

THE USE OF TRACEY CLARKE AND TIMOTHY JAMESON'S EVIDENCE

1. The Panel may wish to consider whether Tracey Clarke and Timothy Jameson's evidence was properly used and, if not, why not. Could it have been read? In respect of Timothy Jameson, the Panel will also need to decide whether detectives were told that he had admitted "putting the boot in" and therefore should have been treated as a suspect rather than a witness.

Submissions by British Irish Rights Watch and Committee on the Administration of Justice

In our submission, the Panel may also want to consider:

1. Why Tracey Clarke and Timothy Jameson made their statements in the first place.
2. Whether their statements were taken properly.
3. Whether their statements were true.
4. Why and to what extent they resiled from their original statements.

What is perhaps most surprising is that either witness made a statement in the first place.

In Tracey Clarke's case, it would appear that she was almost press-ganged into it by the McKees, after DC McAteer had telephoned her home and spoken to her mother twice on 9th May 1997 and asked Tracey to attend the RUC station. Andrea McKee had previously told DC McAteer that Andrea had been talking freely at the McKees' Tae Kwon Do club, where she had been overheard by an off-duty policeman, RC McCaw, about the attack on Robert Hamill. Tracey Clarke's mother had asked the McKees to collect Tracey Clarke from the restaurant where she worked in the evenings and take her to the police station, and it was there that she made her statement.

Timothy Jameson's case was rather different. He too was interviewed on 9th May, and named the same perpetrators as Tracey Clarke, except that he additionally named Andrew "Fonzy" Allen. He was called in for interview because two of his father Bobby Jameson's police minders, Reserve Constables G and McCaw, informed CID that Timothy had told them about the attack on Robert Hamill and he claimed he had "put the boot in" while talking with the officers in the utility room beyond the kitchen in his father's house. (There is discussion of Bobby Jameson's role below). Timothy Jameson may have felt, but this can only be speculation, that attack was the best line of defence, and that if he "helped the police with their enquiries" by naming names, the spotlight might shift from him – which, of course, it did, as he moved from being a suspect to being a witness, although he became a suspect again after PONI intervened.

The Panel will no doubt be struck by the fact the RC McCaw played a role in both witnesses coming forward. He was described by RC G as someone who "would sit and drink tea with the McKees on a very regular basis" (7.14). The role of the McKees is reverted to below.

In our submission, neither statement was taken properly. Tracey Clarke, who was 17, was interviewed late on a Friday evening after she had worked a long day and a long week (she worked for a travel agent by day and as a waitress in the evening). Although she was a minor, there is no evidence that she was informed about her right to have a responsible adult present and that she had a choice about who that would be. It just seems to have been taken for granted that Andrea McKee would act as the responsible adult.

Timothy Jameson was interviewed on 9th May by DC Edward Honeyford, with no other officer present (6.20). Considering that DC Honeyford had been briefed by DI Irwin to assess Timothy Jameson as both a witness and a suspect (ibid), it was bad practice to allow such a junior officer to make such an important assessment on his own.

As to whether their statements were true, one of the people that Tracey Clarke alleged was involved in the assault was her then ex-boyfriend, Allister Hanvey. When she gave evidence to the Inquiry, she said that she made the statement out of spite, but none of those who heard her original statement, or assessed her evidence at a later date considered that her statement had been untrue. She made her statement to DC McAteer and DC Dereck Bradley. DC Bradley thought that she was telling the truth and would make a good witness (3.5). This was self-evidently a conclusion shared by his superiors, as arrests were made on foot of her statement. On 17th October 1997 she was interviewed by experienced Crown Counsel Gordon Kerr QC, who told the Inquiry that she was a good witness of truth and that he believed that the statement was made in her own words (3.7) At that same meeting was Roger Davison of the DPP's office, who recorded that Tracey Clarke gave an account that was consistent with her statement despite the fact that she had not had any opportunity to refresh her memory as to what she had said in May (2.16) and that she never said that her original statement was untrue (2.37). Raymond Kitson, also of the DPP's office later recorded that Tracey Clarke had never retracted her evidence, as she had not indicated that it was untrue, only that she was no longer willing to testify (2.41). Robert Cooke, who represented the Chief Constable at the meeting, also confirmed that Tracey Clarke did not say that her statement was false (3.20).

Timothy Jameson was also initially regarded as a truthful witness. RC G said he believed it to be a credible account, and that Timothy Jameson seemed to be serious, rather than frivolous or bragging (7.1). His and Tracey Clarke's statements corroborated one another, and the police acted on both statements in order to make arrests. When he was interviewed by Gordon Kerr QC, Timothy Jameson said that he had not seen anything, he was drunk, and the police had put words into his mouth. Gordon Kerr concluded that he was lying (7.33), as did Roger Davison (2.22). That would imply that they considered Timothy Jameson's original statement to be true.

Although both Tracey Clarke and Timothy Jameson repudiated their original statements in evidence before the Inquiry, we submit that the Panel must look behind those repudiations and decide whether other evidence, particularly in

relation to Allister Hanvey and Stacey Bridgett, suggests that initially the two witnesses told the truth but later changed their stories.

Finally, we invite the Inquiry to consider why the witnesses retreated from their original statements, and to what extent they did so.

Timothy Jameson made an almost total retraction, although he still admitted that he was present at the time of the attack. Significantly, his father Bobby Jameson was present at the meeting on 21st October 1997 with Gordon Kerr QC, even though, as the Inquiry Team has pointed out, Timothy Jameson was not a minor (2.19). According to Raymond Kitson of the DPP's office, "The view of the police was that the father was a local businessman who may have felt his son giving evidence would be commercially disastrous." (2.38) Bobby Jameson is in fact a major entrepreneur who own a number of businesses, including a large construction firm, who has won many contracts with the security forces, including the police, over the years. He is also the brother of Richard Jameson, the former "officer commanding" the UVF in Portadown, who was killed in a loyalist feud in 2000. As Ken Armstrong pointed out in his first report, "Had Witness A or B been called [to give evidence] they would have been seen as an informer in the eyes of paramilitaries and their own community." (3.33) As a member of the Jameson dynasty, this would have been particularly true of Timothy Jameson.

As the Panel will be well aware, Tracey Clarke did her level best to avoid giving evidence at the Inquiry. Her reasons for changing her evidence and claiming that Andrea McKee had put words into her mouth changed over time. When she was interviewed by Gordon Kerr QC in October 1997, she had rekindled her relationship with Allister Hanvey and did not want to testify against him. By the time she reluctantly appeared before the Inquiry, she had married him and separated from him, and the main reason why she was not prepared to confirm her original statement was, we believe, self-preservation. Even in 2009, being labelled as an informer in Northern Ireland is a life-threatening situation. However, in her evidence to the Inquiry, Tracey Clarke agreed that significant elements of her original statement did come from her (and by implication, from Allister Hanvey), rather than from Andrea McKee.

The repudiation of their statements by these two witnesses did not take place in a vacuum. October 1997 was when the case against the alleged perpetrators began to unravel. Andrea and Michael McKee came forward with their false alibi for RC Atkinson's telephone calls to Allister Hanvey, DCS McBurney having alerted RC Hanvey to police interest in those calls. One has to wonder how much Tracey Clarke knew about this, given her closeness to Andrea McKee and to Allister Hanvey, to whom RC Atkinson may very well have spoken, as he would have needed to ensure that Allister Hanvey would not say anything that would unwittingly expose the McKees' lies.

In our submission, the Panel will need to consider the original statements of these two witnesses, flawed and unreliable though they may be, in the context of the totality of the evidence available, and we believe that the Panel will be able to draw its own conclusion, albeit those conclusions will probably be

based on the civil standard of the balance of probabilities rather than the criminal standard of proof beyond reasonable doubt.

Submissions by Gus Campbell Solicitors (Marc Hobson)

See sections 10 and 12

Submissions by the Police Service of Northern Ireland

See below.

Submissions by the Public Prosecution Service

Please see the submissions in response to §4, below.

Submissions by Richard Monteith Solicitors (Civilian Witnesses)

Agreed.

THE FIRST ISSUE: THE STATEMENTS

2. The material is to this effect:
 - 2.1 After speaking to Tracey Clarke, DI Michael Irwin and DC John McAteer spoke to Andrea McKee who related what Tracy Clarke had told her about the incident (22760).
 - 2.2 8/5/97 Tracey Clarke was interviewed by DC Dereck Bradley and DC John McAteer. A questionnaire was completed for Tracey Clarke. She was described as 5'6", slim with short brown hair. She said that she wore blue trousers, yellow top, blue anorak and black shoes. She said that she was with Tracey McAlpine, Pauline Newell, Vicky Clayton and Jennifer?. She did not refer to an assault at this stage (70900).
 - 2.3 9/5/97 Timothy Jameson made a statement. He said he was with Stephen Bloomer and Kyle Magee. He saw a man called "McClure" and his girlfriend. He identifies various people who assaulted a man, whom he now identifies as Robert Hamill, including Allister Hanvey whom he saw kick and punch him on the ground. He saw Dean Forbes punch a man in the face who was wearing a grey Umbro sweatshirt. He saw Rory Robinson, who was wearing cream coloured jeans, fighting. He saw 'Fonzy' kick the man lying on the ground. He saw Stacey Bridgett who had a bust nose. Timothy Jameson states that he was standing in the middle of the fight and heard a bottle smashing. He said he saw a Land Rover but no police got out. Timothy Jameson says he was wearing black jeans, a white t-shirt with CK on it, blue trainers with white stripes (00266).
 - 2.4 The name "Fonzy" was typed as "Gonzy" (28503 at 28505).

- 2.5 9/5/97 Tracey Clarke spoke to DC John McAteer and commenced a statement, which will be finished the next day. Tracey Clarke was interviewed in the presence of Andrea McKee (15749).
- 2.6 10/5/97 09.00 Policy file decision six made. This recorded that two witnesses were identified and were to be known as A and B. The reason is given as intimidation and it is stated that ongoing reassessment is necessary (913).
- 2.7 13/5/97 16.00 A consultation took place with Raymond Kitson and Mr Junkin ODPP, DCS Maynard McBurney, DCI **P39** and DS [REDACTED]. The case against the defendants rested on the evidence of two witnesses: Tracey Clarke and Timothy Jameson, who were willing and able to give evidence. There had been no attempt at intimidation at this stage but the police noted there was a strong possibility of intimidation, therefore their names would not be revealed in bail statements (19069).
- 2.8 17/5/97 Policy file decision 21 is made. The decision is taken to continue close liaison with witness A (Tracey Clarke) because of her vulnerability (913 at 934).
- 2.9 20/5/97 Policy file decision 23 is made to develop options available for Tracey Clarke to protect her as she is a vulnerable witness (935 at 939).
- 2.10 21/7/97 DI Michael Irwin reported to DCI **P39** at J Division regarding Tracey Clarke and Timothy Jameson. He noted that Tracey Clarke is the ex-girlfriend of Allister Hanvey. She lived in a predominantly protestant area which has a Loyalist Volunteer Force (LVF) following and due to ongoing pressure she periodically resided with relatives. She alleged that due to this incident she had to terminate two temporary employment posts, both in the Portadown area. She would have known the persons named, through her association with the 'Banbridge scene', her relationship with Allister Hanvey and through her girlfriends. The report was submitted for the information of the DPP via Detective Superintendent, Crime Branch. Due to implications which made reference to a serving police officer, namely Reserve Constable Robert Atkinson who has many contacts within the Portadown Station but who then served in Craigavon RUC Station, it was felt appropriate to refrain from identifying the witness at this stage. The report recognized the junction in Portadown as an area of sectarian conflict and noted that the vast majority of Catholic witnesses declined to co-operate. DI Irwin noted they may be unwilling to give evidence in the face of pressure to retract. DI Irwin recommended an early consultation with them and with Colin Prunty. He noted that Timothy Jameson saw 'Fonzy', who is now known to be Andrew Allen, kick Robert Hamill in the face. Timothy Jameson declined an offer to attend an identity parade to identify Mr Allen. It was reported that Timothy Jameson is a native of Portadown and, through his association with the 'Banbridge scene', would have a good knowledge of the individuals involved. His identity was withheld, as with Tracey Clarke, to protect them both from intimidation which no doubt they will be subjected to in the pursuing months. Due to this fact Timothy Jameson was reluctant to personally identify 'Fonzy', namely William Andrew Allen. (6080 at 6103)

- 2.11 30/7/97 DCI P39 and Deputy Sub-Divisional Commander ██████ read and endorsed DI Michael Irwin's DPP report of 22nd July 1997. DCI P39 noted "the non co-operation of some witnesses and the Hamill family's solicitor has resulted in all possible evidence not being made available. The evidence of witnesses A and B is crucial. However, I refer you to the separate confidential report submitted. I strongly support the recommendation that an early consultation be held with these witnesses" (6135).
- 2.12 12/8/97 DPP Interim Direction Part I, signed by Raymond Kitson, was issued. This contained, inter alia, the following paragraphs: "Finally, I note that reference is made by both the investigating officer and DCI P39 to a separate report in a sealed envelope reference Witnesses A and B. This does not appear to have been forwarded with the original (or copies of the) police file. This report should now be forwarded under appropriate classification, if necessary." (18106).
- 2.13 10/10/97 Roger Davison, DPP, spoke to DI Michael Irwin. DI Irwin informed Mr Davison that witnesses were unlikely to come forward following the events at Drumcree and that it was unlikely that Tracey Clarke and Timothy Jameson would come forward. He stated that he would write to Rosemary Nelson and, in addition, try to set up consultations with Witnesses A and B (18096).
- 2.14 13/10/97 Roger Davison recorded a file note that he had spoken with the Director of the DPP and Raymond Kitson and told them what DI Michael Irwin had said in relation to the witnesses' reluctance. The Director wanted Gordon Kerr QC to consult with the witnesses that week if possible (18093).
- 2.15 14/10/97 Further Interim Direction Part I was issued by Roger Davison, ODPP. This stated that a final direction in the case would pend receipt of the matters referred to therein and would also pend the outcome of consultations to be held between Senior Counsel and Witness A and Witness B, amongst others. Detective Superintendent ██████ was requested to attend these consultations which were designed to assess the willingness and credibility of these witnesses. (18092).
- 2.16 17/10/97 At 15.30 a meeting was held with Roger Davison, ODPP, Gordon Kerr QC, DS Robert Cooke, DS Dereck Bradley, DC John McAteer, Tracey Clarke and Tracey Clarke's parents, ██████ and Jim Murray. Roger Davison recorded that Tracey Clarke was able to relate the events of the night more or less in accordance with her statement without having had an opportunity to refresh her memory. He considered that she was reasonably articulate and seemed to be telling the truth. If she were to give evidence, he considers that she would come across as very truthful. Tracey Clarke expressed that she would rather die than give evidence (17591).
- 2.17 21/10/97 Timothy Jameson indicated that substantial averments made in his statement in relation to RUC officers were based on rumour and supposition. This information was relayed to his then solicitor via Bobby Jameson and is

recorded in a fax from Mr Jameson's 1997 solicitor to the Inquiry dated 20/12/2006 (72988).

- 2.18 21/10/97 A meeting was held between Roger Davison, Gordon Kerr QC, DS Robert Cooke, DI Michael Irwin, DC Edward Honeyford, Timothy Jameson and Bobby Jameson (NB Timothy was not a minor). Mr Davison's note of the meeting recorded that, from the outset of the consultation, Timothy Jameson said he could not remember what he saw. In particular, he could not distinguish in his mind between what he saw and what people had said had happened. After recalling a couple of introductory details he said he could not remember anything about the fight, he was drunk and when he made his statement he was simply agreeing with what the police said to him and he put in his statement what they told him. Mr Davison's note recorded that Gordon Kerr QC quizzed him but he stubbornly maintained his assertion that he could not remember what happened and only wrote in the statement what the police told him to write. The note concluded that this witness will not give any evidence of any value whatsoever (17591).
- 2.19 22/10/97 Bobby Jameson reported to his solicitor that his son Timothy had been interviewed by Gordon Kerr QC and that what Timothy put in his statement had been the comments of others. (72851).
- 2.20 24/10/97 Roger Davison of the DPP wrote to Raymond Kitson of the DPP regarding the consultation with Tracey Clarke and Timothy Jameson. He said that, subject to Counsel's opinion and the other evidence arising, a direction of no prosecution be issued in relation to Dean Forbes and Rory Robinson (18081).
- 2.21 27/10/97 Raymond Kitson of the DPP telephoned Gordon Kerr QC for an update and some advice (18342).
- 2.22 28/10/97 A note for file is made by Raymond Kitson. He noted that the file was referred to him by Roger Davison on 24 October 1997. He recorded that in summary the position is that witness A would not give evidence. Witness B claimed that he could not recollect anything. He was, in Roger Davison's view, lying. Without the evidence of Witness A and Witness B, Dean Forbes, Allister Hanvey and Rory Robinson could not be prosecuted. Raymond Kitson decided to take control of the file from that point onwards. He referred to his telephone conversation with Gordon Kerr QC on 27 October 1997 who said he had not completed his advices but agreed essentially with Roger Davison. Gordon Kerr believed that Tracey Clarke could give credible evidence. Raymond Kitson and Gordon Kerr then discussed whether she should be compelled to give evidence and Gordon Kerr agreed that it was a possibility, but it was left with the DPP to consider. In the note, Raymond Kitson went on to record that he telephoned DI Michael Irwin after speaking to Gordon Kerr. He raised the issue of compelling Tracey Clarke to give evidence. It was DI Michael Irwin's view that she would not give evidence in any event. DI Michael Irwin wished the DPP to consider the forensic evidence linking Stacey Bridgett (18342).

- 2.23 28/10/97 Roger Davison telephoned DI Michael Irwin and asked him if he had considered the matter overnight and wondered what his views were. DI Michael Irwin informed Raymond Kitson that he had spoken to DCI P39 who had previous dealings with the family of Witness A and who was closest to Witness A. It was both DCI P39's opinion and the view of DI Michael Irwin that there was no reasonable prospect, no matter what sanction was applied to Witness A, of Witness A giving evidence in court. It is recorded that Raymond Kitson had also spoken to Detective Superintendent Robert Cooke who agreed that there was no reasonable prospect of Witness A giving evidence in court. In light of this, Raymond Kitson decided to issue a direction of no prosecution against Dean Forbes, Allister Hanvey and Rory Robinson (18346).
- 2.24 29/10/97 DPP issued a Direction Part 1 that stated that in the light of what occurred at the consultations with Tracey Clarke and Timothy Jameson, evidence from these witnesses will not now be available for any prosecution. In regard to Tracey Clarke, the question of her being a compellable witness was considered. Investigating police views are that no matter what steps were taken to summons she would not, no matter what sanction was applied by the court, give evidence. The Chief Constable's office was also of that view. In the absence of evidence from Tracey Clarke and Timothy Jameson there is no reasonable prospect of a conviction of Dean Forbes, Allister Hanvey, and Rory Robinson (10620).
- 2.25 30/10/97 [REDACTED] attends Lisburn Magistrates' court, resident magistrate Mr. [REDACTED]. An application was made to bring forward the cases of Messrs Forbes, Hanvey and Robinson, for the purposes of withdrawal. The application was granted (31856).
- 2.26 7/11/97 Pauline Newell was spoken to by police in relation to the intimidation of Tracey Clarke (5677).
- 2.27 13/11/97 Gordon Kerr QC analysed the evidence against Dean Forbes, Stacey Bridgett, Allister Hanvey, Marc Hobson, Wayne Lunt and Rory Robinson. He advised that, while the evidence against Dean Forbes was weak, every effort should be made to identify witnesses who may confirm the evidence of Colin Prunty. Following the retraction of statements by Tracey Clarke and Timothy Jameson there is no longer a reasonable prospect of convicting Hanvey (17633).
- 2.28 10/12/97 A report was sent from the DPP to the Attorney General's office. The report stated that without the evidence of Tracy Clarke and Timothy Jameson, there was insufficient evidence to sustain a charge against Rory Robinson for any offence of direct violence or other charge such as affray (17665).
- 2.29 13/8/99 A note was sent from Mr [REDACTED], ODPP to the Deputy Director where he indicates that he had reviewed the decision in relation to prosecution in the Hamill case. He notes that Tracey Clarke was Allister Hanvey's ex-girlfriend and lived on an estate where the LVF had a substantial following. She said that she did not want to give evidence because she still loved Allister Hanvey and because the other suspects were her friends. The note also

referred to Timothy Jameson who said he was too drunk to remember. Mr [REDACTED] noted that once their evidence became unavailable there was no other evidence against Dean Forbes, Allister Hanvey or Rory Robinson (18321).

- 2.30 23/8/99 The Coroner instructed [REDACTED], counsel, to consult and advise on holding an inquest and in particular how to deal with Tracey Clarke and Timothy Jameson (380).
- 2.31 6/10/99 The Coroner wrote to DI Michael Irwin requesting a meeting with Tracey Clarke and Timothy Jameson to ascertain for himself the extent of their fears of giving evidence and suggesting the possibility of simply reading their statements at the inquest (367).
- 2.32 22/10/99 The Coroner wrote to DI Michael Irwin chasing him for a meeting with Tracey Clarke and Timothy Jameson (363).
- 2.33 9/11/99 Tracey Clarke telephoned the Coroner to advise that she was no longer willing to be a witness (270).
- 2.34 6/1/00 Timothy Jameson telephoned the Coroner to advise that he is not willing to be a witness (358).
- 2.35 8/2/00 The Coroner wrote to Barra McGrory. The Coroner is satisfied that the fears of Tracey Clarke and Timothy Jameson were genuine and that regard for their personal safety outweighed the desirability of them giving evidence at an Inquest (41375).
- 2.36 15/5/00 The Coroner wrote to [REDACTED], solicitor, stating that he is inclined not to hold an inquest but offering to reconsider if the evidence of Tracey Clarke and Timothy Jameson could be introduced in such a way as to avoid exposing them to risk (464).
- 2.37 16/2/01 A message form was prepared noting a discussion between DC John McDowell and Roger Davison, DPP, where Roger Davison confirmed that at no stage in the consultation with Gordon Kerr QC on 17 October 1997 did Tracey Clarke say that her statement was untrue (5197).
- 2.38 19/2/01 Raymond Kitson, DPP replied to Chris Mahaffey, PONI's letter of 13/2/01 (14662). Raymond Kitson stated that at the consultation with Timothy Jameson on 21/10/1997, Jameson alleged that he had been told to insert a lie by the police. He told his solicitor the next day that the information in his statement was gleaned from gossip and talk around the town. Mr Kitson stated that it was perfectly clear to him that Jameson's position was probably at least partially induced by fear. However, there was no evidence to support any article 3 application even if it were proper to consider one. The view of the police was that the father was a local businessman who may have felt his son giving evidence would be commercially disastrous. Mr Kitson concluded that Mr Jameson cannot be considered a reliable witness on the papers (14659).

- 2.39 28/2/01 Matters were discussed [between DCI **P39** and DCS McBurney] and it was decided to keep everything very confidential as Timothy Jameson was the son of Bobby Jameson and Tracey Clarke was the girlfriend of Allister Hanvey. There was no contact with Bobby Jameson. In court a confidential report went in. When DCI **P39** was asked if she had ever heard anything adverse about Timothy Jameson she stated that she did not know they were UVF. DCI **P39** did not know anything about the retraction as she was away from the area at the time and she heard about it at Christmas (14622).
- 2.40 28/2/01 11.00 – 13.15 A meeting was held with Chris Mahaffey, PONI; Raymond Kitson, DPP and DCS Colville Stewart. They considered using Tracy Clarke as a hostile witness (32308).
- 2.41 5/4/01 Raymond Kitson, ODPP wrote to DS Wenford McDowell noting that there is no indication that Res Con Robert Atkinson or Michael McKee played any role in Tracey Clarke's decision not to give evidence. He recorded that it was incorrect to say that she retracted her evidence as at no stage did she indicate that her evidence was untrue, rather she said she was not prepared to give it (18964).

Submissions by John P Hagan Solicitors (Robert and Eleanor Atkinson)

Comments relating to the evidence of Tracey Clarke are found in Submissions part 8

Submissions by the Police Service of Northern Ireland

See sections 4 and 5 below.

Submissions by Richard Monteith Solicitors (Civilian Witnesses)

Please see 4.

- 3 Witnesses were asked about the issue, and their written and oral evidence can be summarised as follows:

P39

Oral Evidence

- 3.1 She was not given information from Res Con McCaw about Andrea McKee (p.149). She knew TC had been in a relationship with Allister Hanvey. She was aware of a casual relationship between them. She was not aware Tracey Clarke was Andrea McKee's niece (p.163).

Dereck Bradley

Statement

- 3.2 Para. 32: He was instructed to attend the consultations in Belfast with the DPP representatives and Gordon Kerr QC. He sat in on the consultation with Tracey Clarke but played no part in it. He also sat in on the Jonathan Wright consultation. DC Honeyford and he drove Wright to the DPP offices. He thinks DC McAteer brought Tracey Clarke.

Oral Evidence

- 3.3 He sat in as an assistant to DC McAteer when they were conducting the Tracey Clarke interview at her house. McAteer went through the QPF with her. There was no woman present except Tracey Clarke and her mother (p.98). Tracey was not upset when she was being interviewed for the QPF. He does not remember if the issue was raised that Mr Hamill had died on the day of taking the QPF (p.100). A pro forma would be completed and retained by DC McAteer. He does not recall what he did with it (p.104). He saw Miss Clarke when she came into the police station on the 9th May to make her statement. She was walking up the stairs to the CID office, then turned right into P39's office (p.105).
- 3.4 He nearly physically bumped into Res Con McCaw in the station backyard on the afternoon of 8th May. Res Con McCaw said he may have information about a witness and he wanted to speak to a CID officer. Mr Bradley walked over to the CID office with Mr McCaw, introduced him to DI Irwin and left (p112). He probably saw DC Honeyford on the 9th May but he has never seen Timothy Jameson. DC Honeyford and Timothy Jameson were not in the CID office end of the station. There were two interview rooms on the ground floor of the station. There were no interview rooms on the CID side but P39's office was used for the interview of Tracey Clarke (p113).
- 3.5 “[Tracey Clarke] cried frequently during her consultation...she seemed to be telling the truth”(17591), (p64). He states this was the second time he had met her. He agrees with Roger Davison that she was telling the truth and would have made a good witness (p66).

Gordon Kerr QC

Oral Evidence

- 3.6 Disliked leading witnesses in consultations and so asked Tracey Clarke, in consultation of 17 October 1997, to go through her statement (17634) as he would with a witness in court (p.2).
- 3.7 She was a good witness of truth but he would not have run a murder case solely on her evidence (p.3) He believes that it was her own words in the statement (p.4).
- 3.8 Mr Kerr remembers the only reason Tracey Clarke gave for not giving evidence was her feelings for Mr Hanvey (p.96). Mr Kerr has no doubt there

- was a discussion whether she was in fear. He also asked Tracey Clarke if an element of her reason was fear (p.97).
- 3.9 Para. 5: He attended the consultation with Tracey Clarke. He believed she was telling the truth. She clearly did not want to give evidence in court and said she was too frightened to do so. He believed she had a real fear of retribution by Loyalist paramilitaries.
- 3.10 Para. 6: At the consultation with Timothy Jameson , Mr Jameson said he did not see anything of the incident and the content of his statement was provided by a police officer. It was not unusual for witnesses to say something like that.
- 3.11 Para. 8: He thinks it was obvious to everyone who attended the consultations that the case was going to fail. Despite the protestations of prosecuting police who would have liked to continue with the prosecution, everyone accepted the reality of the situation.

Robert Cooke

Oral Evidence

- 3.12 In para. 6: 80204 Mr Cooke did not attend a consultation on 21st October. It was another consultation (p.12). Timothy Jameson did not back out because the other two witnesses would not give evidence as Mr Wright never indicated he had withdrawn his evidence and Ms Clarke just indicated she was unhappy to go ahead with giving evidence (p.13).
- 3.13 Without Mr Davison's note (17591) his memory of the consultation is very poor (p.23).
- 3.14 Mr Cooke believed she was fearful of what might happen, which was reinforced by her parents, and not that she was unwilling to give evidence due to her boyfriend. This was widespread throughout the province (p14). Mr Cooke cannot contradict Mr Kerr's opinion in 17634 (p25). His view was that there was no reasonable prospect of calling her (p26)
- 3.15 He was not present at a discussion about using her statement under Article 3 as that would have been a matter for the Director (p.14). To use article 3 a threat assessment would be carried out by Special Branch officers (p.15). The threat assessment would be made by police at the request of the DPP (p.16)
- 3.16 There was disagreement about the murder case going ahead; the police wanted to see the prosecution go ahead but the DPP had a realistic view that it could not. There was no question of there not being the appetite (p.18).
- 3.17 His purpose for attending the consultation was to hear exactly what was going on between the police and the DPP and to represent the Chief Constable at that. Mr Cooke had no knowledge of the case before the consultation and Article 3 was not addressed. He understood the consultation to be an assessment of the witnesses (p.19). Mr Cooke had not read the papers before

the consultation as another man was responsible for the Portadown region and he was only unavailable to attend the consultation (p.20). The DPP, Mr Kerr and Mr Davison would report through the Chief Constable the course they were thinking of taking. That would go to the man responsible for the Portadown region, who would get in contact with investigating police. There would then be a discussion of the issues to arrive at a conclusion. The police were therefore involved in the decision-making process to use Article 3 (p.21). Mr Cooke does not recall an additional issue in Tracey Clarke's statement (p.22). Mr Cooke does not recall anyone asking Tracey Clarke if she was telling the truth (p.23).

Roger Davison

Oral Evidence

- 3.18 He does not remember the consultations with Tracey Clarke and others (p.6).
- 3.19 Thinks "did not refresh memory" means police informed him she had not been given her statement prior to consultation (pp. 7.-8). Believes she could answer questions clearly and was telling truth from "reasonably articulate...truthful" (p.8).
- 3.20 As there was no note, Clarke did not say her statement was false (p.9).
- 3.21 Generally if a barrister is present, they will ask the questions. He assumes that was the case then (p.10). He feels they were very conscientious about how they approached the case (p.29). Mr Davison provided his own assessment of credibility of Ms Clarke. Does not recall if his view differed from that of Gordon Kerr's but, if they had talked and it differed, he would have made a note (p.31). The same would apply to Detective Superintendent Cooke's assessment (p.32).
- 3.22 Had read the whole file before the consultation (p.10). He was not satisfied with the accuracy of Tracey Clarke's statement prior to, and after, the consultation (p.11). He does not recall if he had concerns about the truthfulness of the statement (p.12)
- 3.23 Does not recall if phone records were checked regarding the allegation about Res Con Atkinson in Tracey Clarke's statement but, if the allegation were shown to be false, it would have affected the credibility assessment (p.13). The issue was what Allister told her, not what the phone records showed (p.28).
- 3.24 He did not recall if he explored her saying she had made things up (p.16).
- 3.25 There was no reason why the consultation would not be thorough (p.21).
- 3.26 Does not recall why Cooke was present as it is rare to have a Crime Branch member present but he believes it was due to the high profile nature of the

case (p.23). He believes the other two officers' presence was due to them both being in on the case as the case officer normally sat in (p.24).

- 3.27 Recorded that she was crying as if she cried through the trial and could not produce evidence, it would affect prosecution assessment (p.25).
- 3.28 Per Para. 11: 81412, Mr Davison cannot recall Tracey Clarke denying she was in fear but he can think of nothing to contradict that (p.59).
- 3.29 17634 accords with Mr Davison's memory of the consultation (p.60).
- 3.30 When considering using Article 3, they would ask the witness to make a statement about his fear. They would also ask police officers to make statements about the witness's fear (p.9). 17591 would not support an Article 3 application as her primary reason was not fear. If she was in such fear that she would not give evidence then an application could be made (p.11). Mr Davison feels he got the idea she was afraid from her family. She would not have signed a statement saying she was afraid (p.12).
- 3.31 Mr Davison does not remember the Clarke consultation or asking Tracey Clarke if her statement was true (p.42). Mr Davison does not recall the conversation in 5197 (p.43).
- 3.32 The point of the consultations was to ascertain if the witnesses would still give evidence and to assess their credibility rather than go into the detail in their statements (p.51). He would have taken a note of anything significant said at the consultation (p.52).

Ken Armstrong

First Report

- 3.33 Page. 81, Para. 3.6.6: Had Witness A or B been called they would have been seen as an informer in the eyes of paramilitaries and their own community.
- 3.34 Page. 81, Para. 3.6.10: It is difficult to say whether police action/inaction caused witnesses to retract their evidence. It may well have been the case that no matter what the police did the witnesses would not have given evidence.

Submissions by British Irish Rights Watch and Committee on the Administration of Justice

DCI P39's evidence is puzzling. She seems to have been singularly ill-informed for such a senior officer involved in the investigation of a serious crime. For example, she claimed to have no idea of the UVF connections of the Jameson family (2.39), which was common knowledge, and was under the impression (which we doubt anyone else involved would have shared) that Timothy Jameson was not treated any differently from anyone else because he was Bobby Jameson's son (7.22). In her testimony to the Inquiry she said that

she was not given information about Andrea McKee by RC McCaw, or that Tracey Clarke was Andrea McKee's niece (3.1). Either she was lacking in the curiosity which is usually found among experienced police officers, or she was kept in the dark.

Submissions by John P Hagan Solicitors (Robert and Eleanor Atkinson)

See Comments in Part 8

Submissions by the Police Service of Northern Ireland

See sections 4 and 5 below.

Submissions by the Public Prosecution Service

Significant Factual Corrections:

§3.7 records Mr Kerr QC as having said in evidence that he would not have run a murder case solely on Tracey Clarke's evidence. That is an inaccurate summary of his evidence. Mr Kerr stated:

"In terms of her evidence, when I say that she was credible and reliable in her evidence, it means I would have been content she would have been put forward as a witness of truth and that she was giving as detailed evidence as she could remember. Obviously, whether or not you would run a murder trial on her evidence would depend on the totality of the evidence in the case." (10.2.09, Day 13, p2)

§§3.9-3.11 are attributed to Gordon Kerr QC. This is incorrect. These are, in fact, summaries of the witness statement of Robert Cooke.

Submissions by Richard Monteith Solicitors (Civilian Witnesses)

Please see 4.

Comment

4. The power to admit a witness statement was dependent on a judge believing that the witness was in fear. In the case of Tracey Clarke there was some talk of fear, but the evidence of Mr Kerr and Mr Davison is plain that her primary reason for not giving evidence was that she did not want to harm Hanvey or his friends. Jameson's primary reason for not giving evidence was his denial that his statement was true. It seems unlikely that a judge would have permitted the statements to be used in those circumstances.

Submissions by British Irish Rights Watch and Committee on the Administration of Justice

The DPP seems to have played a very passive role in this case. Given that Tracey Clarke's evidence was considered pivotal for the prospect of a successful prosecution, every effort should have been made to secure her co-operation. Whilst there may have been the possibility of intimidation against Tracey Clarke (2.26), it seems that fears regarding her safety may have been objective and not expressed by her. Indeed, DCS McBurney claimed that he had discovered months after giving her anonymity that Tracey had talked openly about her statement (module 16, paragraph 3.245), which both shows that she was not overly concerned about her safety and that she increased any risk to herself.

While fears for her safety, may have been legitimate, measures could have been taken to ensure her safety such as conducting a full risk assessment and providing the appropriate level of protection as a result of that assessment (discussed above regarding whether Tracey Clarke should be treated as a witness under Article 3).

Tracey Clarke's subsequent reaction to the threat of civil enforcement proceedings by the Robert Hamill Inquiry may be considered in support of the contention that more should have been done to secure her evidence. Whilst the possibility of treating Tracey Clarke as a hostile witness was considered (32308) the extent of this consideration is not clear to us in the documentation provided. We are mindful that use of a hostile witness in any case may become problematic, however we invite the Panel to consider whether the possibility of using Ms Clarke as a hostile witness was fully explored.

Furthermore it is for the Panel to consider whether action should have been taken against Tracey Clarke for perverting the course of justice in light of her refusal to co-operate. Whilst there have been references elsewhere to the non-co-operation of Catholic civilians who were at the scene, whilst such witnesses were reluctant to co-operate with the police due to their own safety fears, they made efforts to co-operate with the investigation through a third party. In addition, other civilian witnesses at the scene (with the exception of Timothy Jameson) were unable to name Robert Hamill's attackers; this places increased significance on the evidence of Tracey Clarke as she knew the names of those people whom she identified to the police.

The DPP did not seem to play his usual role of monitoring the police investigation in this case. He does not seem to have asked, for instance, why Thomas Hanvey, who gave Allister Hanvey a false alibi, was not reported for perverting the course of justice; nor does he appear to have questioned DCS McBurney's failure to break Allister Hanvey's alibi by pursuing the party-goers' evidence.

All of that said, we are forced to agree that no judge would have been likely to have accepted that Tracey Clarke and Timothy Jameson's main reason for refusing to testify was fear for their personal safety, although ironically, for

the reasons we have set out at the beginning of this module, self-preservation was probably their over-riding concern in reality.

Submissions by Edwards & Co Solicitors (Serving and Retired Police Officers)

We take issue with the word "unlikely". There was no possibility of a Judge permitting their statements to be read.

Submissions by the Police Service of Northern Ireland

The PSNI agree with this comment.

It is clear that the process for considering whether it would be possible to admit the statement using Article 3 must commence as a legal decision. This decision would have to be made by the Office of the DPP.

If the ODPP wished to explore this avenue they would ask the RUC to carry out a threat assessment: see the oral evidence of Mr. Robert Cooke (p14 and 16). Presumably if a threat assessment carried out by Special Branch identified evidence to establish a risk to life this could be used to underpin any Article 3 application.

Plainly, the experienced DPP team (including senior counsel) realised that such an application would be inappropriate and futile when Tracey Clarke's declared reason for her refusal (loyalty to friends/associates in Portadown) was incompatible with the requirements for Article 3.

Submissions by the Public Prosecution Service

1. Inquiry Counsel's Closing Submissions state:

"The power to admit a witness statement was dependent on a judge believing that the witness was in fear. In the case of Tracey Clarke there was some talk of fear, but the evidence of Mr Kerr and Mr Davison is plain that her primary reason for not giving evidence was that she did not want to harm Hanvey or his friends. Jameson's primary reason for not giving evidence was his denial that his statement was true. It seems unlikely that a judge would have permitted the statement to be used in those circumstances." (Part 13, §4)

2. The PPS submits that the statements of Tracey Clarke or Timothy Jameson could not have been read during criminal proceedings against any of the suspects identified therein. As set out more fully below, in response to Part 18, §2, the PPS accepts that the Terms of Reference are wide enough to encompass any alleged failure to advise or direct further investigations to reach an informed decision as to whether these statements could be adduced under Article 3 of the Criminal Justice (Evidence, etc) (Northern Ireland) Order 1988. The PPS does not however accept that the Terms of Reference permit any determination of the merits of the decision not to invoke Article 3.

3. The PPS's submissions on the Article 3 issue are divided into three sections: first, the applicable legal test; second, the nature of the evidence required to meet that test; third, the actual evidence available in the Hamill case. The further issue of whether either witness should have been compelled to give evidence is not the subject of separate submissions by Inquiry Counsel, but is addressed briefly by the PPS for completeness.

The applicable legal test

4. Article 3(1) and (3) of the Criminal Justice (Evidence, etc) (Northern Ireland) Order 1988 ("Article 3"), provides in relevant part that "*a statement made by a person in a document shall be admissible in criminal proceedings as evidence of any fact of which direct oral evidence by him would be admissible if ... the statement was made to a police officer or some other person charged with the duty of investigating offences or charging offenders; and ... the person who made it does not give oral evidence through fear or because he is kept out of the way.*"

5. Article 6 of the same Order creates a specific presumption against admission of any statement which was prepared for the purposes of criminal proceedings or investigations, even where the requirements of Article 3 are met. It provides in relevant part that

"the statement shall not be given in evidence in any criminal proceedings without the leave of the court, and the court shall not give leave unless it is of the opinion that the statement ought to be admitted in the interests of justice; and in considering whether its admission would be in the interests of justice, it shall be the duty of the court to have regard—

(i) to the contents of the statement;
(ii) to any risk, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings, that its admission or exclusion will result in unfairness to the accused or, if there is more than one, to any of them; and

(iii) to any other circumstances that appear to the court to be relevant."

6. Article 6 accordingly has the effect of reversing the usual position which applies to statements prepared for purposes other than criminal proceedings or investigations. The normal position under Article 5 is that a statement will be admitted if the requirements of Article 3 are met, unless the interests of justice militate against its admission. Conversely, under Article 6, a statement prepared for the purposes of criminal proceedings or investigations will not be admissible unless (1) the requirements of Article 3 are met and (2) the interests of justice specifically mean that the statement ought to be so admitted.

7. The leading case in 1998 on the application on Articles 3, 5 and 6 was *R v Laverty* [1995] NI 102, where the principles were stated to be (at 106):

“1. In any application under the 1988 Order the applying party must first show that the statement which he is seeking to have admitted in evidence is one falling within the provisions of art 3.

2. Having passed that hurdle a decision must be made as to whether or not the statement is one falling within art 5 or art 6. Police statements fall within art 6.

*3. Articles 5 and 6 bear certain similarities but in fact a different approach is required depending upon whether the statement falls within art 5 or art 6. This was made clear by the judgment of Ralph Gibson LJ in *R v Cole* [1990] 2 All ER 108 at 115–116 which was cited with approval by Hutton LCJ in the course of his ruling on the admissibility of statements in *R v Quinn* [1993] NI 351 at 359–360:*

“The overall purpose of the provisions was to widen the power of the court to admit documentary hearsay evidence while ensuring that the accused received a fair trial. In judging how to achieve the fairness of the trial a balance must on occasions be struck between the interests of the public in enabling the prosecution case to be properly presented and the interest of a particular defendant in not being put in a disadvantageous position, for example by the death or illness of a witness. The public of course also has a direct interest in the proper protection of the individual accused. The point of balance, as directed by Parliament, is set out in the sections. It is not of course the case that these provisions are available only to enable the prosecution to put evidence before the court. A defendant also may wish to make use of the provisions, in order to get before the jury documentary evidence which would not otherwise be admissible. Next, some comment on the structure of these sections is necessary. By s 25, if, having regard to all the circumstances, the court is of the opinion that a statement, admissible by virtue of s 23 or s 24, “in the interests of justice ought not to be admitted”, it may direct that it be not admitted. The court is then, in considering that question, directed to have regard to the list of matters set out in s 25(2). They include “any risk” of unfairness caused by admission or exclusion of the statement “having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend”. In short, the court must be made to hold the opinion that the statement ought not to be admitted. By contrast under s 26, which deals with documents prepared for the purposes of criminal proceedings or investigations, when a statement is admissible in criminal proceedings by virtue of s 23 or s 24, and was prepared for the purposes of criminal proceedings, the statement shall not be given in evidence unless

the court is of opinion that the statement “ought to be admitted in the interests of justice”. The matters to which the court must have regard have been set out above and they include, again, “any risk” of unfairness caused by admission or exclusion having regard to the possibility of controverting the statement. Again, in short, the court is not to admit the statement unless made to hold the opinion that in the interest of justice it “ought to be admitted”. The emphasis is the other way round.'

4. *The differing approach between art 5 and art 6 cases was emphasised in R v Setz-Dempsey. In that case the Crown sought to put in evidence the police statement of a Terence Newman. It is evident that Crown counsel invited the judge to follow the principles set out in s 25 and it was upon this basis that the judge eventually ruled (see 98 Cr App R 23 at 28). Beldam LJ highlighted the differences between ss 25 and 26 in this way (at 28–29):*

'Although the ultimate decision of the Court whether to admit in evidence a statement admissible under s 23 may in the final analysis, both under s 25 and s 26, be based on the Court's opinion whether it is in the interests of justice to do so, the difference of approach is bound to be significant. Under s 25 the Court exercises its discretion by holding that the statement ought not to be admitted in the interests of justice. Under s 26 the Court is required to start from the position that the statement cannot be given in evidence without leave and that leave should not be given unless the interests of justice require admission of the statement. Accordingly, we consider that the learned judge erred in principle, but in any event he failed to take into account the effect of Dr. Raafat's testimony on the quality of the evidence contained in the statements, and accordingly we are satisfied that it is open to this Court to review the exercise of the judge's discretion.'

Later, after stating that Newman's statements should not have been admitted in evidence, Beldam LJ continued (at 31): 'Alternatively, that in failing to consider the requirements of section 26 the learned judge made an error of law.'

The nature of the evidence required under Article 3

8. The Inquiry heard evidence from Gordon Kerr QC that both objective and subjective evidence of fear would be required for an application to succeed under Article 3. He explained, “*Effectively, the witness would have to say that the reason she is not giving evidence is because of her fear, and, in addition to that, one would need objective evidence from the police, or perhaps from a member of her family, to show that it was both reasonable and proper for her to have such a fear.*” The Court would have to be satisfied beyond reasonable doubt as to the fear (16.9.09, Day 64, pp122-123). In a case where there were mixed motives for a witness refusing to testify, one of which

was fear, an application could be made to the Court, but it would be “*highly unlikely*” that the Court could be satisfied beyond reasonable doubt that the primary motivating factor was fear (Gordon Kerr QC, 16.9.09, Day 64, pp123-124).

9. D/Supt Cooke confirmed that a witness saying they had a number of reasons for not giving evidence including a mention of fear, which is in fact thought to underlie their decision, would not be sufficient alone for the purposes of Article 3. “*There would have been a threat assessment carried out on the basis of what the witness was saying and that would be carried out by ... Special Branch officers, who would be more aware of the intelligence, and probably officers in the area where these people reside*” (15.9.09, Day 63, p14).

The evidence in the Hamill case

10. Shortly after the initial statements of Tracey Clarke and Timothy Jameson were taken in May 1997, it was apparent to the Police that they were at potential risk of intimidation: see for example, the material referred to at §§2.6, 2.7, 2.10 of Inquiry Counsel’s Closing Submissions. As Gordon Kerr QC observed in his statement to the Inquiry, that much was obvious from the fact that they were being referred to as Witness A and Witness B ([81413], §13).

11. However, concerns that a witness may be or even is likely to be subjected to intimidation are quite different from the concrete question which must be asked and answered when making an application under Article 3. As both Police and ODPP witnesses explained, that requires subjective and objective evidence that the witness is in fear, that their fear is reasonable and that it is the reason they are not prepared to give evidence. A concern that a witness is at risk of intimidation may cause the Police and the ODPP to consider the possibility of using Article 3 if the witness subsequently refuses to give evidence, but it is not and could not be of itself a basis for making the application. Instead, the decision must be made by reference to the witness’s stated reason for not giving evidence and any objective evidence to support the conclusion that they are in fear. The available evidence in relation to Tracey Clarke and Timothy Jameson is accordingly addressed below.

Tracey Clarke

12. Tracey Clarke was seen in consultation on 17 October 1997 by Gordon Kerr QC and Roger Davison. DSupt Cooke, DS Bradley and DC McAteer were also present. The evidence in relation to this consultation is:

a. Roger Davison’s note, in which he records “*She said she wouldn’t give evidence because she loves Alastair Hanvey, to whom she was formerly engaged. She stated that it was hard to give evidence against the others because she knows them all. She and her family are all very worried about the possibility of attack by loyalist paramilitaries. Her father stated that he would like to see the accused*

going to Court but he stated that going to Court will destroy Tracey.” ([17591]) When questioned about his note, in evidence Mr Davison clarified the following points:

- i. His impression was that the question of fear arose from discussions with Ms Clarke’s family, rather than from Tracey Clarke herself (16.9.09, Day 64, pp10-11);
 - ii. Her primary reason for not giving evidence was her love for Alastair Hanvey, not fear (16.9.09, Day 64, pp10-11);
 - iii. She would not have signed a statement saying that she was in fear (16.9.09, Day 64, p11);
 - iv. From what was recorded in his note, he did not think that there was an evidential basis for making an application under Article 3 (16.9.09, Day 64, p10).
- b. Gordon Kerr QC’s summary in his written advice, where he records *“It was clear that she may be a reluctant witness and I explored this with her first of all and then discussed it with her parents and the police. She stated that she did not want to give evidence. She further stated that the reason she did not want to give evidence against Hanvey was that she still loved him and that as against the others they were her friends. She realised the importance of the matter but was quite clear that she would not give evidence. Were there evidence upon which it would have been proper to make an application under Art.3 of the Criminal Justice (Evidence) NI Order 1988 I would advise so doing. The position however was that it was only her parents who said anything which would have laid the grounds for this. On the basis of her declared reason for not wishing to give evidence no application could legitimately have been made.”* [17634]. Mr Davison confirmed in evidence that this summary was consistent with his recollection (16.9.09, Day 64, p58).

c. In his statement to the Inquiry, Mr Kerr QC summarised the position as follows: *“My impression of witness A was that she did not want to give evidence at all. She denied that it was as a result of fear and maintained that she was in love with one of the potential accused. The witness also considered other people involved with the case as friends. For these reasons, it was evident Witness A was unwilling to give evidence. My recollection is that Witness A’s parents were supportive of her.”* ([81412], §11). In evidence, Mr Davison could *“think of nothing which would contradict”* this summary of the consultation (16.9.09, Day 64, p57). Mr Kerr QC also noted that *“With regards to vulnerability of Witness A and B, the very fact that they were being referred to as Witness A and Witness B was enough to alert me that there was concerns [sic] about their safety. I do not doubt that at some stage I would have spoken to the police about their vulnerability.”* ([81413]).

d. In his evidence to the Inquiry, Mr Kerr QC confirmed that he would have asked Tracey Clarke whether she was in fear, but her reason for refusing to give evidence remained that she was in love with Hanvey (16.9.09, Day 64, pp96-97): *"I have no doubt there was a discussion in relation to whether or not she was in fear because that's something that would have concerned me, but my clear recollection is that the witness suggested that the reason for not giving evidence was not related to fear. Whether she felt fear or not and whether she said she may feel fear to other persons is a different matter. As far as I was concerned, she made it absolutely clear to me that it was a relationship [that] was the reason she would not give evidence. ... I am confident that I would have asked her if part of the reason for her not giving evidence was her fear and that she may have said that she had some general fears, but in this case the reason for not giving evidence was her relationship."*

e. DSupt Robert Cooke said in his statement to the Inquiry that *"I do vaguely remember that consultation and am reminded by Roger Davison's notes. I remember that she was concerned and tearful but I believed she was telling the truth. She clearly did not want to give evidence in court and said she was too frightened to do so. I believed she had a real fear of retribution by Loyalist paramilitaries. If she had been compelled to go to court I did not believe she would give evidence."* In evidence, however, he clarified that:

i. He had only a vague recollection of the consultation and was really relying on Roger Davison's note (15.9.09, Day 63, pp12-13, 21-22);

ii. *"She would have indicated that she was unwilling to give evidence for other reasons, but at the back of it, when she may have been saying she was unwilling to give evidence because of her boyfriend, my impression was that she was fearful of what might happen and that was reinforced by the parents."* Such a fear was common throughout Northern Ireland at that time (15.9.09, Day 63, p13);

iii. Without Roger Davison's note, he would not be able to independently answer the question who, if anyone, mentioned fear during the consultation (15.9.09, Day 63, p22);

iv. He was not in a position to contradict Gordon Kerr QC's summary in his advice at [17634] that it was her parents, not Tracey Clarke, who mentioned fear, and that her declared reason remained love and loyalty (15.9.09, Day 63, p24).

13. Raymond Kitson and Gordon Kerr QC both considered whether there was any possibility of adducing Tracey Clarke's statement under Article 3. As extracted above, Gordon Kerr QC concluded in his advice that *"On the basis of her declared reason for not wishing to give evidence no application could*

legitimately have been made.” ([17634]) Raymond Kitson confirmed in his statement to the Inquiry that he would have routinely considered the use of Article 3 in circumstances such as this, and that he would have discussed the possibility with Gordon Kerr QC during the conversation on 27 October 1997. Mr Kitson concurred with Mr Kerr QC’s view that, given her declared reason for not testifying, there was no basis on which an application could have been made under Article 3. He further noted that the centrality of the statement to the case against Forbes, Hanvey and Robinson was such that a judge in Northern Ireland would have been most unlikely to admit the statement under Article 3 without an opportunity for cross examination, especially in light of the presumption against its admission arising from the fact that it had been prepared for a criminal investigation (2nd W/S of Raymond Kitson, [82093]-[82094], §§31-4).

14. The Director’s letter to xxxxxxxxxx, dated 10 December 1997, encapsulated the position in short form ([18234]):

“consideration was given to Article 3 of the Criminal Justice (Evidence, Etc) (NI) Order 1988 in relation to the use of ‘first hand hearsay’. Even if the requirements of the Order in relation to the ‘unavailability’ of witness A could be met, and this was not the position, in any event, it was concluded that a court would not consider it in the interests of justice to admit her statement, in pursuance of the Order, given its centrality to the prosecution case.”

Timothy Jameson

15. Timothy Jameson attended a consultation on 21 October 1997 with Roger Davison and Gordon Kerr QC. D/Supt Cooke, DI Irwin and DC Honeyford were also present, along with Timothy Jameson’s father, Robert Jameson. The evidence in relation to this consultation was as follows:

a. Roger Davison’s note records ([17591]):

“He was reasonably articulate but from the outset of the consultation said he could not remember what he saw. In particular he could not distinguish in his mind between what he saw and what people had said to him had happened. After recalling a couple of introductory details he then stated that he could not remember anything about the fight. He stated ‘I don’t know if I saw things happening, I was drunk and had been drinking all that night.’ He stated that when he made his statement he was simply agreeing with what the police said to him and he put in his statement what they told him.

Gordon Kerr QC quizzed him at length and in depth but he stubbornly maintained his assertion that he could not remember what happened and only wrote in the statement what the police told him to write. He stated that he is not scared to give evidence although he admitted that he did not want to give

evidence. He indicated that his desire not to give evidence was not affecting his inability to remember.

This witness will not give any evidence of any value whatsoever.”

b. In his statement to the Inquiry, Mr Kerr QC noted ([81413]-[81414]):

“Prior to the consultation, I was told that the witness was claiming that his statement was not true, and he was reluctant to give evidence. With regards to vulnerability of Witness A and B, the very fact that they were being referred to as Witness A and Witness B was enough to alert me that there was concerns [sic] about their safety. I do not doubt that at some stage I would have spoken to the police about their vulnerability. The purpose of the consultation with Witness B was to test the evidence but also to ascertain if this person was going to give any evidence at all. ... Witness B's father was present at the consultation. I recall that he sat with a very long face and looked exceedingly uncomfortable and miserable throughout. At the end of the consultation, he said that his son would not be giving evidence. It was thought by the police that his demeanour was due to the fact he owned a local business and feared a family member giving evidence in a sensitive case would not be good for trade. I can recall being told that he had a shop of some sort which was in the local area although am not 100% certain. My impression of Witness B was that this person lacked credibility and reliability in giving evidence.”

c. DC Honeyford gave the following evidence in his Inquiry statement ([80476], §§16-17):

“At the consultation, Timothy retracted his statement. He said he had been drunk on the night of the assault, did not remember anything about what happened and had simply signed a statement which had been compiled by the police. As I was the officer who took that statement it was obvious he was alleging that I had put the words into his mouth. That did not happen and would never happen. I would not contemplate such a course of action and it was obvious to me that Timothy was making this up to avoid having to give evidence. That was a very common tactic in Northern Ireland. I do not believe anyone else in the room took it seriously either. In fact, I saw Mr Davison roll his eyes as Timothy Jameson said that. I believe everyone had treated it as simply the method he chose to get out of the situation. It was a tactic which I think everyone recognised. I believe that Timothy was put under pressure from the other Protestant boys he was running with at the scene to retract his evidence. Gordon Kerr QC really grilled him during

the consultation but he stood his ground albeit he seemed a bit intimidated.”

d. Gordon Kerr QC summarised the position in his advice in the following terms ([17634]-[17635]):

“I saw witness B with Mr Davidson in attendance. His father was also present. Witness B informed me that he had no recollection of the events set out in his statement recorded on the 9th May 1997. He was too drunk to recall the events of the evening. I pointed out the averment at the end of his statement ‘I wasn’t drunk’. He informed me that this was false and that he had been told to insert this lie by the police. He claimed the information in the statement was gleaned from gossip and talk from around the town about the incident. He agreed that he had just been wasting police time. It was perfectly clear to me that his position was probably at least partially induced by fear but was clear that there would be no evidence to support any Article 3 application even if it would have been proper to consider one in these circumstances. In any event the police view was that the father was a local businessman who may have felt his son giving evidence would be commercially disastrous. In the event Witness B cannot be considered a reliable witness on the papers.”

16. In short, Timothy Jameson at no stage expressed fear as any element of his reason for not being prepared to give evidence. On the contrary, he denied he was in fear and sought to retract the substance of his statement. Although, as Gordon Kerr QC recognised, fear may well have played at least a part in his change of position, there was no prospect of obtaining any evidence of that either from Timothy Jameson himself or from anyone else. In those circumstances, there was simply no basis on which an application under Article 3 could even have been advanced.

Compulsion

17. A further issue which has been raised during the evidence, although is not the subject of direct submissions by Inquiry Counsel, is whether or not Tracey Clarke or Timothy Jameson ought to have been compelled to give evidence.

Tracey Clarke

18. On 27 October 1997 Mr Kitson spoke with Mr Kerr QC. His note, dated 28 October 1997, records (in relevant part):

“I raised with Mr Kerr the question of summoning Witness A to court. I pointed out that she was a compellable witness. I asked had this been discussed with police. Mr Kerr told me that that had occurred to him and that he had mentioned it to Mr Davison but no discussion had

taken place with police on this issue. I said that I would need to consider the issue.” ([18343], §9) (see also, 2nd W/S of Raymond Kitson, [82092], §28)

19. Later on 27 October 1997 Mr Kitson accordingly spoke with DI Irwin about the possibility of compelling Witness A. His note records:

“I raised [with] the D/Inspector the question of the summoning of Witness A to court. I said that this was a matter which had not been discussed, as I understood it, with police. I said this was a difficult issue. This was a serious case and Witness A could give relevant and cogent evidence. There was the question of compelling her to give that evidence. However, I needed police advices as to whether, if summoned to court, there was a reasonable prospect of Witness A giving evidence. D/Inspector Irwin’s view was that there was not. He did not consider that in any event and no matter what happened that Witness A would give evidence [against] any of the accused. I told D/Inspector Irwin that this was an important point and I suggested he reflect on it overnight, consult with his superiors, if necessary, and come back to me the next day.” ([18343], §10) (see also, 2nd W/S of Raymond Kitson, [82092]-[82093], §29)

20. Mr Kitson spoke with DI Irwin the following day as arranged. His note records:

“D/Inspector Irwin told me that he had spoken to D/Chief Inspector P39 who in fact had had previous dealings with the family of Witness A and who was probably closest to the family and to Witness A. It was both D/Chief Inspector P39’s opinion and the view of D/Inspector Irwin that there was no reasonable prospect, no matter what sanction was applied to Witness A, or Witness A giving evidence in court. I indicated to D/Inspector Irwin that I had already spoken to D/Superintendent Cooke on this issue. D/Superintendent Cooke had attended at the consultation with Witness A. It was D/Superintendent Cooke’s view also that there was little or any prospect of Witness A giving evidence.” ([18345]), §§2-3) (see also, 2nd W/S of Raymond Kitson, [82093], §30)

21. D/Supt Cooke confirmed in evidence to the Inquiry that it was his view that in practice there was no prospect of compelling her (15.9.09, Day 63, p25). The issue of compelling Tracey Clarke was also summarised in the Director’s letter to xxxxxx dated 10 December 1997:

“The issue of summoning and compelling witness A to give evidence at court was considered. Investigating police were asked to advise. Witness A was a compellable witness. Investigating police advised that there was no reasonable prospect, no matter what sanction was applied to witness A, of that person giving evidence in court. This opinion was confirmed by Detective Superintendent Cooke on behalf of the Chief Constable.” ([18234], §12).

22. Full and proper consideration was given by the ODPP to whether or not Tracey Clarke should be compelled. The overwhelming evidence was that, no matter what steps were taken, she would not give evidence. It is not suggested by Inquiry Counsel that this was a decision reached without due diligence, nor is there any evidence which would support such a conclusion. Indeed, the Panel will have in mind her unwillingness to testify before the Inquiry, the need to compel her to do so and the nature of the testimony she eventually gave on 1 September 2009.

Timothy Jameson

23. At the consultation on 21 October 1997 Timothy Jameson retracted his account and averred that he had no recollection of the incident, having been drunk at the time. That being the position he adopted, there was plainly no evidence of any value which he could be compelled to give in court. As Gordon Kerr QC concluded in his statement to the Inquiry: "*In my view, compulsion of Witness B was irrelevant in view of the fact that he was going to claim his statement was made up and he was ordered to sign it by the police. I did not see any point in compelling a witness who was clearly incredible.*" ([81414], §17)

The consequence of the inability to use the evidence of Tracey Clarke and Timothy Jameson

24. The immediate consequence of the ODPP's inability to rely upon the evidence of Tracey Clarke and Timothy Jameson was that it became necessary to abandon the prosecution against Hanvey, Forbes and Robinson. This aspect of the ODPP's reasoning is addressed in response to §8 of Part 18.

Submissions by Richard Monteith Solicitors (Civilian Witnesses)

Agreed and please see our comments at Section 5, paragraph 18..

Submissions by Richard Monteith Solicitors (Tracey Clarke)

It is submitted that the Inquiry can quite properly form the view that Tracey Clarke did not want to give evidence because her statement was entirely false. She had no desire, and has stated so on oath to the Inquiry, to give sworn evidence to the Court which she knew to be false. The Inquiry has to balance Mr Kerr and Mr Davidson's opinions about Tracey Clarke's reluctance to give evidence against her won forthright testimony that she did not want to give evidence based on a false witness statement. It is respectfully submitted that the Inquiry must prefer the actual evidence of a witness as to their state of mind over the conjecture of professional witnesses who observed her one in 1999.

5. There is another factor to consider in relation to Timothy Jameson in his capacity as a witness. It is striking that the only person whom he named as an attacker whom Tracey Clarke did not mention was Andrew Allen, and that

Allen was released after interview. The failure to make a case against Allen is dealt with below, but the Panel may wish to consider whether the RUC was keen not to use Jameson as a witness, perhaps because it would embarrass his father.

Submissions by British Irish Rights Watch and Committee on the Administration of Justice

It is clear that Bobby Jameson took a keen interest in his son's involvement in the police investigation from Timothy's constant reference to his father when he was questioned during Inquiry hearings, the fact that Bobby Jameson attended the meeting with Gordon Kerr QC (2.18) and contacted his solicitor the following day regarding the consultation that Timothy attended (2.19). Whether his motivations were those of a father concerned about his son's welfare or those of a businessman with many local connections protecting his interests it is up to the Panel to decide. However, it is notable that if Bobby Jameson took an active interest out of concern for Timothy, the Panel may wish to consider why no complaint was made against the officer who interviewed Timothy in light of the allegations he made that the officers had put words in his mouth, which were raised in October 1997 (notably almost six months after the event).

Submissions by Edwards & Co Solicitors (Serving and Retired Police Officers)

We have already dealt with the issue of Andrew Allen not being prosecuted. The reason for this was that Jameson would not attend at an identification parade or confrontation.

There is simply no evidence that the RUC was keen not to use Jameson as a witness because to do so would embarrass his father. The evidence suggests that the RUC were keen to utilise whatever witnesses they could in order to mount a successful prosecution.

Submissions by the Police Service of Northern Ireland

It is unclear why it might be suggested that the RUC would not be keen to use Timothy Jameson as a witness because it would embarrass his father. It is submitted that there is no evidential basis for making this crude and unsubstantiated suggestion.

If the RUC were not keen on availing of the evidence of an important eye witness they could simply refrain from interviewing him and taking a statement from him. Of course this would be a corruption of the investigative process and a betrayal of the duty of a police service.

In this case Timothy Jameson was treated like any important witness should be treated: he was invited to the police station; he was interviewed at length by a senior and experienced detective; all of the information that he could give or was prepared to give was compiled in the form of a statement; the content of

his statement (allied to the statement of Tracey Clarke) was the basis for arrests, charges and for carrying a prosecution forward.

What interest the RUC would have in avoiding embarrassment for Mr. Jameson (Senior) has not been explained. Yes, he was a business man whose firm carried out work for the security forces but why would this cause the RUC not to be keen to use his son as a witness if he had relevant evidence to give? .

In any event the suggestion that the RUC would not be keen to use Jameson as a witness doesn't arise. His usefulness as a prosecution witness was removed from the RUC when he declared that the statement he had signed was not in fact true. This was wholly outside of the control of the RUC.

Submissions by Richard Monteith Solicitors (Civilian Witnesses)

While this is a matter for the RUC, it is respectfully submitted that, in the light of his withdrawal, Mr Jameson would not have been a witness.

Submissions by Russell, Jones & Walker Solicitors (Michael Irwin)

There is no credible or substantiated evidence in the Robert Hamill Inquiry which tends to suggest that embarrassment to Bobby Jameson was in the minds of any RUC officer. This suggestion is, it is submitted, unfair to the RUC, given the lack of any evidence whatsoever.

THE SECOND ISSUE: TIMOTHY JAMESON

6. The materials show this:
 - 6.1 9/5/97 Reserve Constables **G** and McCaw told detectives about Timothy Jameson (15878, 15944, 19483, 14351 & 14619).
 - 6.2 9/5/97 Timothy Jameson makes a statement (266).
 - 6.3 29/11/00 DS **H** interviewed Res Con **G** in relation to 9th May 1997. All he recalls is that he and Res Con McCaw had heard that Timothy Jameson knew a lot about what happened and was present during a lot of fighting. They went immediately to DI Michael Irwin and related this to him (15944).
 - 6.4 7/12/00 Reserve Constable **G** telephoned DS **H** to say that he remembered that he and Reserve Constable McCaw were in Bobby Jameson's house when Timothy Jameson told them he witnessed the assault and had run past and put the boot in. He said that he and Reserve Constable McCaw both went to the CID office. They met a DI, whom he has since learned was Irwin, who took them into his office and then took them to a DS, he does not know the Superintendent's name but he was stocky with grey hair. Reserve Constable McCaw did all the talking and Reserve Constable **G** cannot remember what

was said. DCI **K** is briefed by DS **H** in relation to Reserve Constable **G** (57519).

- 6.5 7/12/00 Reserve Constable **G** makes a statement (15878).
- 6.6 8/12/00 DCI **K** interviews Reserve Constable McCaw but Reserve Constable McCaw's memory had been affected by ECT treatment and all he could remember was speaking to DI Michael Irwin about Andrea McKee. He cannot remember anything about Timothy Jameson or being at Timothy Jameson's house (15949).
- 6.7 8/12/00 Action log indicates that DCI **K** informed Chris Mahaffey that he had recently taken a statement from Reserve Constable **G** which said that he had provided information to DI Michael Irwin implicating Timothy Jameson in the murder, and with subsequent enquiries that that information might not have been dealt with correctly (14875).
- 6.8 12/12/00 DCI **K** raised issues at a meeting with PONI and DCS Maynard McBurney. In particular, he raised the way DI Michael Irwin and DCS Maynard McBurney had handled Timothy Jameson, Tracey Clarke and Andrea McKee. The log also indicates that Chris Mahaffey had read the materials and concluded that nothing could be found to explain how Timothy Jameson progressed from being a suspect to a vital crown witness (2902).
- 6.9 13/12/00 A meeting was held between David Wood, PONI, and Sir Ronnie Flanagan, Chief Constable. PONI told the Chief Constable that there was a lack of confidence in DCS Maynard McBurney and DI Michael Irwin. DCI **K** would remain the Investigating Officer responsible for the Atkinson investigation. The Ombudsman would continue to supervise and direct this investigation. The Ombudsman would investigate all matters relating to Timothy Jameson, Andrea McKee and any alleged neglect of duty by DCS Maynard McBurney or DI Michael Irwin (14877).
- 6.10 10/1/01 A meeting was held between Chris Mahaffey PONI, DCI **K** and D/Supt Stewart. D/Supt Stewart reported that DCI **P39** and DI Irwin had denied that Res Con **G** told them anything about Timothy Jameson and denied being told of Jameson's admission. They did not remember Res Con **G** even being present when Res Con McCaw was taken to speak to DCS McBurney. The team agree to interview Res Con **G** jointly (2906).
- 6.11 13/2/01 Chris Mahaffey, PONI, wrote to Raymond Kitson DPP saying that the matter currently being investigated by the Ombudsman, regarding DCS Maynard McBurney and DI Michael Irwin, became apparent during the investigation by the RUC into the murder of Robert Hamill and the actions of Reserve Constable Robert Atkinson. The concerns of PONI related to how Timothy Jameson became a witness rather than a defendant and later retracted evidence (4662).
- 6.12 28/2/01 A meeting was held with PONI, DCI **K** and DCI **P39**, at the home of DCI **P39**. DCI **P39** confirmed that she did not have any direct dealing with

Reserve Constable McCaw. DCI **P39** was in the office with DCS Maynard McBurney when he came in the late afternoon and he was not in uniform. She thinks he was introduced by DI Michael Irwin (as it was a restricted area) who left him at the door. Reserve Constable McCaw said something like this fellow, Timothy Jameson, was in the centre of town and heard what was going on but DCI **P39** did not recall what he had seen or heard. It was decided to get a questionnaire and ascertain what Reserve Constable McCaw had seen. DCI **P39** heard that DC Edward Honeyford was to do it. She thought it was late afternoon when they brought Timothy Jameson in and DC Edward Honeyford spoke to Reserve Constable McCaw for hours. DCI **P39** did not speak to him. DCI **P39** said that Reserve Constable McCaw had spoken about Andrea McKee and so the information from Timothy Jameson was worth pursuing and arrests planned much later. Reserve Constable McCaw was alone in the office but could have come to the station with someone. Reserve Constable McCaw did not say anything else and DCI **P39** agrees in the meeting with Chris Mahaffey that the drive to get Timothy Jameson in was because it was Reserve Constable McCaw who had provided the information. She says that she would not be surprised when Chris Mahaffey asks her if he had been excited. She says that Reserve Constable McCaw would not have had the confidence to ask anything. Matters were discussed and it was decided to keep everything very confidential. (14622)

- 6.13 2/3/01 DI Michael Irwin interviewed by Chris Mahaffey and [REDACTED], PONI. DI Irwin stated that on 9th May 1997, Reserve Constable McCaw told him he had information regarding Timothy Jameson witnessing the incident but not that Timothy Jameson was a suspect. DI Michael Irwin took Reserve Constable McCaw to DCS Maynard McBurney and DCI **P39** where he told them the full story. DI Michael Irwin says that he was not present for that but he was briefed later that day. (22715)
- 6.14 21/3/01 A meeting was held between Reserve Constable McCaw and [REDACTED], PONI. Reserve Constable McCaw's recollection is poor in relation to Andrea McKee. He can recall contact with her at Kernan but remembers absolutely nothing about Timothy Jameson. (14617)
- 6.15 23/3/01 Reserve Constable **G** was interviewed by [REDACTED] and [REDACTED], PONI in relation to comments of Timothy Jameson's that he put the boot in. Reserve Constable **G** remembered sitting in a utility room at the back of a kitchen in Bobby Jameson's house when Timothy Jameson mentioned the Robert Hamill incident and said that he put the boot in up the town. Reserve Constable **G** and Reserve Constable McCaw thought this was serious so they went to Portadown CID to report what they had heard. They went to the DI's office (whom Reserve Constable McCaw knew) and were there for five to 10 minutes, then went to the DCS's office where Reserve Constable McCaw did the talking, being there for about 15 to 20 minutes. Reserve Constable **G** said that if they had been told not to make a note they would not have. He could only think that they had been told that the CID would take care of it. After this, Reserve Constable **G** had no contact with either the DI, whom he now knows as DI Irwin, or the DCS. Reserve Constable **G** did not speak to either Reserve Constable McCaw or Timothy

Jameson about this. Reserve Constable **G** was not aware that Timothy Jameson attended the police station to make a statement. When asked about Reserve Constable McCaw, Reserve Constable **G** said that he was a strange guy who some found difficult to work with and he would involve himself in things which were nothing to do with him. Reserve Constable **G** said both he and Reserve Constable McCaw were present when they heard Timothy Jameson's comment and they were both present when Reserve Constable McCaw told DCS Maynard McBurney and DCI **P39** about it but he cannot remember exactly what was said save that he was sure Reserve Constable McCaw would have told them about it 14619. Reserve Constable **G** made a statement to this effect. (14351).

- 6.16 27/3/01 With regards the information given by Reserve Constable McCaw, DCS Maynard McBurney denied he was told that Timothy Jameson was involved in the fight.(22811).
- 6.17 4/4/01 A meeting was held between the DPP and PONI regarding the evidence allegedly passed on to DI Michael Irwin and DCS Maynard McBurney about Timothy Jameson's involvement. The current position was indicated to be that DI Michael Irwin had been interviewed under caution and DCS Maynard McBurney had been interviewed not under caution as he had retired. Both DI Michael Irwin and DCS Maynard McBurney said that they had no knowledge of any notes or written materials in conjunction with the information about Timothy Jameson which they received from Reserve Constable McCaw and Reserve Constable **G**. DC Edward Honeyford had interviewed Timothy Jameson to take the statement and DI Michael Irwin maintained that he was there for part of it. Timothy Jameson's position was considered with regard to any admissions made by Timothy Jameson to the DPP. DI Michael Irwin denied being present when Timothy Jameson retracted his evidence but this was inconsistent with the DPP file note by Roger Davison. The main concern was how Timothy Jameson went from being a suspect to a witness. The DPP was to decide whether to disclose the advice of Gordon Kerr QC to PONI. (14612)
- 6.18 11/6/01 A letter was sent from Chris Mahaffey to Timothy Jameson asking to interview him as a witness. (14529)
- 6.19 21/9/01 A meeting was held between DCI **K**, DCS Colville Stewart, Chris Mahaffey, PONI and another PONI employee. There was a general discussion. DCS Colville Stewart's intention was to revisit some aspects of the murder investigation, such as Timothy Jameson (16698).
- 6.20 5/12/01 DC Edward Honeyford was interviewed by [REDACTED] of PONI. He recalled meeting DCI **P39** and DCS Maynard McBurney on 9th May 1997 in DI Michael Irwin's office, though DI Michael Irwin was not present. On 9th May 1997, DCS Maynard McBurney briefed DC Edward Honeyford as to what was happening about Timothy Jameson. He said that Timothy Jameson was to be reinterviewed as, contrary to his previous evidence, he had told an officer that he had witnessed the assault and could assist the police. DC Edward Honeyford described his role in interviewing Timothy Jameson. He

stated that Timothy Jameson was to be assessed as a witness and also to consider the possibility that he was involved in the attack. DC Edward Honeyford had conducted the interview on his own. He reported that Timothy Jameson was concerned about anonymity and that before he gave a statement he wanted some assurance in this regard. DCS Maynard McBurney had been asked for guidance about the anonymity and agreed to record him as witness B. Timothy Jameson maintained he was only a witness. Timothy Jameson's allegation made at the consultation on 21st October 1997 that DC Edward Honeyford had put words in his mouth was denied by DC Edward Honeyford (27082).

- 6.21 9/5/02 Timothy Jameson was recorded as a potential murder suspect but was not to be interviewed at that time (8945).
- 6.22 19/11/02 Timothy Jameson was arrested and interviewed for the murder of Robert Hamill and affray. Forensic samples were taken from Timothy Jameson. He denied knowing either Reserve Constable G or Reserve Constable McCaw and does not remember ever going to the utility room for a smoke. He could not remember anything about the incident and he also said this was the first time anyone had ever put to him that he said that he put the boot in (15881).
- 6.23 27/1/03 The crime file containing the report of DS Wenford McDowell was sent to the DPP in relation to Timothy Jameson. This report noted that no recommendation could be made for prosecution until DI Michael Irwin and DCS Maynard McBurney were interviewed and Timothy Jameson's DNA is compared (15868).
- 6.24 3/2/03 The Legal Registrar received Acting Detective Superintendent [REDACTED]'s recommendation of no prosecution of Timothy Jameson. He recognized that forensic results are still outstanding and may change his recommendation but the case was built on the recollection of Reserve Constable G that Timothy Jameson said he put the boot in, which is not in itself sufficient. He also noted however that Timothy Jameson is a member of a well known Portadown family with strong links to loyalist paramilitaries (19471).
- 6.25 18/4/03 Raymond Kitson, DPP directed that there be no prosecution of Timothy Jameson for any offence (31715).

Submissions by British Irish Rights Watch and Committee on the Administration of Justice

In light of the recognised connection that Timothy Jameson's family had to the UVF was security force intelligence on loyalist paramilitaries ever interrogated to establish if the Robert Hamill murder was ever discussed? This may have been one line of enquiry open to the post-2000 investigations. The potential involvement of Timothy would have been very likely to have been discussed in paramilitary circles, as would the intimidation of witnesses.

Submissions by the Police Service of Northern Ireland

See sections 8 and 9 below.

Submissions by Richard Monteith Solicitors (Civilian Witnesses)

Please see 8.

Submissions by Emmett J Kelly & Co (G)

See Section 9 below.

7. A number of witnesses gave evidence on the issue:

G

Statement

- 7.1 Para. 14: He believed Timothy Jameson as it was a credible account. He seemed to be serious, he was not frivolous or bragging.
- 7.2 Para. 16: When he was in Portadown station they met DI Irwin in the corridor and asked to have a word. DI Irwin took them into his office. Reserve Constables McCaw and G told him what Mr Jameson had said. They were in his office for 5 to 10 minutes. They then went to DCS McBurney's office for 15 to 20 minutes.
- 7.3 Para. 17: He does not recall DCS McBurney or DI Irwin taking any notes. They did not give any instructions to Res Cons McCaw and G. He asked DCS McBurney if they should make notebook entries and they were told "don't worry, we'll deal with it".

Oral Evidence

- 7.4 He is clear that he took the information about Mr Jameson "putting the boot in" to detectives with Res Con McCaw (p.2).
- 7.5 He was out for a smoke with Res Con McCaw and Mr Jameson was with them. The conversation turned to the Hamill assault. Timothy said he was there and, as he was coming up through town, he saw a fracas. He heard "Fenian" being shouted. As he ran past he put the boot in. The officers did not question him or make a note about it (p.3). He did not think to arrest him. It was more important to take the information to detectives and let them handle it (p.4). There was no obligation to arrest him (p.32).
- 7.6 He had very little experience of arresting people. His first arrest was in 1995 and he had joined the police in 1987. He had not arrested many people between 1995 and 1997 (p.5).

- 7.7 He was interviewed by **H** on 29/11/00. The note of the interview (15945) suggests he did not mention “putting the boot in”. **G** maintains he did (p.6).
- 7.8 The first record of “putting the boot in” is in December 2000 (19483) (p.6).
- 7.9 Both he and Res Con McCaw met DI Irwin at the Police Station. DI Irwin was on his own in his office in CID. McCaw did the talking. He talked about “putting the boot in” (p.8). DI Irwin then led them to the “boss’s office” where he went in (p.9). **G** went in the office and closed the door behind him. DCS McBurney and DI Irwin were there. DI Irwin stayed. There was no lady detective there (p.10). Res Con McCaw did the talking and told them about Jameson “putting the boot in”.
- 7.10 DCS McBurney said something along the lines of “don’t bother making a note, we’ll deal with it” (p.12).
- 7.11 Per 19483 **G** could not remember exactly what McCaw had said to McBurney (p.22). He says he was satisfied that all the information was relayed but does not remember exactly what was said (p.23). He made a statement to PONI on 23/3/01 (14351) where he says cannot remember exactly what was said but he was almost 100% sure that the boot being put in was mentioned (p.28).
- 7.12 He thought “putting the boot in” meant having a swipe at someone on his way past (p.25).
- 7.13 Res Con McCaw was quite childlike and he would get wrapped up in something for about 6 to 8 weeks then move on (p.43). Res Con McCaw was not a liar (p.44). He was not a gossip but liked talking to people (p.46).
- 7.14 Res Con McCaw would sit and drink tea with the McKees on a very regular basis (p.44).

Paul Adamson

Statement

- 7.15 Para. 2: He was a police officer with 25 years experience.
- 7.16 Paras. 5 & 6: He did not know anything about the Robert Hamill investigation, just an occasional reference to Allister Hanvey and Tracey Clarke when he was at the gym. It was not until DCI **K** interviewed him in November 2000 that he knew who was involved. He knew Andrea and Michael McKee, Robert Atkinson and Davy McCaw were involved. It was some time after the incident that Davy McCaw first mentioned he had some information he was taking to CID. He came to the gate lodge of Brownstown business centre and asked for the keys. He said he had some information was going to speak to CID about it. He did not say what the information was. He was his usual self. Res Con McCaw had said on previous occasions he was off to speak to CID about things. That was just him.

Edward Honeyford

Oral Evidence

- 7.17 For the interview on 9th May, before an action sheet was issued (which said Jameson was believed to have been in the town centre p.44), he was privately briefed by DCS McBurney and DCI P39, who was second in command. DCS McBurney took the lead and told DC Honeyford that information had come in about Timothy Jameson and that he had to be interviewed that night (pp.5-6). DC Honeyford was told to assess Jameson (p.7). There was no suggestion that Jameson had acted criminally (p.53). Part of the assessment DC Honeyford was to make was the possibility that Jameson could have done something wrong. If Honeyford suspected wrongdoing, then Jameson would have been arrested, cautioned and a custody record would have been opened. When interviewing a person if there is a suspicion the interviewee has been involved in criminal activity then they had to be cautioned (p.7). Portadown was not a PACE station. Interviews under caution were normally done at Lurgan (p.68).
- 7.18 Per 27084 DC Honeyford was told by DCS McBurney and DCI P39 that Timothy Jameson had confided in people. He does not recall that but accepts it is more accurate than his recollection now (p.51). There was no possibility he was told who the confidant was (p.55). It was later talked about a little by police that Jameson confided in his father's police minders (p.56). If DC Honeyford had known that his superiors knew he had "put the boot in" he would have felt he was being used to protect him (p.57). DC Honeyford does not feel Jameson was protected due to his father (p.56). He had not heard that G in 80671 says Jameson should have been interviewed as a suspect (p.76).
- 7.19 He didn't know of the "putting the boot in" allegation at the time. He wouldn't have treated him as a witness then adjusted him to become a suspect as that is contrary to PACE and would cause problems at trial (p.8). He was aware of the complaint made by Rosemary Nelson but he was not under particular pressure to achieve results (p.65).
- 7.20 Timothy Jameson was holding back at the consultation. The consultation pressed him as hard as possible (p.28). He was trying to get out of giving evidence so he was trying to say police put words in his mouth, which was common practice (pp. 25-6). No-one ever believed it (p.26). Roger Davison rolled his eyes indicating "more nonsense" (p.7). No-one asked DC Honeyford if the allegation was true, as he believes they did not believe he would do that (p.62). DC Honeyford feels Bobby Jameson would have complained if he felt Tim had been bullied into making a statement (p.63). If such a complaint is made, the interviewer would be investigated. He had been subject to such an investigation in the past. This time no such investigation occurred, as no complaint was made (pp. 89-90).

P39

Statement

- 7.21 Para. 21: Res Con McCaw did not tell her that Timothy Jameson had admitted putting the boot in.

Oral Evidence

- 7.22 She only met Res Con McCaw on one occasion. She was in her office at time with DCS McBurney. McCaw came in on the afternoon of the 9th May. There was only one door into her office. DCS McBurney would use that office as well when he was in Portadown station. When Res Con McCaw came in he was with DI Irwin and no one else. It is possible someone could have been in the corridor (p.92). There was no sign of Res Con G (p.179). When Res Con McCaw came in DI Irwin introduced him and McBurney got up and spoke to him (p.93). There was nothing to indicate that McCaw had previously been introduced to McBurney (p.184). McCaw said Timothy Jameson saw or heard what happened in town centre. DI Irwin left as he was going elsewhere (p.93). She had never heard about Jameson “putting the boot in” until Chris Mahaffey interviewed her at her house (p.94). Per 14625 “After Res Con McCaw left we got Eddy Honeyford summoned to the room to invite Jameson in to ascertain what he knows” (p.97). Per 14626: “Res Con McCaw stayed a few minutes. We were mindful that Jameson was son of Bobby and that Tracey Clarke was the girlfriend of Allister Hanvey. There was no contact with Timothy Jameson’s dad” (p.102) “Being mindful of Jameson” meant that he needed less security as Bobby Jameson already had security (p.103). If she had found out Jameson was involved the circumstances would have changed (p.101). She did not leave the room at any time (p.98). There was no conversation about Bobby Jameson (p.100). The conversation after Res Con McCaw left was between her and DCS McBurney about whether Timothy Jameson had been in the investigation before and when it was discovered that DC Honeyford had spoken to him they wanted Mr Jameson to be brought back in to be interviewed (p.102). Timothy Jameson was in absolutely no way treated differently because he was Bobby Jameson’s son (p.104).

Michael Irwin

Statement

- 7.23 Per 81457: On 9 May he received a phone call from a casual contact. This person provided intelligence that Stacey Bridgett and Dean Forbes were involved in the assault. This person is named at M15. Immediately before going to this meeting he met Res Con McCaw and brought him to a room to meet DCS McBurney and DCI P39 so that Res Con McCaw could brief them.
- 7.24 Per 81458: At no time was he ever made aware that Timothy Jameson had assaulted Robert Hamill.

Timothy Jameson

Statement

- 7.25 Para. 5: He did not have a conversation with his father's protection officers about the incident.

Oral Evidence

- 7.26 He says that his telling his father's protection officers that he had put the boot in" as he ran past never happened (p.68). He was very, very rarely in his father's house at that time (p.102). He had no relationship with his father's protection officers (p.103)

Bobby Jameson

Statement

- 7.27 Para. 4: He first heard about the Hamill incident from the news. Timothy did not tell him about the incident or that he had been in town that night.
- 7.28 Para. 5: He does not think that he was aware that Timothy had made a statement at the time. He vaguely remembers discussing the statement as it was not expressed in a way that sounded like Timothy. He does not recall when he had that conversation.
- 7.29 Para. 6: He found out about his protection officers saying that Timothy had told them he'd seen what happened in a "round about sort of way". He cannot remember how or when exactly. He did not speak to those officers about it.
- 7.30 Para. 7: He is not sure when Timothy told him the statement had come from a police officer but he advised Timothy to explain fully the true position. This must have been before October 1997.
- 7.31 Para. 8: He does not recall any discussion about police protection for Timothy. He took Timothy to his solicitor as he had never been in trouble before and Mr Jameson wanted him to have legal advice.
- 7.32 Pg. 18 of his inquiry interview: Mr Jameson was concerned that there were things said that may have been interpreted by the police as not what Timothy actually said.

Gordon Kerr QC

- 7.33 No-one believed Timothy Jameson when he said police had put words in his mouth (p.91). Mr Kerr remembers Bobby Jameson being uncomfortable during Timothy's consultation but does not remember him protesting at his son's treatment (p.95) The father was definite in relation to what his son would be doing with the case (p.96).

Chris Mahaffey

Statement

- 7.34 Para. 29: DC Honeyford raised a valid point when discussing the approach to Timothy Jameson that “what was to be gained in not treating him as a suspect if he was one?” During the investigation nothing was uncovered to suggest that Timothy Jameson received any form of protection or favour.

Oral Evidence

- 7.35 Mr Mahaffey thought Mr Jameson became a witness then a suspect as it was the outcome of DCI K’s team speaking to an officer and concerns were raised that Jameson had made admissions about his role. Up until that point Timothy Jameson was considered a witness only (p.155)
- 7.36 The decision to arrest Timothy Jameson in 2002 was due to the information K had from G and Res Con McCaw (p.179)

Colville Stewart

Statement

- 7.37 Para. 28: He expressed an opinion that they would deal with the Jameson issue after the conspiracy arrests took place. If he had said “I kicked him” then he should have been arrested and he would then have been available for interview.
- 7.38 Para. 29: There was no evidence within the 1997 file to support what Res Con G was saying.

K

Statement

- 7.39 Para. 39: On 16th February 2001 DCS Colville Stewart and he met Chris Mahaffey and they discussed how to approach the Timothy Jameson issue. It was agreed they would focus on the Atkinson allegation and they would return to the Jameson issue when those investigations had been completed.
- 7.40 Para. 62: In the interviews with Res Con G and Res Con McCaw he did not explore why they did not make any notes about what Jameson had told them. He understands that if the officers had provided that sort of information then it would have gone on HOLMES. There was no evidence about this until he interviewed them.

Maynard McBurney

Statement

- 7.41 Para. 24: On 8 or 9 May Res Con McCaw advised him about Timothy Jameson. He cannot recall seeing G.
- 7.42 Para. 25: He did not give instructions to the officers not to make notes but he said if Res Con McCaw got another opportunity he should try and gain as much intelligence as possible.
- 7.43 Para. 26: DC Honeyford did not necessarily believe all that Timothy Jameson had said.
- 7.44 Para. 27: As Timothy Jameson's father was a top Loyalist it would be dangerous for a local Loyalist faction to deal with them.
- 7.45 Para. 28: He was never given the information about Timothy Jameson saying he had "put the boot in"

Submissions by British Irish Rights Watch and Committee on the Administration of Justice

Given the concern that Bobby Jameson had expressed that his son make it clear what happened when interviewed by the police and his knowledge of the allegations made by officers G and McCaw (7.29 - 7.30), it is surprising that he made no complaint if he believed that G and RC McCaw were lying. Did he request new close protection officers after officers G and McCaw, who were supposed to be protecting him and his family members, made allegations against his son? Were they re-assigned by the RUC after approaching CID, as they may have been called upon at a later date to give evidence? Also, why did Bobby Jameson make no complaint against DC Honeyford, who Timothy Jameson alleged took a false statement from him? The Panel may think that Bobby Jameson's real concern was not that officers had lied about his son, but that his son had made a truthful statement that would embarrass the Jameson dynasty and a mechanism needed to be found which would enable his son to withdraw his statement.

Submissions by Edwards & Co Solicitors (Serving and Retired Police Officers)

We do not intend making detailed written submissions concerning the taking of the witness statements from Tracey Clarke, Timothy Jameson or Jonathan Wright. The evidence is overwhelming that these were voluntary witness statements, properly taken by experienced detectives.

If the Panel requires submissions on this, we will do so in oral submissions.

Submissions by the Police Service of Northern Ireland

See sections 8 and 9 below.

Submissions by Richard Monteith Solicitors (Civilian Witnesses)

Please see 8.

Submissions by Emmett J Kelly & Co (G)

See Section 9 below.

Comment

8. There is a sharp conflict of evidence for the Panel to resolve. It is clear that Jameson said something to the two officers, that those officers then reported to the detectives and that as a result Jameson was re-interviewed. G was clear in his apparent recollection of what Jameson told him and McCaw. It seems unlikely that his memory would play a trick such as to create such a recollection.

Submissions by British Irish Rights Watch and Committee on the Administration of Justice

We agree that Officer G's evidence does not seem to be a fabrication, as to concoct such a story would be of no benefit to him.

Submissions by the Police Service of Northern Ireland

Plainly, Timothy Jameson said something to the officers because it triggered their journey to Portadown Police Station to speak to detectives. The problem is in working out with any degree of confidence what they (and more particularly Mr. McCaw) said to them.

It is suggested by the comment above that the Inquiry can safely conclude that G (and Mr. McCaw) were told by Timothy Jameson that "he put the boot in." It is suggested that G's memory would be playing a strange trick on him to create a recollection such as that if it was untrue. These suggestions are disputed.

If Timothy Jameson told the officers on the 9 May 1997 that "he put the boot in" it would amount to a remarkable act of bravado or stupidity. It would be tantamount to a confession of involvement in a serious crime. If Mr. Jameson said it he must have been exceedingly confident that nothing more would come of it, or he must not have cared less. It is submitted that it would be surprising but not impossible if Jameson did speak in this way to police.

It is submitted that a sensible starting point for any analysis of this issue is to move forward three and a half years to the 29 November 2000. On that date DS H interviewed G in relation to the events of the 9 May 1997. At that time, if the note made by DS H is accepted, G stated that "the only thing he recalls about the entire Hamill incident was that both he and P20 (McCaw) had heard that Timothy Jameson had heard and saw a lot in town that night and was

present when a lot of the fighting went on. He stated that both he and P20 went to DI Irwin and told them this as soon as they heard it (15944)."

It is noted that in his oral evidence G disputes this account and contends that when he spoke to DS H on the 29 November about Jameson he did tell him about Jameson's admission (p. 6). It is submitted that G's protests about this simply do not add up. If he is right DS H has inexplicably failed to record what he was told, and failed to record a statement about it. It is submitted, however, that the notes made by DS H are the most reliable guide to what was happening at that time.

Those notes show that on the 7 December 2000 - just over a week after the initial contact - DS H phoned G at Portadown Police Station. He wished to speak to G. G phoned him back. DS H sought clarification from him about where he had heard that Timothy Jameson had been in the town on the night of the attack on Mr. Hamill. It was during this conversation that G told DS H that since their last contact "he had given it a lot of thought..." It was only at that point that G revealed that what Jameson had said went beyond merely a description of having witnessed events. Now G was in a position to recall that Jameson had told him that he was an active participant in the events under investigation, having taken an opportunistic kick at some unidentified person as he ran past (15878). According to the note DS H "put him over his story again and he related the same story."

The entries in the note of the 7 December 2000 plainly indicate that DS H was hearing the story about Jameson's role in the violence for the first time. His actions on the 7 December 2000 also establish that this was important new information coming into the system for the first time. The note shows that on the 7 December 2000 he took a statement from G and advised K about the development. It seems clear that such actions would have followed on the 29 November 2000 if G is correct that he told DS H about them on that date. G's statement on the 7 December 2000 also indicates that it was only after having had time to think about his dealings with Jameson ("...on thinking about it...") that he was able to recall the admissions that he had made (15878).

It is submitted that if Timothy Jameson was to have unambiguously confessed to police officers that he was involved in kicking someone during part of the incident when Mr. Hamill was assaulted, that would form a firm memory (for most police officers) which would immediately come to the forefront of the mind on any subsequent occasion when the issue was discussed, even three and a half years later.

That it did not come to G's mind at all when the issue of Jameson was discussed on the first occasion with DS H is to say the least very strange. Quite simply it is difficult to see how the Inquiry can accept that G's account is an accurate one when it is also considered that G has emphasised that it was Timothy Jameson's confession which acted as the trigger for him going with his colleague McCaw to speak to CID on the 9 May 1997.

It is asked rhetorically, what kind of police officer forgets the most significant part of a conversation such as this and then remembers it a week later? It is submitted that human experience teaches us that we can forget and then with some effort recall small and inconsequential details. The second account which G brought to the attention of DS H hardly falls into this category.

Submissions by Richard Monteith Solicitors (Civilian Witnesses)

In the light of our instructions and of Mr Jameson's evidence to the Inquiry we are unable to assist by assuming either (a) that he told anything self-inculpatory to G or Mr McCaw or (b) that G or McCaw communicated the same to detectives or (c) that, assuming (a) and (b) they put Mr Honeyford in the picture.

Submissions by Russell, Jones & Walker Solicitors (Michael Irwin)

At no time was Michael Irwin told by Reserve Constable McCaw that Timothy Jameson "... put the boot in". Michael Irwin introduced Reserve Constable McCaw to P39 and DCS McBurney and then left the station to visit P38. P38 was a source in prison. The message documents on the Holmes system confirm that there was a contact and that there was a meeting (see documents 02203, 02191 and 16048). These documents are "messages" on the system which run contemporaneously numbered M14, M15 and M16. There is also a statement from DC Keith McIlmurry (8094) and document number 16049 which all support this. It is also submitted that the evidence of P38 (in closed session) for what it was worth, also confirmed that Michael Irwin did go to the prison at that time.

P39 confirms that her clear recollection was that Michael Irwin went on elsewhere (page 93). G claims that Michael Irwin, and not P39, was at the meeting with DCS McBurney, but P39 and DCS McBurney both say not.

It is submitted that the evidence of Witness G was not credible for a number of reasons. He stated at the outset of his oral evidence that given the death of Robert Hamill the previous day, he understood the importance of what Timothy Jameson had said to him and Reserve Constable McCaw. She did not consider however that he ought to have arrested Timothy Jameson or followed up on what he had told detectives for a number of years. The first time G was interviewed about the matter was by Witness H. That was on 29 November 2000 (15944) and in H's note book there was no mention of "... putting the boot in". G claimed in oral evidence that he did tell H but agreed under cross examination by Mr Adair QC that H must have completely misrecorded this in his notebook entry. Mr Adair QC pointed up a number of contradictions in statements initially made by G in November and December and in March 2001. G later made a statement on 7 December 2000 (19483) wherein he said: "... he couldn't recall any of either conversation." On the 23 March 2001 (14351) he then went on to say: "... I am almost 100% sure that Timothy Jameson's comments about putting the boot in would have been relayed." (Ombudsman's Bundle.) The question for the Robert Hamill Inquiry must then be if it prefers the evidence of G over and above the

evidence of DCS McBurney, who says that Michael Irwin was not at the office meeting, the evidence of P39 who agrees with that, the evidence of H regarding the note book entry and the contradictions in the various statements. It is submitted that the Robert Hamill Inquiry must also ask itself why, if it is satisfied that these detectives were working hard to get suspects, they would not want to treat Timothy Jameson as a suspect when, collectively, they have all indicated that they would have loved to treat Timothy Jameson as a suspect. It is submitted that the weight of the evidence prompts an inevitable conclusion that Reserve Constable McCaw never at any stage told the detectives that Timothy Jameson had "... put the boot in". The suggestion that the detectives did not want to embarrass Bobby Jameson has no foundation in any of the evidence. It is clear, it is submitted, that G's reasoning as to why he could remember exactly what was said in 2009, when he was unable to do so in 2000, is not credible. The best that G could do under cross examination was to claim that Reserve Constable McCaw had left nothing out in the telling but that is not the same as actually remembering. It is submitted that G's evidence was, simply, not credible.

Submissions by Emmett J Kelly & Co (G)

See Section 9 below.

9. He was less impressive in his recall of precisely what was relayed to detectives. That was principally carried out by McCaw in any event. Given that the officers had to work with Jameson's father after the event, it is possible that they decided simply to tell detectives something to the effect that it was in their interests to press Jameson about the events of the night.

Submissions by British Irish Rights Watch and Committee on the Administration of Justice

We think this interpretation may be unfair to Officers G and McCaw. They were in a difficult position. They were assigned as close protection officers to Bobby Jameson, a businessman whose customers included the RUC and who also had family paramilitary connections. If they had been looking after their own interests, they would simply have ignored Timothy Jameson's alleged admission of involvement in the attack on Robert Hamill, but instead they reported it to the murder investigation team. They had little thanks for their pains, because both DC Irwin (7.24) and DCS McBurney (7.45) denied ever having been told that Timothy Jameson had taken part in the assault.

Submissions by Edwards & Co Solicitors (Serving and Retired Police Officers)

It may well be that Jameson told McCaw and G that he put the boot in. The overall weight of evidence is that this was not conveyed to DCS McBurney, P39, DI Irwin and DC Honeyford.

The Panel saw and heard P39. No-one impugned her integrity at this Inquiry, and we remind the Panel of the following extract from her evidence, p88,

"22 Q. Now, events began to unfold pretty quickly though on the 23 9th.

24 A. Yes.

25 Q. There were two major events --

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1 A. Absolutely.

2 Q. -- on the 9th and the 10th which made a material
3 difference to the investigation.

4 A. Yes.

5 Q. Of course, you know what they are.

6 A. Yes.

7 Q. It's the information that came in about Tracey Clarke
8 and the information that came in about Timothy Jameson.

9 A. That's right.

10 Q. The source for that information in both cases was
11 a gentleman called [Reserve Constable McCaw]. Do you want to check
your

12 cipher list?

13 A. Yes.

14 MR UNDERWOOD: This person is now open.

15 MR McGRORY: [Reserve Constable McCaw] is McCaw. The other name
is not open, and

16 he is being referred to as G.

17 A. No, I don't know of G.

18 Q. Well, I think we can proceed in any event. Can you --
19 doing the best you can, P39, try to recall the moment
20 when you first heard about what

21 Reserve Constable McCaw had to say about anything.

22 A. Sorry, I've got the wrong name here.

23 Q. We can say it now, it's Reserve Constable McCaw.

24 A. Right.

25 Q. He comes into the police station during the course of

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1 the 9th?

2 A. Yes.

3 Q. And he -- twice actually, but the first time he has
4 information to impart?

5 A. Yes.

6 Q. Can you remember where you were when you encountered
7 him?

8 A. I only met that gentleman on one occasion, and I was in
9 my office at the time, and Mr McBurney was in the office
10 as well.

11 Q. Can you remember what time it was?

12 A. Well, I think I said in my statement I thought it was
13 about teatime. But it was certainly afternoon time, you
14 know, afternoon teatime.

15 Q. Would you describe your office for us, please?

16 A. Gosh, my office was an extremely small office. It was
17 one -- the CID offices were next door to the police
18 station. It was in actual fact a house, a dwelling
19 house, which was converted into CID offices, and the
20 office that I had was a bedroom, which was divided off.
21 There was a corridor taken off it, and also a walk-in
22 stationery room taken off it as well. So the remainder
23 of that was my office.

24 Q. Was there only one door into it?

25 A. Yes.

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1 Q. So you had a private office?

2 A. Yes.

3 Q. Superintendent McBurney was in that private office with
4 you?

5 A. Yes, that's right.

6 Q. Can you remember what you were talking about?

7 A. Actually I was on the telephone --

8 Q. Yes.

9 A. -- when -- and he was there.

10 Q. Would he have used that facility, P39, when he was
11 visiting the station?

12 A. Yes. He would have come into the office, of course, and
13 that was the office where we restricted admittance to.

14 Q. Yes. Was -- this gentleman, Reserve Constable McCaw,
15 with anybody when he arrived at your room?

16 A. With DI Irwin.

17 Q. Was he with anybody else?

18 A. No. I didn't see anybody else.

19 Q. Could there have been anybody else outside in the
20 corridor?

21 A. I have been asked about this before, and it is possible
22 that someone else could have been in the corridor.

23 I wouldn't have had access to seeing who was in the
24 corridor.

25 Q. But it would have been --

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1 THE CHAIRMAN: In other words, you can't really say.

2 A. That's right.

3 MR McGRORY: It would have been a bit of a tight squeeze in

4 your room, anyway, to put more than three or four people
5 into it.
6 A. Yes, it would.
7 Q. This is your only encounter with Reserve Constable McCaw?
8 A. That's right.
9 Q. That's your evidence. What did he tell you?
10 A. Well, when he came in, he -- DI Irwin introduced him.
11 Mr McBurney got up and spoke with him. I remained
12 behind my desk. He said -- I can't remember the exact
13 words, but something like -- that this fellow was in
14 this -- this fellow was in the town centre and would
15 have -- would know what -- either saw what happened or
16 heard what happened in the town centre on the Saturday.
17 Sunday morning.
18 Q. What fellow was he talking about?
19 A. He was talking about Timothy Jameson.
20 Q. So he was accompanied to your room by DI Irwin?
21 A. Yes. DI Irwin introduced him to us. He left. DI Irwin
22 left. He was going elsewhere, and this reserve
23 constable remained with Mr McBurney, and I was in the
24 office.
25 Q. Was it your impression that this was the first time

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1 Superintendent McBurney had encountered this man on that
2 day, in this context?
3 A. Well, that really didn't enter my head, because it was
4 the first time I ever saw him, and as well as that, he
5 was giving us intelligence which I was absolutely
6 delighted with. This is what I was working for all
7 week, and I -- he was introduced to Mr McBurney, so I am
8 assuming that, yes, it was the first time he met him.
9 Q. You see, you understand how important this is, P39,
10 because there is a dispute about what you were told --
11 A. Oh?
12 Q. -- about Timothy Jameson?
13 A. Right.
14 Q. Are you aware of that?
15 A. Yes. Actually, Mr Mahaffey mentioned that to me for the
16 first time.
17 Q. He did indeed.
18 A. I never heard -- he referred to somebody saying he put
19 the boot in. Isn't that right?
20 Q. That's correct.
21 A. Yes. Well, Mr Mahaffey was the first person that I ever
22 heard mentioning that. I never heard those words until
23 Mr Mahaffey actually asked me about that in my home,
24 when he came to interview me.

25 Q. You see, it's because we expect to be told later today

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1 by the gentleman I referred to by the name of G that he
2 was with Reserve Constable McCaw when they both went to
3 the police station on the 9th, and that
4 Superintendent McBurney and Inspector Irwin were
5 informed about what Timothy Jameson had said to them,
6 and there's no mention of you being present.

7 A. I was in the office.

8 Q. So what I'm trying to find out is whether or not there
9 might have been two meetings, but we will have to
10 explore that with G.

11 In any event, there was an occasion when Reserve
12 Constable McCaw came to your office --

13 A. Yes.

14 Q. -- you were present with Mr McBurney, and you were
15 informed about what Timothy Jameson had said?

16 A. Yes.

17 Q. Are you absolutely 100 per cent certain that there was
18 no suggestion at that point that Timothy Jameson had put
19 the boot in?

20 A. Absolutely 100 per cent certain.

21 Q. But you would have been concerned about his
22 involvement -- that is Jameson's -- wouldn't you?

23 A. Well, I was working, morning noon and night, to get
24 this -- to get this investigation up and running and
25 getting the people who are -- who were suspected of

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1 causing this damage to Robert. I wanted them arrested
2 and brought into the station, and to be brought through
3 the courts successfully.

4 So I was delighted that this evidence was given to
5 us to enable us to get another witness in. Absolutely
6 delighted.

7 Q. Yes. If I could just have page 14625 on the screen,
8 please. The page I'm having put up here is a transcript
9 of the handwritten note of the conversation you had with
10 Mr Mahaffey and Chief Inspector K in 2001.

11 The top half there, the bottom of the top, just
12 before K -- perhaps it would be easier if that was
13 highlighted. That's lovely. Thank you.

14 The section there:

15 "Get questionnaire."

16 A. Questionnaire?

17 Q. Look at the bit before it. This is you saying:
18 "No dealings directly. McCaw came in (didn't at
19 first think he was a cop ..."
20 McBurney was present, and yourself. You thought it
21 was late afternoon:
22 "McCaw said ... think Michael may have come to the
23 door and introduced him."
24 This is all consistent with what you have said:
25 "McB stood up. McCaw said something like this

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1 fellow was in the centre of the town ... here is a
2 fellow who heard what went on. Don't know whether he
3 said seen or heard."
4 Then something about:
5 "Get questionnaire.
6 "Got Eddy (Honeyford) & his partner."
7 Now, was Eddy Honeyford summoned to the room? Is
8 that what happened?
9 A. You mean after that person had --
10 Q. Was this was after or was it --
11 A. Yes, after.
12 Q. After. That's okay. So:
13 "Had to be invited in & ascertain what he knows ..."
14 Is that a reference to what Eddy Honeyford knew?
15 A. No, he had to be invited in, "he" being Jameson.
16 Q. "And more importantly, his involvement?"
17 A. Yes. Well, his involvement. That's how -- what did he
18 know about the situation?
19 Q. And, of course, whether or not he might have been
20 involved?
21 A. To be honest with you, anything. If he was involved,
22 you know, obviously the circumstances would be changed.
23 Q. Did the name Jameson ring a bell with you?
24 A. When this man came in?
25 Q. Yes.

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1 A. No, it didn't.
2 Q. No. Well, were the circumstances of how you heard the
3 information made clear to you? This is McCaw.
4 A. The circumstances in which he had received the
5 information?
6 Q. Yes.
7 A. It had to -- when he left, I had to be told who he was.
8 I didn't know who he was, and I was told then that --

9 later on, that he was security man for the -- for that
10 family.
11 Q. Yes. Do you know how much later you were told that?
12 A. Oh, it would have been an ongoing discussion.
13 Q. So did McCaw leave with Inspector Irwin and leave you
14 and McBurney in the room?
15 A. No, no, no. Inspector Irwin came to the door with
16 McCaw.
17 Q. Yes.
18 A. Inspector Irwin left, and McCaw was in the room with
19 Chief Superintendent McBurney and myself.
20 Q. Did you leave the room at any time?
21 A. Did I leave the room? No, I didn't leave the room.
22 Q. During that conversation when you were present in the
23 room, was it made clear to you that McCaw was a security
24 guard of Bobby Jameson?
25 A. Sorry, could you just repeat that question, please?

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1 Q. We know that the circumstances in which McCaw said he
2 was speaking to young Jameson were in the context of his
3 duty as a guard of Bobby Jameson, his father?
4 A. Yes.
5 Q. He then came immediately into the police, he says, with
6 Reserve Constable G, to impart this information to
7 somebody higher up.
8 So when it was being imparted to you, was it -- do
9 you think it was on the basis that this is a security
10 guard of a certain individual?
11 A. Yes. Yes, I would say yes, you know. I'm going from
12 memory, but I would think so, yes, because the
13 discussion was immediately afterwards. It was ongoing
14 discussion.
15 Q. So Reserve Constable McCaw said what he had to say --
16 A. Yes.
17 Q. -- and then he obviously left?
18 A. Yes.
19 Q. Did he leave with Inspector Irwin or did he leave on his
20 own?
21 A. He obviously left on his own.
22 Q. On his own. So that left in the room you and
23 Inspector Irwin and Superintendent McBurney?
24 A. No. It left me and Chief Superintendent McBurney.
25 Q. So Irwin wasn't there at all?

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1 A. No.

2 Q. So it's my misunderstanding. So it's just the two of
3 you?

4 A. Yes.

5 Q. So when he left on his own, was there any conversation
6 between you and the Chief Superintendent?

7 A. Yes, of course.

8 Q. Was there any conversation about Bobby Jameson,
9 Mr Jameson senior?

10 A. No, not at all. The conversation was in relation to
11 this fellow Jameson. I have forgotten his Christian
12 name, just off the top of my head, to find out was he
13 questioned before, to get him in, to have him
14 interviewed, you know, I was absolutely delighted that
15 this intelligence was coming in.

16 Q. But as you have said, it would have occurred to you that
17 young Jameson might have been involved in the attack.

18 A. No, I was going on the basis of what I was -- what I had
19 heard McCaw say.

20 Q. When you said to Mahaffey and K that he had to be
21 invited in -- this is young Jameson -- to "ascertain what
22 he knows and more importantly his involvement" --

23 A. Yes.

24 Q. -- is that not --

25 A. Well, no, it wasn't what I meant. I know what you

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1 are -- you are trying to say: was he involved in the
2 actual assault, his involvement at the scene, at that
3 time, in relation to who he was with? And if he was
4 involved, then the circumstances would change. But we
5 wanted to bring him in on the basis of what I was told;
6 that he either seen or heard what was going on at that
7 time when the incident occurred.

8 Q. Would it have occurred to you that this is a potential
9 suspect as well as someone who had information?

10 A. Well, I would take him in as a witness. But if he
11 was -- if he gave us information that he was a potential
12 suspect, my goodness, great, we'd got another suspect.

13 Q. Was there any discussion between you and
14 Superintendent McBurney then about the sensitivity of
15 this young man being the son of Bobby Jameson?

16 A. Yes.

17 Q. Did that discussion ensue in the immediate aftermath of
18 Reserve Constable McCaw's departure?

19 A. No, that was after -- some time after. The conversation
20 in relation to -- with Mr McBurney and myself was,
21 number 1, to see if this chap -- this man had been

22 interviewed before, because we had introduced these
23 questionnaires, and we had to see if he had been brought
24 in to the investigation before; 2, then we discovered
25 that it was Detective Constable Honeyford who had spoken

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1 with him, and then we wanted to get this man in to be
2 interviewed in relation to what information he had.
3 Q. Do you want to just look at the next page from this,
4 which is 14626?
5 Sir, I have a little bit to do on this document, not
6 much, and then I have another topic.
7 A. Okay.
8 Q. I am sure everyone can do with a break.
9 THE CHAIRMAN: We can't sit much longer before we break off
10 for lunch.
11 MR McGRORY: This is the following page just of the note of
12 the meeting you had with Chris Mahaffey and
13 Chief Inspector K. They are asking you about
14 Reserve Constable McCaw:
15 "Did McCaw ask anything?
16 "No, he wouldn't have had the confidence.
17 "How long was he there?
18 "A couple of minutes.
19 "Was there further discussion?
20 "Yes, very confidential. Keep it that way.
21
22 "Maynard? Michael? Debriefing.
23 "Yeah, that these witnesses are kept on
24 board. Mindful that Jameson was the son of Bobby and
25 knew that TC was girlfriend of AH. Confidential, not

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1 referred to by name, kept on board.
2 "Was there contact with TJ's dad?
3 "No."
4 Now, this may help us just with the timing because
5 it seems to have been in the context of discussing
6 Tracey Clarke as well.
7 A. Yes. Ongoing. And it was much later, after -- when
8 I read that, that was -- that conversation had taken
9 place after the statements were obtained.
10 Q. But just what is meant by, "mindful that Jameson was the
11 son of Bobby"?
12 A. That the police officers were -- the police officers
13 were doing security with Jameson senior, because he was

14 a contractor to Government, and at that time we were
15 discussing the security for both Jameson and
16 Tracey Clarke, and I was -- the fact that Jameson had
17 that security meant that we didn't put as much emphasis
18 on the security as we were on Tracey Clarke. He had
19 already got that security, police officers, and that's
20 what I mean by saying I was mindful that Jameson had
21 already got that.

22 Q. Yes. I just want to make it clear to you, to be fair,
23 do you understand the reason why I'm exploring this?
24 I will set it out for you.

25 A. Yes.

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1 Q. If it's correct, that senior police, including you, were
2 made aware at this point, when McCaw came in, that
3 Timothy Jameson had made a confession to having been
4 involved in the attack, then some explaining has to be
5 done as to why he wasn't arrested and questioned about
6 that confession.

7 A. But I can assure you that if I had been aware that this
8 man had made a confession, he would have been arrested.
9 I had been working so hard to get a successful
10 prosecution here, I wanted to get the suspects who had
11 murdered Robert brought through the courts successfully.

12 Q. I believe you in that, P39, but what I'm trying to get
13 to the bottom of --

14 THE CHAIRMAN: What you believe doesn't matter. It is not
15 for counsel to give evidence.

16 MR McGRORY: I am being fair to the witness so she knows
17 I am not questioning her integrity, sir.

18 THE CHAIRMAN: Well, that's the way to put it.

19 MR McGRORY: What I'm trying to get at, P39, is if there's
20 any evidence or any possibility that young
21 Timothy Jameson was treated differently than a normal
22 suspect would have been because he was Bobby Jameson's
23 son.

24 A. Absolutely no way.

25 Q. Certainly not in your mind?

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1 A. Not at all."

Further, as Chris Mahaffey stated in his Inquiry Statement at paragraph 29,

"29. I did question McBurney, Honeyford and Irwin in light of the evidence from G and P20 why Timothy Jameson was never treated as a suspect when it was alleged that he had 'put the boot in'. Honeyford raised in my view a valid point by saying 'what on earth was to be gained in not treating him as a suspect if indeed he was a suspect'. During my investigation nothing was uncovered to suggest that Timothy Jameson received any form of protection or favour."

Submissions by John P Hagan Solicitors (Robert and Eleanor Atkinson)

No Comment

With reference to the below adverse inferences or potential criticisms with regards to Eleanor and Robert Atkinson, please see submissions in sections 8.

Submissions by the Police Service of Northern Ireland

Even if the Inquiry is prepared to accept that McCaw and G were told by Jameson "he put the boot in" it doesn't follow that this vital information was conveyed to the people who could do something about it, namely the senior investigators.

Again, G has provided a varied and inconsistent account. After speaking to DS H on the 7 December 2000 he recorded a statement in which he explained that it was McCaw who spoke to DI Irwin about what Jameson had said and that it was McCaw again who spoke to DS McBurney. He "could not remember any of either conversation (15879)."

Then on the 23 March 2001 G gave a statement to PONI investigators. At this time he was able to say that he was "almost 100% sure that Timothy Jameson's comments about putting the boot in would have been relayed (14351)."

The Inquiry will observe that it was at this point (23 March 2001) that the wheel had turned full circle: from not having any memory of Jameson's confession when he first spoke to DS H (29 November 2000), G had moved to having such a memory (7 December 2000) but not remembering any part of the conversation with detectives, to now recalling ("almost 100%) that detectives were told about what Jameson had said.

Most police officers would have made a note for the record in their notebook about such conversations. However, G made no such note. He recognised the fact that such an omission was unusual when he made his statement to PONI: "I cannot understand why neither me or P20 made notebook entries concerning what Timothy Jameson told us. I am not sure whether the Detective Superintendent told his not to make entries."

By the time G makes his statement for the purposes of the Inquiry there is another development in his memory. At that point he is able to declare that in fact he asked DCS McBurney whether they should make notebook entries

only to be told, "don't worry, we'll deal with it (Para 17)." By the time he came to give oral evidence the explanation for failing to make a notebook entry was complete. Now G had it that McBurney gave them a positive direction not to make a note: he said something along the lines of "don't bother making a note, we'll deal with it (p. 12)."

Against this background of ever decreasing consistency it is submitted that the clear accounts of DI Irwin, P39 and DCS McBurney should be accepted. Interestingly, neither P39 nor McBurney could recall seeing G when Irwin brought McCaw to the office of P39. None of them were told that Jameson had admitted putting the boot in. They were told that Jameson had seen or heard what had happened in the town centre (per P39, p. 93), which was a significant development in itself. This was valuable new information. It was decided that he should be interviewed as a matter of urgency. DC Honeyford was given that task.

When Mr. Honeyford was interviewed by PONI about his knowledge of Jameson he said, "what was to be gained in not treating him as a suspect if he was one (per Chris Mahaffey, Para 29)." Mr. Mahaffey considered this to be a valid point. If the investigators were to choose to corrupt the investigative process by ignoring what G allegedly said to them about Jameson's admission they must have had some interest in doing so, otherwise what would be the point? There is no basis for suggesting that these officers had any such interest.

For all of these reasons it is submitted that the Inquiry should reject the account of G.

Submissions by the Public Prosecution Service

1. The PPS does not understand there to be any criticism of its consideration of the allegations against Timothy Jameson, once it became aware of them. It does, however, wish to make short observations on this issue, for completeness.

2. At no stage during 1997/1998 was the ODPP made aware that Timothy Jameson was in any way suspected of involvement in the murder of Robert Hamill. It was the ODPP's understanding that his only connection to the incident was as a potential witness. In a letter dated 19 February 2001 from the ODPP to PONI, Mr Kitson explained: "*There is, in the papers on the case held in this office, no record of information relating to 'admissions made by Timothy Jameson as to his personal involvement in an attack upon Robert Hamill.' I cannot put the matter any further.*" ([14659]) This letter was followed up with a meeting between Mr Kitson and PONI (Mr Mahaffey and Mr xxxxxx) at which Mr Kitson confirmed the position in relation to Timothy Jameson as far as the ODPP had been involved, namely that he was a witness, not a potential suspect, but that he had subsequently retracted his evidence in any event ([14612]):

“RETRACTION OF EVIDENCE (WITNESS B – TIMOTHY JAMESON) – Discussed the letter from Raymond to Chris Mahaffey dated the 19th February 2001 in greater detail and CM asked, specifically, if there were any notes of possible emissions [sic] made by Timothy Jameson to the DPP and if so, what the normal DPP procedure would be on such an occurrence i.e. would they refer the allegation to the RUC to be investigated. RK stated that he was almost 100% sure that no omissions [sic] were made by TJ, as they viewed him as a crown witness, at that stage. He was later discredited as a witness due to his remarks about being drunk and police putting words in his mouth, when the statement was taken and general inconsistencies with his statement. RK stated that requests under Art 6.3 have been given previously as procedure to the RUC – Chief Constable for investigation, after specific emissions [sic] have been relayed to the DPP. RK said that there was no indication TJ was involved in the incident but he was at the scene.

CM pointed out that DI Irwin denies being present at the retraction of evidence by TJ but RK opinion, from reading of the DPP file note by Roger Davidson, is that they were all present. This is also the opinion of CM. RK will confirm with Roger Davidson – his opinion or recollection relation to the file note he made.”

3. In February 2003, the ODPP received a police investigation file in relation to Timothy Jameson as a suspect in the murder of Robert Hamill. The report from DS McDowell set out the following history ([15867]):

“In the course of completing enquiries into an investigation of conspiracy to pervert the course of justice by R/Constable Atkinson, Michael McKee and others regarding the murder of Robert Hamill, H spoke with G on 29 November 2000. H was making enquiries into the use of a mobile phone which G and R/Constable McCaw had been using on the 27.4.97. At that time both officers were detailed personnel protection duties with Mr Bobby Jameson, a Security Forces Contractor (Timothy Jameson’s father). G was spoken to concerning any knowledge he may have had surrounding the conspiracy to pervert the course of justice by R/Constable Atkinson with Michael and Andrea McKee.

G stated that his knowledge of the Hamill murder related only to the fact that he and R/Constable McCaw had heard that Timothy Jameson had seen a lot in the town and was present when the fight occurred. With regard to the mobile phone which R/Constable McCaw and himself had shared, he was unable to recall the telephone number but undertook to carry out further enquiries. It was agreed that H would contact G at a later date to establish if he had identified the mobile phone number. At that initial conversation on 29.11.00 with H, G made no comment in relation to his later assertions that Timothy Jameson had said ‘he had put the boot in’.

On the morning of 7 December 2000 H spoke again with G to establish if he had located the mobile telephone number and to further clarify where he had heard about Timothy Jameson being in the town that night when Jameson had apparently 'heard and saw a lot'. G then disclosed to H that he had given the matter some thought and could recall that he and R/Constable McCaw had been at Bobby Jameson's house at xxxxxxxxx, Portadown, when Timothy had told them he was in the town centre that night and had seen a lot going on and that he had 'ran past and put the boot in'. ...

As a result of the new information by G, P20 was spoken to by H and D/Constable xxxx on 8 December 2000 and asked he could recall these remarks by Timothy Jameson to himself and G. David McCaw had suffered mental illness and throughout the interview maintained that he was unable to recall any detail whatever regarding their dealings with Timothy Jameson. ...

G alleged that he and P20, upon receipt of this information from Timothy Jameson, made their way directly to Portadown Police Station and spoke with senior CID officers. It would appear that the two Reserve Constables first spoke to D/Inspector Irwin who, at that time, was leaving Portadown Police Station. D/Inspector Irwin then introduced P20 to Ex D/Chief Superintendent McBurney and P39 who were also present in an office at the Police Station at that time.

The handing of this information in consequence of G' statement made to H on 7.12.00 was investigated separately by Mr Chris Mahaffey of the Police Ombudsman's Office...

Timothy Jameson attended Lurgan Police Station by arrangement on 19 November 2002. He was arrested by D/Sergeant McDowell at 1940 hours and interviewed in the presence of his solicitor, Mr Richard Monteith, by D/Sergeant McDowell and J. He denied having made any such remarks to G and P20 and stated he had nothing to do with the disturbance or assaults. Timothy Jameson said that he would rarely have been at his father's home at xxxxxxxxx. He said, that at that time, he lived with his mother on the Armagh Road in Portadown. He said that he did smoke at that time but that his father was not aware of this fact and that he would not have smoked in his presence.

The fact that the police escort were there mean that his father had to be present at the house at that time.

...

A number of witnesses both civilian and police, have stated that they observed Timothy Jameson in the town centre at the relevant time. There is no evidence provided from any of these persons to indicate that Timothy Jameson was involved in the affray or that he assaulted any person at the time of the incident.

...

G appears to be a credible witness. G is currently serving in the Police Service, however he was recently on long term sickness absence from the 3.1.01 to 22.5.02 with a depressive illness.

P20 would not be a credible witness. P20 was medically retired from the Police Service on 30.5.00 suffering from severe mental illness.”

4. Under “Recommendations”, DS McDowell noted:

“The account of Timothy Jameson’s remarks by G are not corroborated either by G’s contemporaneous notes or by his colleague P20. During interview Timothy Jameson made no admissions either to having made this remark or taking part in the affray whatever.

The content of the debrief of the information imparted by G and P20 to CID officers is being dealt with separately by Mr Mahaffey of the Ombudsman Office. The investigative findings will be forwarded separately to the DPP by PONI.

Recommendations regarding the prosecution of Timothy Jameson for any criminal offences resulting from the incident can only be fully assessed when the evidence of D/Inspector Irwin and D/Chief Superintendent McBurney are fully examined and forensic comparison of Timothy Jameson’s DNA with outstanding crime scene samples are completed.”

5. The views and recommendations of the supervising officer, D/Supt K, endorsed DS McDowell’s report and noted in relevant part:

“That said, in the absence of any forensic evidence to connect Timothy Jameson to the assaults on Robert Hamill and D, the case rests solely on the evidence of G. In these circumstances, the question of whether there is a reasonable prospect of conviction is a matter to be considered by the Prosecuting Authority and will have to be made in the context of the recollections of Ex-D/Chief Superintendent McBurney, P39 and D/Inspector Irwin.

This Report should be forwarded to Mr Morrison of the Director of Public Prosecutions. Mr Morrison is currently the DPP directing officer in relation to other criminal matters arising from the incident which led to the death of Mr Robert Hamill.”

6. The covering letter with the file from A/D/Supt Thompson, on behalf of the Chief Constable, to the Legal Registrar stated ([19471]):

“Mr Jameson is a member of a well known Portadown family with strong links to Loyalist paramilitaries.

The evidence in this case is that of the recollections by G of comments made by Mr Jameson.

Forensic evidence is still outstanding and this may have a considerable bearing in this case but I feel that the matters in question in this file are:

(a) Did Mr Jameson make the comments reported by G, and

(b) If it is accepted that he did, is that in itself evidence of his participation in the murder.

I consider that even if 'a' is accepted there is still an enormous gap between that and having any realistic prospect of a conviction for the murder of Mr Hamill.

In the circumstances and with the caveat that forensic results awaited might change matters, I recommend No Prosecution."

7. On 18 April 2003 Mr Kitson issued a Further Direction stating ([31715]):

"The contents of these additional police papers are noted. I direct no prosecution. The available evidence is insufficient to afford any reasonable prospect of a conviction of Timothy Robert Jameson for any offence." (see also, 2nd W/S of Raymond Kitson, [82087], §12)

8. A report dated 23 June 2005 by Mr xxxxx, then Senior Assistant Director, sets out the decision-making process of the ODPF:

"Witness B was not charged. Police reported Witness B to the Director. Police did not recommend prosecution of Witness B. This report by police arose from an investigation in 2000 into allegations of conspiracy to pervert the course of justice by other persons regarding the murder of Robert Hamill.

The evidence was a verbal comment allegedly made by Witness B to G and P20 sometime after the incident on 27 April 1997. The Reserve Constables were on duty providing police protection to Witness B's father, a construction contractor who, because of carrying out work for police, was under threat from Republican paramilitaries.

It was concluded that the evidence was wholly insufficient to prosecute. In this regard the following matters were noted:

(a) Neither G or P20 made any contemporaneous notes at the time.

(b) When first spoken to by police, G had stated that he had heard that Timothy Jameson (Witness B) had been in town and had heard and seen a lot. Subsequently G stated that he had given the matter a lot of thought. He then stated that Timothy Jameson (Witness B) told them that he was in town that night and saw a lot going on and ran past and put the boot in.

(c) *P20 could not corroborate G's evidence.*

(d) *Jameson denied making any such remarks.*

(e) *G asserted that he had reported what Jameson had said to investigating police at the time (Detective Chief Superintendent McBurney and Detective Inspector Irwin). The Police Ombudsman for Northern Ireland conducted a separate inquiry into actions carried out by the aforementioned police officers on foot of receipt of information from G. The police Ombudsman did not submit to the Director any file in relation to that inquiry. This may indicate that the Police Ombudsman did not consider that any criminal offence had been committed by either police officer.” (excerpted in the Second Advice of David Perry QC, [82182]-[82207], §4.14)*

Submissions by Richard Monteith Solicitors (Civilian Witnesses)

We agree the first two sentences, but otherwise repeat 8 above.

Submissions by Russell, Jones & Walker Solicitors (Michael Irwin)

See 8 above.

Submissions by Emmett J Kelly & Co (G)

Witness G's Evidence, both in various written statements and in his oral testimony to the Inquiry is that:

A: Timothy Jameson, in a conversation at Robert Jameson's home, told G and Reserve Constable McCaw that he, Timothy Jameson, had been at present at the disturbance arising out of which Robert Hamill lost his life and that he had 'put the boot in' as he ran past.

B.G and Reserve Constable McCaw together relayed to Messrs Irwin and McBurney what Timothy Jameson had told them, including Jameson's admission that he had 'put the boot in'.

I will deal with A and B separately as follows:

A. Who are the witnesses who could have given evidence in relation the proposition advanced at A.above?

1.RESERVE CONSTABLE McCAW

This witness declined to co-operate with the Inquiry, alleging total amnesia in relation to the conversation described by Witness G.

2.TIMOTHY JAMESON

The evidence of this witness is so replete with inconsistencies and downright lies that in no circumstances could he be accepted as a witness of truth. The

web of lies he has spun is so dense that on occasions too numerous to mention he has been caught out as he struggles in vain to extricate himself from the absurdity of his position.

For example, at Paragraph 5 of his statement to the Inquiry, Jameson states as follows in relation to the conversation referred to at A above:

‘I knew that the men who protected my Dad were police officers but I definitely did not have a conversation with either of them about the incident. The conversation referred to in Reserve Constable G’s statement never happened.’

However, it is beyond dispute that the reason why Timothy Jameson was interviewed on 9th June 1997 was that police officers leading the murder investigation had been told that he, Jameson, had told Reserve Constable McCaw and Witness G that, at the very least, he had been present at the murder scene.

Furthermore, in Paragraph 6 of the statement to the Inquiry made by Robert Jameson, it is accepted by him that, despite the denial of Timothy Jameson, SOME conversation about the incident in question did in fact take place between Timothy Jameson and P20 and Witness G. Robert Jameson states as follows at Paragraph 6:

‘I have been told that the reason Timothy was called in to give a statement to the police was because two of my protection officers, Reserve Constable G and Reserve Constable P 20, alleged that Timothy told them he saw what happened on the night. I DID NOT KNOW AT THAT TIME THAT TIMOTHY HAD BEEN SPEAKING TO THE OFFICERS. I FOUND OUT ABOUT IT LATER IN WHAT I CAN ONLY DESCRIBE AS A ROUND ABOUT SORT OF WAY. I CANNOT REMEMBER HOW OR WHEN EXACTLY(my emphasis)’.

In all the circumstances, the panel may feel that the evidence of Timothy Jameson is so riddled with deceit and fabrication that his evidence in respect of this matter cannot be preferred to that of Witness G.

3. WITNESS G

What possible motive could have driven this witness to make this very serious allegation against Timothy Jameson if it were untrue? No one, including Timothy Jameson and his father, has suggested either that Witness G has acted in bad faith or for some improper motive, so the panel may well take the view that Witness G has made and is continuing to make this allegation because it is true

B. Who are the witnesses whose evidence would have been relevant to the proposition advanced at B above?

1. RESERVE CONSTABLE McCAW

This witness declined to co-operate with the Inquiry, alleging total amnesia in relation to this matter.

2.MICHAEL IRWIN

This witness claims that on 9th May 1997 he was in a hurry to proceed to a meeting elsewhere when Reserve Constable McCaw came to him at Portadown Police Station with information about a potential witness, Timothy Jameson. Mr. Irwin brought him to a room to meet Maynard McBurney and P39. Mr. Irwin then left for his other appointment and was not present for any of the conversation between Reserve Constable McCaw and Maynard McBurney and P39. He does not refer at all to Witness G.

3.MAYNARD McBURNEY

Sadly, this witness died during the course of this Inquiry and before he had an opportunity to give oral evidence. However, it is apparent from his various written statements and interview transcripts that his oral evidence in relation to this matter would have been to the effect that on 8th or 9th May 1997, he was in an office with P39 in Portadown Police Station, when Detective Inspector Irwin came to the office and introduced Reserve Constable McCaw who told McBurney that Timothy Jameson had told him that he had witnessed the attack upon Robert Hamill. He did not recall seeing Witness G in the room.

4.P39

This witness gives an account broadly similar to those of Messrs. McBurney and Irwin, including the assertion that she did not recall Witness G being present when Reserve Constable McCaw came to report to Mr. McBurney about what Timothy Jameson had told him.

5.WITNESS G

This witness disputes the accounts given by McBurney, Irwin and P39. He gave oral testimony to the effect that, contrary to the evidence of these more senior police officers, he was in the company of Reserve Constable McCaw at all times from when Timothy Jameson first made the disclosure until the time he and Reserve Constable McCaw left the police station. He does not accept the evidence of Mr. Irwin about the events surrounding the disclosure to senior police of the possible involvement of Timothy Jameson. He has stated in oral evidence that he was present with Reserve Constable McCaw when McCaw first told Mr. Irwin that Timothy Jameson had confessed to 'putting the boot in at the scene'. He has further stated that he went with Mr. Irwin and Reserve Constable McCaw to the office of Mr. McBurney where, in the presence of Witness G and Mr. Irwin, McCaw repeated what he had just told Mr. Irwin.

Witness G is adamant that P39 was not present on the day in question.

In those circumstances, if the panel accepts the evidence of Witness G, one explanation of the evidence of P39 is that she is referring to a meeting with Reserve Constable McCaw on 8th May at which Witness G accepts he was not present.

According to the evidence of Witness G, the only police officers to have definite knowledge of the fact that Timothy Jameson had told Witness G and Reserve Constable McCaw that he had 'put the boot in' were McBurney, Irwin, McCaw and Witness G.

Mr.Honeyford, prior to his interview with Timothy Jameson, appears not to have been told by either McBurney or Irwin that Timothy Jameson had confessed to putting the boot in and the panel may take the view that McBurney and Irwin, for whatever reason, chose to keep this incriminating information to themselves, even concealing it from P39, one of their fellow senior officers.

In any event, Witness G has absolutely no motive for giving a version of events at odds with those of his former senior officers. He had a long career in the police service and has been involved in security work for the police after his retirement from the force. No one, either in the thousands of pages of written documentation or in oral evidence to the Inquiry, has suggested that Witness G has some hidden agenda or that he has anything to gain by taking the stance he has taken and maintained.

In those circumstances, the panel may take the view that Witness G is a witness of truth whose evidence may be relied upon.

Potential criticisms and adverse inferences

Andrew Allen

- Participated in the attack on Robert Hamill

Eleanor Atkinson

- Gave a false account to the RUC about a telephone call made to the home of Allister Hanvey on 27 April 1997

Robert Atkinson

- Warned Allister Hanvey to destroy the clothing that he wore on 27 April 1997.
- Gave two false accounts to the RUC about the telephone calls to the Hanvey household
- Entered into a conspiracy with his wife and the McKees to cover the telephone call of 27 April 1997

Stacey Bridgett

- Participated in the attack on Robert Hamill

Tracey Clarke

- Gave a false statement to the police which led to the detention of the persons named in it
- Gave false evidence to the Inquiry

Dean Forbes

- Participated in the attack on Robert Hamill

Allister Hanvey

- Participated in the attack on Robert Hamill
- Provided the RUC with a false account of his movements and his clothes
- Destroyed the clothing that he was wearing at the time of the attack

Marc Hobson

- Participated in the attack on Robert Hamill

Edward Honeyford

- Obtained false statements from Jonathan Wright and Timothy Jameson by exerting undue pressure

Michael Irwin

- Shared responsibility with Maynard McBurney and **P39** for the conduct of the investigation
- Failed to consider treating Timothy Jameson as a suspect

Timothy Jameson

- Participated in the attack on Robert Hamill
- Falsely alleged DC Honeyford took a false statement from him

G

- Misled H about what he and McCaw told detectives on 9 May 1997

H

- Not recording that G told him that Timothy Jameson had “put the boot in” when he interviewed him in November 2000

Maynard McBurney

- Failed to ensure that the investigation into the murder of Robert Hamill was conducted with due diligence and/or conducted the investigation so as to protect Allister Hanvey and Robert Atkinson

Andrea McKee

- Provided false information at the meeting in Seagoe
- Coerced Tracey Clarke into giving a false statement to the RUC about the murder of Robert Hamill and the tip-off allegation against Robert Atkinson
- Falsely accused Robert Atkinson of conspiring to pervert the course of justice
- Gave false evidence about the above to the Inquiry