

## Replies to oral closing submissions

### Reply to the submissions of Mr Michael Mc Comb

1. The suggestion by Michael McComb made on 10<sup>th</sup> December 2009 at Page 3:6 - 10 that the family have submitted the attack was over and done with quickly is not correct. In fact we make the opposite case. See paragraph 33 (page 242, consolidated papers) of our paper on the land rover crew when we submitted as follows:

“The family also submits that the attack on Robert Hamill was continuing at this time and did continue until police eventually reacted and pushed the crowd back from the casualties. It was a sustained attack. Support for this is to be found in R/Con Atkinson's statement who observes three youths jumping on the head of the male who was lying outside Eastwoods (Robert Hamill). This element of the assault takes place after R/Con Cornett has radioed for ambulances.”

### Reply to the submissions of Mr Adair QC

2. Mr Adair seeks to minimise the extent of the neglect alleged of police in the Land Rover by suggesting that the conversation of Forbes and Bridgett was very brief. (15<sup>th</sup> December 2009 pm at Pages 22:16 - 27:10) In doing to he refers to our submission that they “took their eye off the ball”. We have made it clear that this did not imply a momentary lapse but a lengthy conversation when they had been warned of potential danger.

An example from our submissions on the issue of the duration and nature of this exchange can be found at Pages 52:9 - 54:12 - 7<sup>th</sup> December 2009 as follows:-

9 That, in itself, is significant, we submit. What  
10 happens then is a conversation ensues between Bridgett  
11 and Forbes, on the one hand, and the police in the  
12 Land Rover, on the other hand.  
13 Now it is our respectful submission that that  
14 conversation was a substantial conversation. It is

15 difficult to time it, but it was certainly  
16 several minutes. It could have been five minutes.  
17 Mr Adair has said in his written submissions that there  
18 was a brief distraction. He has accepted that much, but  
19 he says it was brief. In our submission, it was more  
20 than brief. If one looks at even the topics that were  
21 discussed -- it is at paragraph 23 of our written  
22 submissions, page 133 -- we quote the evidence of  
23 Forbes, who gave evidence on 6th May. Sorry, his  
24 evidence of 6th May 1997. This is what he said to the  
25 police:

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1 "The doors opened and the police officer in the back  
2 noticed us and he called us over. He was staying to  
3 Stacey and all, 'I take it you didn't go and join the  
4 army and all'. He said, 'No. Just left school and went  
5 to work for DV Jameson's'. He was asked, 'Do you know  
6 that police officer?' 'I can't remember if it was ..."  
7 I will not say any more. He is referring to who  
8 would have been P40. He says:  
9 "They were just talking away. They were just  
10 talking to the police."  
11 He was asked what they were talking about. He said  
12 this policeman he referred to as P40 was asking Stacey  
13 if he wouldn't join the army or something, the RAF.  
14 Stacey turned round and said he had decided to leave  
15 school and was working for Jamesons. He then said, "Are

16 you working?" and he said he was a painter. "I might  
17 get you out some time to do a job for me". You know?  
18 So he asked, did he know who that policeman was and so  
19 forth. He says this conversation is ongoing when  
20 a fellow comes over and pulls Neill out of the  
21 Land Rover.  
22 There was also conversation about the clothes they  
23 were wearing. The female police officer said to Stacey  
24 about his shirt, about it being Ralph Lauren and that  
25 they were expensive or a bit dear:

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1 "... and we were just carrying on with her".  
2 Then he saw a ring and he laughed and there is a bit  
3 of banter about her "being mad getting married."  
4 So this is quite a chat that's going on here. This  
5 is not a momentary distraction, and this is after  
6 Thomas Mallon has come down and has said to these  
police  
7 in the Land Rover, "There may be people coming down  
8 Thomas Street behind me".  
9 They know these people. They know them from within  
10 the community. They know a bit about their backgrounds.  
11 They also know they are trouble-makers. They spend some  
12 considerable time talking to them.

3. Mr Adair has submitted (15<sup>th</sup> December 2009 pm at 36:13 - 37:16) that the family has been unfairly critical of Reserve Constable Cornett for spending too much time on the radio. The family of course accepts that it was necessary for someone to man the radio and that the calls made were

essential. The point of criticism is however that she appeared to do little else, which is another example of the disorganisation of the police response.

4. Mr Adair has quoted out of context a comment by Mr Mc Grory during an exchange with the Panel that one might speculate as to the motives for Mr Mc Burney's conduct in deliberately compromising the investigation into Reserve Constable Atkinson and whether or not his superiors had knowledge of this. Mr Adair's submission to this effect is to be found at Pages 50:13 - 52:5 - 16<sup>th</sup> December 2009 am and reads:-

13 MR ADAIR: At page 118, without calling it up, Mr McGrory  
14 suggested it was a crime of opportunity by Mr McBurney.  
15 This was the initial allegation made against  
16 Mr McBurney, that it was a crime of opportunity.  
17 Then at my page 131 on 7th December -- to save time,  
18 sir, if I read this, and then in due course I ask you to  
19 have a look at it perhaps on the transcript. It is my  
20 page 131. That may be 130 or 132. What Mr McGrory says  
21 is:  
22 "That is right at the heart of this Inquiry, we  
23 submit. It is a very, very disturbing submission to  
24 have to make, but it is collusion in its worst form. It  
25 is a very subtle form of collusion, in the sense that,

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1 if it is correct that Atkinson, who is a policeman, had  
2 engaged in the tipping-off of a murder suspect for one  
3 reason or another, and that there was a belief on the  
4 part of senior police that that was so, and even in  
5 McBurney's case that he is making it was a belief,  
6 because, without it, there would have been no strategy,  
7 for nothing to be done --

8 "The Chairman: So you say this was collusion  
9 between McBurney and his senior officers?  
10 "Mr McGrory: No."  
11 So on 7th December, in making his submissions, when  
12 asked the direct question:  
13 "The Chairman: So you say this was collusion  
14 between McBurney and his senior officers?  
15 "Mr McGrory: No, it is collusion between McBurney  
16 and Atkinson, albeit it is not that the two necessarily  
17 ever spoke to each other, apart from in the context of  
18 the investigation, but it is our respectful submission  
19 that, for reasons that were best known to Detective  
20 Chief Superintendent McBurney, he," McBurney, "decided  
21 to bury it.  
22 "Now we can only speculate as to why he might have  
23 done that ..."  
24 That's absolutely right, because what has happened  
25 in this case is, when Mr McGrory, with respect, comes

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1 back on 8th December, he does start to speculate, and  
2 that speculation is because the chief constable has lied  
3 about cradling and one or two other matters, therefore  
4 he is guilty of collusion, and that's precisely what has  
5 happened

Lest there be any misunderstanding we have never submitted that that there was room for speculation on the issue of whether or not DCS Mc Burney was guilty of misconduct. We have in fact submitted there is an overwhelming case to be made that Detective Chief Superintendent Mc Burney deliberately and wilfully compromised his own investigation into the

allegation that Reserve Constable Atkinson had tipped off Alastair Harvey. Secondary to that is the issue of his motivation and that, we say, could have been due to a personal connection or motivated by a misguided belief that exposure of this alleged wrongdoing by Reserve Constable Atkinson would have been damaging to the RUC at the material time. Mr Mc Grory made it clear to the Panel a short time later (Day 70 pages 134ff) that he wished to develop his submission as to Mr Mc Burney's possible motive in the context of the evidence of Sir Ronnie Flanagan. Mr Mc Grory did indeed develop a submission the following day that cast serious doubt on the veracity of Sir Ronnie Flanagan's claims to have known nothing about the "tipping off" allegation until June 2000. The point at which speculation turns to inference on any issue is of course a matter for the Panel. If the Panel finds however that Sir Ronnie Flanagan has not been truthful about the extent or timing of his knowledge of this investigation then it may wish to consider why this was so and whether it might also be relevant to Mr Mc Burney's motivation for compromising an investigation that he appeared to start in earnest. In the absence of any evidence of a personal connection between Atkinson and Mc Burney it is a reasonable inference to draw, we submit, that the most likely motive on Mc Burney's part was the protection of the good name of the RUC at a critical time. It is of course also open to the Panel to infer that DCS Mc Burney and his Chief Constable must have spoken about the allegation and the investigation of it and that DCS MC Burney had approval at Chief Constable level for the manner in which he was conducting the investigation.

5. At page 30 line 16 of the transcript of his submissions on day 75 (pm), Mr Adair said that:

“16 It was suggested during  
17 the course of Mr McGrory's submissions that there was no  
18 aggression on the part of Forbes and Bridgett, but it is  
19 quite clear from Mr Mallon that there was aggression to  
20 the extent he felt it necessary to put up his hands in  
21 a protective manner.”

This refers to Mr McGrory's submissions at page 50 of Day 70 where he paraphrases Mr Mallon's evidence on the point.

In his statement to Police on the 12<sup>th</sup> May 1997 (00505) whilst Mallon did say he was apprehensive and felt threatened by the *situation* and put his hands up because one of them had a bottle, the youth who had it made no attempt to hit him. He does not at any stage describe Forbes and Bridgett as "aggressive".

In his Inquiry transcript at page 26 he says, "I felt a little bit apprehensive about the bottle of wine, but he didn't actually make any attempt to... there was no threat of violence there ultimately"

He goes on to describe the demeanour of the youth as, "He was very obviously drunk. He didn't appear threatening when he actually approached me. It was the initial approach of four or five youths, you know, that was a little bit threatening."

Here, whilst he is apprehensive about the intent of the initial approach, he says that when the youth holding the bottle actually approached him he was not threatening. He again makes no mention of any aggression on the part of the youths.

At page 29 of his transcript he reiterates that the youths were not overtly threatening toward him and didn't bar his path or stop him going anywhere.

In his oral evidence at page 64 on day 5, in answer to Mr Underwood QC he said,

"16 There  
17 was no altercation. There was no real aggressiveness.  
18 It was just a situation I felt was a bit dangerous for  
19 me and I just had to get away."

And later at Page 70,

"4 A. He was keen that I have a drink of wine, and that I --  
5 if I said at that time he was keen, then I suspect he  
6 was, but there was no aggressiveness or altercation as  
7 such. It was just a conversation."

Mr Mallon was not cross examined on this issue by Mr Adair. In short we say that Mr Adair overstates the evidence when he suggests that, on Mr Mallon's evidence, Forbes and Bridgett were overtly aggressive toward Mallon to the extent that he put his hands up as a result of their aggression. In fact, we say, the tenor of Mr Mallon's evidence is quite the opposite. It should be pointed out that any evidence of the police officers in the Land Rover to the effect that there was overt aggression on the part of the two youths is, on the basis of Mr Adair's submissions, wholly self serving and that Mr Mallon's evidence, as a participant, as to the nature of the encounter, is to be preferred.

6. Mr Adair at page 57 of the transcript of his submissions makes reference to the criticism of P89 in the family's written submissions in the context of his visit to Craigavon Area Hospital to ascertain the condition of the two injured men. He said:

“Now, there is a criticism in Mr McGrory's written  
25 submission of P89 at the hospital which I will just deal  
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1 with briefly. In our submission, it is criticism for  
2 the sake of it. The suggestion seems to be that he  
3 should have found out more at the hospital than he did.  
4 Well, thankfully I have not recently been to the A&E  
5 at 3 o'clock in the morning, but I have seen and heard  
6 about A&E at 3 o'clock in the morning when the drunks  
7 are in getting fixed up. The thought that P89 should  
8 insist that one of the doctors, if he could find one,  
9 should come out and inform the police as to the nature  
10 of the injuries and the extent of the injuries that were  
11 suffered by Mr Hamill is fanciful. I just leave it at  
12 that.  
13 THE CHAIRMAN: P89 said, didn't he, you would not get  
14 a doctor to talk to you?  
15 MR ADAIR: He did. He made enquiries of the nurses, but  
16 could not get any information from the nurses. The  
17 thought of getting a doctor -- to go with an injury and  
18 try to get a doctor, never mind going to make an enquiry  
19 and trying to get a doctor...  
20 Anyway, I suspect Mr McGrory was just in critical  
21 mood at the time.”



In this rather flippant passage, Mr Adair in particular castigates Mr McGrory for his criticism of the inability of P89 to obtain information from a doctor. There is indeed criticism on the part of the family that neither P89 nor Inspector McCrum ascertained the extent of the injuries until some considerable time had passed. It is P 89's claim that he was only able to speak to a nurse (although this is not supported by R/Con Silcock's account) and that conversation was inconclusive as to the condition of the injured men that leads to the specific criticism of him. At page 351 para. 48-49 of the consolidated closings on behalf of the Hamill family, it is pointed out that he made no arrangement to be updated by the Hospital when someone was able to provide the information and he failed to follow it up with any further enquiry. Further, it is recognised in the written submissions by the family, that this may well be a *systemic* failure and the difficulties experienced by P89 at the hospital are accepted. The very evidence of the nurses in support of P89's assertion that it was difficult to speak to a Doctor is set out in our written submission.

### **Mr Emmerson's submissions**

7. At page 27 of his submissions on day 76 Mr Emmerson makes the proposition, in the context of the abandoning of the prosecution of Atkinson by the DPP, that there must be some evidential basis for finding that a prosecutorial decision may have shaped the murder investigation. The family submit that this proposition finds no support in the Secretary of State's clarification of the terms of reference as they apply to the DPP in his letter to P J McGrory & Co. Dated 4<sup>th</sup> November 2008. In fact the language used is that of a *possibility* of a decision shaping the investigation. That it was possible that Mr Atkinson may have given evidence against Hanvey is, we submit, recognised by Mr Emmerson himself in the course of his oral submissions. Indeed it is difficult to see that an evidential basis for any likely, much less possible, effect of a prosecutorial decision on the investigation would necessarily always be apparent. In any event however, in this instance, it is readily apparent that the dropping of the prosecution almost certainly deprived the investigation of the possibility referred to. That alone, we submit, is sufficient to satisfy Mr Emmerson's test of shaping of the investigation.

### **Reply to the oral submissions of Mrs Dinsmore QC**

8. In her closing at Pages 25:19 - 26:3) on 17<sup>th</sup> December 2009, Mrs Dinsmore said:-

19 Then I look to the allegation, and this is one to  
20 which great exception is, in fact, taken. That is that  
21 Robert Atkinson was a bigot. There is an allegation in  
22 the British Irish Watch:

23 "... perhaps on the Loyalist side."

24 Now, there is no evidence, no evidence before this

25 Inquiry, of any such allegiance. That was

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1 notwithstanding the very best efforts of Mr McGrory.

2 Mr McGrory himself in his closing accepted that he tried

3 and admitted defeat on that about the allegiance.

We fail to see how Mrs Dinsmore concludes that Mr McGrory 'tried and admitted defeat' regarding Robert Atkinson's alleged allegiance. Mr McGrory made our position in this regard quite clear in his closing submission on 8<sup>th</sup> December 2009 at pages 77:20 - 78:8 which reads:-

20 It is our submission that Atkinson's motivation for

21 engaging in that conduct was sectarian.

22 THE CHAIRMAN: Was?

23 MR McGRORY: Was sectarian. We put this to him very

24 clearly. He has accepted he was a member of the

25 Orange Order. He became a member of the Orange

Order

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1 after, I think, this incident. If he was motivated to

2 tip off Allister Hanvey on any basis because he felt he

3 was under pressure to redeem himself within his own

4 circle of Loyalists, because he had a bad reputation for

5 doing to them what he should not have been doing as one

6 of them in terms of policing the parades, then that was

7 a sectarian motive for engaging in the conduct in which

8 he engaged.

