by the law and that the law is ill-served by Scottish lawyers.

"D Malcolm Ross, 25 November 2009."

The SCRO core participants, the Fingerprint Experts, have each come before this Inquiry and defended their identifications in respect of Shirley McKie, David Asbury and Marion Ross. They have been supported in those identifications by the independent experts: Peter Swann, Shirley McKie's own Fingerprint Expert; Malcolm Graham, David Asbury's own Fingerprint Expert; John Berry, and Martin Leadbetter. The fact that Shirley McKie's own Fingerprint Expert and David Asbury's own Fingerprint Expert came before this Inquiry maintaining each identification demonstrates the immense integrity and invaluable Independence of these independent experts.

I now bring this to a close. In so doing, in respect of a man who has suffered a barrage of criticism, I take a moment to pay tribute to the dedication, determination, tenacity and integrity of Les Brown in conducting his investigation into these matters. We are very grateful to Mr Brown. I say, sir, that Scotland should be proud of its Fingerprint Experts, Robert Mackenzie, Allister Geddes, Terry Foley, Fiona McBride, Alan Dunbar, Hugh McPherson and those who have appeared. They have each been supported by Peter Swann, Martin Leadbetter and John Berry.

We simply leave the McKies and their lawyers to the media, the Americans, the Danes and the Dutch and, of course, their worldwide Internet experts. Thank you, sir.

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Iain McKie Inquiry Evidence and Statements:

http://www.thefingerprintinquiryscotland.org.uk/inquiry/files/FI_0181-02.pdf

http://www.thefingerprintinquiryscotland.org.uk/inquiry/files/FI_0186-02.pdf

<http://www.thefingerprintinquiryscotland.org.uk/inquiry/1582.html>