

THE ROBERT HAMILL INQUIRY

CLOSING SUBMISSIONS ON BEHALF OF THE FAMILY OF ROBERT HAMILL

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PART ONE

THE ISSUES IN THE CONTEXT OF THE TERMS OF REFERENCE

The terms of reference of this Inquiry are as follows;

“To inquire into the death of Robert Hamill with a view to determining whether any wrongful act or omission by or within the Royal Ulster Constabulary facilitated his death or investigation of it; or whether attempts were made to do so; whether any such act or omission was intentional or negligent; whether the investigation of his death was carried out with due diligence; and to make recommendations”

In our respectful submission the terms of reference can be separated into three broad headings;

1. The conduct of the RUC
2. The conduct of any other agency or body that might have had an adverse effect on the due diligence of the investigation
3. Recommendations

The RUC

It is our submission that the Inquiry must examine the conduct of each and every RUC officer involved in this case and to determine three questions;

Question 1. Did this officer do any act or make any omission that (a) facilitated the death of Robert Hamill or (b) obstruct the investigation of it?

Question 2. Did this officer attempt to do anything which would have (a) facilitated the death of Robert Hamill or (b) obstructed the investigation of it?

Question 3. If the answer to questions 1 or 2 is yes, were the acts, omissions or attempts deliberate or as a consequence of negligence?

We have confined our submissions on behalf of the Family to those individuals and organisations in respect of whom we seek to make significant criticisms. It is of course open

to the Inquiry to make criticism of other individuals and organisations as it sees fit.

It is entirely possible that the Inquiry, when examining the conduct of individual officers, may identify problems with the overall conduct of the investigation which are systemic in nature and not the fault or responsibility of any individual officer. We therefore submit it would be desirable that the Inquiry should make comments or recommendations on organisational or systemic matters as it deems appropriate

Other Agencies

It is submitted that the “due diligence” aspect of the terms of reference insofar as the RUC is concerned will be adequately addressed in asking the questions posed above. The Inquiry however will have to examine how the investigation was affected adversely or otherwise by the actions of any other body outside the RUC that was concerned in any way with this investigation. We submit that the following agencies or bodies had sufficient connection with this murder investigation to merit scrutiny under this heading;

FSNI

The ICPC

The office of the DPP and;

The Northern Ireland Office

Recommendations

This final part of the terms of reference requires no further elaboration.

CAUSE OF DEATH

1. Overview

2. Primary Injury

3. Hypoxia

(a) Observations

(b) Pathology

4. Medical Treatment

5. Causation

Overview

1. The Inquiry have identified in their closing submissions and indeed in their opening two questions which may have to be addressed in the context of the issue of the cause of Robert Hamill's death.
2. The first is whether the assault was the cause of Robert Hamill's death or whether there was some other intervening cause.
3. The second is whether the medical findings reveal something about the intensity and duration of the assault.
4. It is the family's submission that it is inappropriate to deal with the second of these two matters in the context of the Inquiry's document on the cause of death. It is our

submission that the evidence as to intensity and duration of assault must be viewed as a whole. That is to say the medical findings cannot be considered in isolation from the eyewitness evidence regarding the blows struck. The evidence of the latter may, for example, help to reconcile conflicts in the former and *vice versa*.

5. In respect of the first question it is assumed that the use of the phrase “intervening cause” means an intervening act sufficient to break the chain of causation between the primary injury as the result of the assault and the death of Robert Hamill.
6. It is the family’s submission that this question, (which does relate directly to the cause of death) as a matter of evidence may be divided into two parts:
7. Firstly whether there was in fact an intervening event or process subsequent to the initial injury from the assault which can be considered a material cause of death.
8. Secondly, if the panel do decide that there was in fact an intervening cause and that it materially contributed to the death, then the question becomes one of whether it was sufficiently material and independent of the original injury so as to break the chain of causation.

PRIMARY INJURY

9. Of course it is implicit in the foregoing analysis that there must be a finding of fact as to the nature of the major or primary injury sustained as a direct result of the assault. All the medical witnesses are agreed that the primary injury to Robert Hamill was Diffuse Axonal Injury. Their findings are as follows.

(i) Professor Jack Crane (State Pathologist)

Autopsy Report (9567)

“Detailed examination of the brain however and in particular its microscopic examination revealed widespread damage within its substance of a type known as diffuse axonal injury . This condition, most frequently encountered in acceleration/deceleration injury as a result of road traffic accidents is also well recognised as occurring as the result of repeated blows to the head such as by punching or kicking and this would seem the most likely mechanism of injury in this

case.”

Inquiry Statement (80218)

Para. 13-16

“Significant injury in this case was diffuse axonal injury (DAI). This injury may occur without there necessarily being severe external injury. Occurs as a result of the brain being shaken inside the skull. It is recognised as occurring in assaults particularly those lying on the ground when kicked. DAI shows up in pathology examinations rather than CT scan as the former are microscopic.”

During both his oral evidence at trial and to the Inquiry Prof Crane’s finding that there was DAI was not challenged. His evidence rather concentrated on what degree of force and what mechanism might produce DAI.

(ii) Dr Herron (Neuropathologist)

Prof Crane’s findings were informed by the neuropathology report of this witness

Report 29/10/97 (31396)

Comment:

“In summary, the predominant finding in this case is the severe diffuse axonal damage... This pattern of injury is consistent with having been caused by trauma. It is indicative of a severe head injury”

Inquiry Statement (80441)

Para14

“The findings suggested to me that Mr Hamill had a diffuse brain injury that involved the deep structures of the brain, which was important, because he had been unconscious. The macroscopic findings suggested to me that the particular diagnosis of diffuse axonal injury was the cause of the unconsciousness.”

(iii) Dr Lawler (Independent Consultant Pathologist)

Report 23/11/05 (72236)

“As I believe that the neuropathology is fundamental to the pathological interpretations in this case, I have advised that this aspect be reviewed by a specialist neuropathologist”

Dr Lawlor then goes on, later in his report, to adopt the findings of Dr Reid.

Oral evidence (16-01-09)

“25 A. I think that we have evidence externally and internally

8

1 of significant blunt force injury to the deceased's

2 head. I have seen cases where there has been far more

3 than there is here. Of course I have, but,

4 nevertheless, there is evidence that there has been

5 significant blunt force trauma.

6 I think that we have to look very closely at the

7 *neuropathological findings in this context also, because*
8 *I think that the extent of the diffuse axonal injury*
9 *described by all those who have examined the microscope*
10 *sections from the deceased's brain I think also reflects*
11 *the fact that there have been multiple impacts to the*
12 *deceased's head."*

(iv) Dr Reid (Independent Neuropathologist)

Report 21-11-05 (72532)

"THE EXACT NATURE OF THE BRAIN DAMAGE

In my opinion he had sustained blows to his head which resulted in the fractured left sphenoidal wing and the haematoma over the left supra-orbital plate...

During these injuries he had acceleration/deceleration damage to his brain resulting in traumatic diffuse axonal injury of Grade II microscopically."

Whilst, in our submission it can be clearly established as a fact that DAI was the primary injury the question then arises whether it can be established as a fact on the available evidence that there was an intervening act which materially contributed to Robert Hamill's death. The Inquiry submissions in this regard focus on two possibilities, firstly that of hypoxic brain damage as a result of first aid or the lack thereof; and, secondly the possibility of Neuroleptic Malignant Syndrome as a result of the administration of Chlorpromazine by the medical personnel treating Robert Hamill's. (These two matters are referred to at various points in the Inquiry bundle as potential factors in Robert Hamill's death.)

HYPOXIA

10. The medical evidence on this issue relates to the observations of eyewitnesses at the scene and the medical personnel treating Robert Hamill's and the scientific findings of both sets of Pathologists.

(a) Observations

(i) R/Con Cornett

Police Interview re Neglect 2-10-97 (9464)

“...then I went to (Robert Hamill), now he had hustly breathing, it was very hustly and I actually thought that he could have had a punctured lung and I was, I sort of worried, and that's why I kept screaming for ambulances”

(ii) R/Con Silcock

Police statement 27-04-97 (0700)

“...having difficulty breathing...”

Disciplinary interview 20-09-01 (10480)

“...rasping from his breathing...”

Inquiry Statement (81161)

Para 9

“...I could hear that he was struggling with his breathing. I am trained in first aid and put my hand on his back to turn him over into the recovery position. It was clear to me

from the vibration I felt in his back as I moved him that he was definitely having trouble breathing.”

(iii) Con Neill

Police statement (00680)

“The male outside Eastwoods was breathing, rasping...”

Police Interview re Neglect (09417)

NEILL “...I had already been over to

Hamill and he was, his breathing was really rasping

Well what do you mean by rasping now ?

NEILL It was going, it was like, it was nearly the death rattle you know the last (intake of breath) it was.

As if he couldn't breath?

NEILL As if he, as if, actually he wasn't breathing through his mouth as if it was somewhere else.

Inquiry Statement (81035)

Para 29

“...he was breathing but it was raspy.”

Oral evidence 19-05-09

20

9 *Q. Was he breathing in a laboured way throughout?*

10 *A. It was just sort of raspy, you know, whether it was --*

11 *just a raspy sort of breath, but he was still breathing,*

(iv) David Morrow (Paramedic)

Inquiry Statement (80978)

Para. 15

“He did not have any difficulty breathing but an unconscious patient will breathe more slowly and so it is standard procedure to give them oxygen. Glen (Stewart) and I agreed at the time that he had a good strong pulse and a good colour which shows he was receiving adequate oxygen.”

(v) Glen Stewart (Paramedic)

Inquiry statement (81204)

Para. 10

“he was breathing on his own but I would say it was laboured.”

Para. 14

“I tried to insert a plastic airway into his throat to assist his breathing but his teeth were clenched. Mr Hamill’s breathing was still laboured in the ambulance...”

Oral evidence 25-02-09 para 8.

- 8 *Can I get you to expand, please, on this and tell us*
9 *what you mean by "laboured breathing", and how that*
10 *would have appeared at the time?*
11 *A. Well, laboured breathing is, when we breathe normally,*
12 *you wouldn't hear us unless somebody would get down with*
13 *their ear to listen to your breathing, but you could*
14 *hear the noise when he was breathing, laboured breathing*
15 *when -- the breathing was slow. It wasn't -- it was out*
16 *of the normal sync for anybody breathing. So it was*
17 *like slow breathing, but there was a noise, noisy*
18 *breathing. It is classed as laboured breathing when it*
19 *is slow and noisy.*
20 *Q. Would "raspy" describe it?*
21 *A. "Raspy" could be fair enough to describe it, yes.*

(vi) Maureen Millar (Nurse in Charge CAH A&E)

Inquiry Statement (80966)

Para. 5

“He was brought in by ambulance and was being given oxygen en route to the hospital.”

Para. 9

“Given that his breathing was very loud and snorty, oxygen would have been applied straightaway.”

Oral Evidence

67

15 *Q. Then you have, "Respiration:" is "inadequate".*

16 *Can you help us with any recollection you have about*

17 *that?*

18 *A. His breathing, I recall, was quite snorty, loud and*

19 *inadequate. He wasn't breathing properly, which meant*

20 *that his oxygen levels wouldn't be very good. So he*

21 *would have oxygen applied immediately.*

(vii) Maureen Hagan (Staff Nurse CAH A&E)

Inquiry Statement (80339)

Para. 20

"I have also written in the top right hand corner of the (triage) form: "unconscious, breathing noisily, wound to back of head". I obtained this information from my own observations of the patient."

(viii) Dr Boon Low (SHO CAH A&E)

Inquiry Statement (80691)

Para. 17

"I noted that Mr Hamill was breathing but there was evidence of upper airway obstruction and he would not open his jaw. I was trying to insert an airway into his mouth to lift the tongue out of the way to help with the breathing as this is the common cause of something obstructing the airway, but his jaw was clenched tight."

Para. 19

"Mr Hamill's oxygen saturation was 75% which is a very life threatening level of oxygenation. It was therefore necessary to "bag him". By this I mean putting a mask over his face and squeezing a bag which delivers oxygen to help him breathe. In effect, blowing air into his lungs. I was able to tell there was upper airway obstruction because Mr Hamill was breathing noisily which is usually a tell-tale sign of upper airway obstruction. His circulation appeared to be stable..."

Oral evidence (14-01-09)

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19 Q. Where you say:

20 "Upper airway obstruction. Will not open jaw."

21 Is that the same thing? Has he got an obstruction

22 which is, in fact, that he wouldn't open his jaw, or

23 *were they two separate things?*

24 *A. What happens is that, to assess upper airway*

25 *obstruction, the first sign of it is obviously you can*

39

1 *hear sounds, a bit like snoring. So there are signs of*

2 *upper airway obstruction. I felt in this patient there*

3 *were signs of upper airway obstruction. The next thing*

4 *I did was try to open his airway -- open his mouth to*

5 *put what we call a Guedel airway to try to lift out the*

6 *tongue, because quite often it is the tongue that falls*

7 *down and obstructs the upper airway.*

8 *Q. The oxygenation of 75 --*

9 *A. Uh-huh.*

10 *Q. -- can you tell us the significance of that?*

11 *A. Well, I mean, anyone with oxygen saturation of 75%,*

12 *that's very low. Normal person's oxygen saturation*

13 *is -- well, it is 95% to 100%.*

14 *For example, patients with COPDI, people who have*

15 *chronic lung disease and are very used to a low level of*

16 *oxygen, you know, about 88%, 89%, 90%. 75%, if anybody*

17 *has oxygen of 75%, they would be very, very -- well,*

18 *they wouldn't be conscious, would they? So something is*

19 *very wrong there.*

20 *Q. Is that associated with airway obstruction?*

21 *A. I believe so, yes.*

22 Q. By "bagged", I think you explain in your witness
23 statement at a later point that this is a bag over to
24 introduce oxygen?
25 A. Yes. We put a mask over the face and then this mask is

40

1 attached to a bag which is filled with an oxygen
2 reservoir. Then we squeeze the bag to blow the oxygen
3 into the lungs to try to bypass the airway.

(b) Pathology

(i) Dr Herron (neuropathologist)

Inquiry Statement (80441)

Para 31

If the patient has lost a lot of blood and his heart has stopped or his airway has been obstructed, or his brain is so swollen then blood and oxygen cannot get to the vital areas of the brain. The cells that are responsible for consciousness may die, but a person can be unconscious and still survive for a prolonged period of time in a vegetative state. This is a form of hypoxic/ischaemic injury.

Para 32

I excluded hypoxic/ischaemic injury as a cause of the unconsciousness as it would have had to have been there from the time of the injury. Since Mr Hamill died 11 days later, the brain cells would have had this period of time to react and that reaction was not there... There was no evidence of an 11day reaction to suggest that there was a hypoxic/ ischaemic brain injury that caused his initial unconsciousness.

Para 33

There was some acute reaction to hypoxia/ischaemia that occurred shortly before his death, but this would not have explained all of Mr Hamill's injuries or his prolonged unconsciousness. I think if I was writing up this case again, I would perhaps discuss the hypoxia/ischaemia more. I would add another paragraph to say that there was no established hypoxic/ischaemic damage that caused the initial unconsciousness. I suspect that at the time (of writing his report) I was trying to emphasise that major pathology which was the axonal injury."

Para 34

I essentially agree with Dr Reid's conclusions about hypoxia in her report at pages 72531 to 72533. I agree that there was perhaps hypoxic/ischaemic change around the time of death and this did not have an effect earlier on. However Dr Reid gives a statistical statement at page 72533 that hypoxia contributed to worsening the original brain injury by less than one third. I do not know of any literature or any mechanism that would allow me to make a statement like that...To be clear, for the reasons I have already stated, my view is that the hypoxia/ischaemia was not related to Mr Hamill's original condition.

Oral evidence p 62

"We have been told that

24 *the oxygen saturation of Mr Hamill when he arrived at*

25 *Craigavon Hospital was 70%. Can you comment on what*

63

1 *that tells us?*

2 *A. I can't comment on that statistic because it is not*

3 *something I deal with on a day-to-day basis, but I will*

4 *try to clear this issue to the understanding of*

5 everybody.

6 Hypoxia means there is not enough oxygen in your
7 blood. If you were allowed to do experiments where you
8 could put a patient on a ventilator and keep their heart
9 going and remove their oxygen, they wouldn't come to any
10 significant damage. There has to be a loss of blood
11 flow as well. The hypoxia per se does not do long-term
12 damage. That's when I have put "the hypoxic/ischaemic
13 change". Ischaemic change is lack of blood flow. So it
14 is the combination of those things you would typically
15 get after a cardiac arrest.

16 The brain reacts in a stereotypic way to
17 hypoxic/ischaemic damage. It causes a particular change
18 that we see under the microscope to the nerve cells.
19 There was a change to the nerve cells that probably
20 happened in the day or so before his death that could
21 have a number of causes, but what we needed to address
22 was the cause of this man, Mr Hamill's, initial
23 presentation.

24 The pattern of injury to the brain showed that there
25 was no hypoxic/ischaemic damage that would have occurred

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1 at the time of admission to hospital and that was not
2 the cause of his unconsciousness and that was not the
3 cause of his axonal damage. If it had been, then the

4 *brain would have an 11-day reaction to that, and it*
5 *didn't.*

6 *Q. That's quite clear, is it?*

7 *A. I think it is accepted by all the authors, yes."*

(ii) Prof Jack Crane

Oral evidence 15-01-09 para. 19

"5 *Q. Can you help us with how somebody with 75% saturation at*
6 *that stage would then not, a week or so later, show the*
7 *signs of a hypoxic injury?*

8 *A. Yes. Maybe I have oversimplified it in my statement.*

9 *There was -- and I think it is reasonable to consider*
10 *this -- some evidence of some hypoxic damage in the*
11 *brain. I think Dr Reid felt there was and Dr Herron*
12 *felt there was. I was not saying there was no evidence*
13 *of hypoxic, but if the brain is deprived of oxygen for*
14 *a significant period of time, and I mean deprived of*
15 *oxygen so no oxygen is getting to the brain for*
16 *a significant period of time, then irreversible changes*
17 *will occur in the brain. If that individual is kept*
18 *alive for a period of time, for example, on*
19 *a ventilator, then there are very significant changes,*
20 *very clear changes that will be seen whenever the brain*

21 *is examined.*

22 *Now those significant, well-developed changes from*
23 *hypoxia were not present. Obviously there were some*
24 *changes that were present, but if hypoxia was the main*
25 *cause of Mr Hamill's brain injury, if we put it -- or*

20

1 *brain damage, then I think we would have seen much more*
2 *evidence of that than was present.*

3 *Q. Thank you. Is it possible to conclude from what you*
4 *have just told us that the 75% saturation was temporary*
5 *or not?*

6 *A. Yes. I mean, I think that's reasonable. He may have*
7 *been breathing better initially. There may have been*
8 *some degree of obstruction to his breathing. Clearly,*
9 *when he got to hospital, I am sure the first thing they*
10 *would have done was to ensure that his airway was*
11 *properly secured, that he was given oxygen. So that*
12 *would be, therefore, to improve the oxygenation of the*
13 *brain, which is crucial in these cases.*

14 *THE CHAIRMAN: If there is an improvement and not too long*
15 *a period of starvation, then there is no permanent*
16 *damage?*

17 *A. That's correct, yes.*

(ii) Dr Lawler

Report (72226)

“Another observation by Dr Reid, which I consider to be equally important in the context of this particular case, is that although there was some hypoxic/ischaemic neuronal damage, it was only mild and not significant. This is really little or no more than I would expect to be found in association with a traumatic head injury of sufficient severity to cause grade II TDAI. It therefore follows that the deceased did not sustain significant hypoxic/ischaemic damage whilst he was lying unconscious in the roadway after the assault and before receiving medical assistance from the paramedics.”

(iii) Mr Todd (consultant neurosurgeon)

Report (72617)

Para. 120

“If there had been a significant hypoxic injury to the brain one would expect to see histological evidence of damage to cortical neurons in excess of any damage seen in white matter tracts. The cerebellar Purkinje cells are metabolically very active and one would expect to see evidence of damage to the Purkinje cells. In Mr Hamill’s case there was no evidence of damage to these metabolically active structures.”

From the observations made by those at the scene and at the Hospital it appears that Robert Hamill was having some difficulty with his breathing. This tends to be supported by the measurement of his oxygen saturation level on admission to CAH of 75% when the normal range should be 95%-100%. Dr Boon Low says that he was concerned that there was an obstruction to his airway and that the most likely reason for this was Robert Hamill’s tongue falling back. He also describes him as having clenched teeth so he could not introduce a plastic airway to maintain his airway. Clenched teeth are also described by Glenn Stewart the paramedic. He says that he tried to introduce an airway. He does not say whether he was successful in doing so

although it is probable that he wasn't given that Dr Low had to attempt the same procedure. It seems that Robert Hamill was administered oxygen by way of face-mask in the ambulance and by bag in A&E. It can be inferred that it is likely that Robert Hamill whilst on the ground had some problem with his airway before receiving oxygen in the ambulance and in hospital. However, from the pathology it appears that this period of obstruction of his airway was insufficient to cause any injury to the brain and therefore could not have been a contributory factor to Robert Hamill's brain injury as the result of the assault. If anything the pathology tends to suggest that the initial treatment received by Robert Hamill was successful in preventing hypoxic brain injury.

In the family's submission hypoxia does not fall to be considered as an intervening cause and no issue of causation therefore arises in relation to it.

MEDICAL TREATMENT

11. The next factor to be considered as a possible intervening cause is the treatment Robert Hamill received in Hospital from the time of his admission until his death on the 8th May 1997. The focus here is on the administration of Chlorpromazine, a neuroleptic drug, used in the treatment of various psychiatric illnesses including schizophrenia. The literature referred to in the Inquiry bundle tells us that neuroleptic drugs can cause a potentially fatal adverse reaction in a small minority of those to whom it is administered. This is called Neuroleptic Malignant Syndrome (NMS)
12. As all the authors of the pathology reports prepared in the aftermath of Robert Hamill's death and for the Inquiry are agreed that the primary injury as the result of the assault is Diffuse Axonal Injury the question is whether there is sufficient evidence to support a finding that NMS was present and materially contributed to the cause of death. If that is established then one can consider whether the medical treatment *viz* the administration of chlorpromazine, was an intervening act in the sense that it was sufficient to break the chain of causation.
13. In our submission, having made a finding that the primary injury was DAI, the panel should first weigh the scientific evidence and consider what are said to point toward NMS and what the various medical experts have to say on the subject.
14. It is accepted that Robert Hamill was administered chlorpromazine. (The appropriateness or otherwise of this can be examined later).
15. Prof Crane gives his findings on the issue of NMS in his Inquiry Statement at para 27

et seq:

“I understand there was some surprise amongst the clinicians at the suddenness in decline of Mr Hamill’s health and they raised with me the possibility that there could be a cause other than the brain injury.”

28

Specifically we discussed the possibility of malignant neuroleptic syndrome and I was in discussion and correspondence with Dr Herron as to whether this was the cause of death or the head injury alone. Factors which pointed to NMS were that he had a head injury, he had a spiked temperature and he had been given chlorpromazine. At the time of autopsy I was not aware of the results of the CK tests showing 924 per litre but that level of CK is not especially elevated. A raised CK level is not unusual where a patient has undergone physical trauma. I would have expected a far higher level of CK, in the thousands, in a case involving NMS.”

29

The reasons I ruled out NMS include, the absence of damage to the kidneys where NMS would have caused casts of myoglobin but none were present. I did special stains on the kidneys to look for muscle damage but there was none. There were no casts identified within the tubules. There was an absence of damage to the liver with no necrosis evident. There was no rigidity in the muscles which is a notable symptom of NMS. Neither were there the changes to the brain which would normally be associated with NMS such as necrosis, particularly in the cerebellum. We specifically looked for all of the changes that you get in this syndrome. It was in my view a possibility and one that we needed to consider. All of the typical markers that are associated with the syndrome were not found and that is why I excluded it as being a cause of death.”

16. Prof Crane says that he was alerted to the possibility of NMS by clinical features which had been present prior to death but that none of the pathology he would expect to find was present and therefore concluded that it was not a factor in the death.
17. This was also the gist of his evidence on the issue of NMS at the trial of *R v Hobson* where he had this to say:

Q You then said that you had obviously read medical notes and records in relation to it, and on the day of his death he received an injection of a drug to calm his irritation. There were questions as to whether that may have

contributed or caused the death?

- A. *The drug that he was given is Chlorpromazine, and he was given Haloperidol. There is a condition associated with both these drugs. It is a rare condition. It is an unusual allergic reaction to, these drugs which is occasionally seen in some individuals known as the malignant neuroleptic syndrome. It is characterised by a high temperature and various changes in both the brain, the liver and the kidney. Mr Hamill did have a raised temperature, and I think that the doctors, looking after him, were concerned that there was the possibility that this could have been a factor in the death. Whilst the condition of malignant neuroleptic syndrome is not associated with specific changes at autopsy there are some changes that occurred and are recognized both in the brain, and the liver, where you can see acute degeneration, and in the kidneys, where you can see the breakdown of red blood cells. We were keen to ascertain whether that was the case or not. There were no findings either in the brain, the liver or kidneys to indicate that the malignant neuroleptic syndrome associated with the drugs administered contributed to his death.”*

18. Dr Herron agrees with Prof Crane on this issue, in his Inquiry statement he said at Para 37:

“NMS is a very rare condition in which I have had a particular interest since I was a junior doctor in 1988. I saw a patient who was admitted to the medical ward from a psychiatric hospital, who was diagnosed with NMS and then died. I wrote a paper on this condition which I presented at the British Neuropathological Society meeting. I think it is still the case that this was the largest pathological series on fatal NMS published or presented. Also in 1997 a patient was admitted with a head injury to intensive care at RVH and died. I diagnosed NMS in that patient about the same time as I considered Mr Hamill’s case.

38

Accordingly at the time NMS was something very current both with the neurosurgeons and me, and we were very aware of this condition. NMS was a reasonable suggestion to make and I thought it was appropriate to address it as Mr Hamill had been given neuroleptic drugs that may cause the syndrome; he also had a raised temperature and he was sweating excessively. Professor Crane asked for my thoughts on NMS and I wrote back explaining the reasons why it might not be NMS. I compared the

findings in relation to Mr Hamill with those of the other 4/5 cases of which I was aware, but it did not really fit with them. You could not absolutely reject NMS as being a factor, but I do not think there were enough symptoms or signs to include it. I did speak to Professor Crane extensively about this issue at the time”

39

Death in NMS cases may occur for a number of reasons, for example pneumonia, multiple organ failure, acute liver failure or due to the muscles in the body breaking down and blocking the normal fluid flow of the kidneys. There was no evidence of any of this happening with this patient; moreover there was no myoglobinuria recorded in the notes. The main feature of my previous cases was that there was severe muscle rigidity, making it almost impossible to bend the patients limbs, almost as if they had meningitis. This pointed to rhabdomyolysis, where the muscles break down. However there was no evidence of rhabdomyolysis in Mr Hamill’s case. Professor Crane looked at the kidneys for ‘casts’ which are bits of muscle that would break down and lodge in the kidneys. In my previous cases the liver was almost completely necrotic (dead). According to Professor Crane, there was no liver damage in Mr Hamill (page 09564).

40

My examination of the brain did not find neuropathological changes that can be attributable to NMS. The purkinje cells were preserved. These cells are very sensitive to damage by hypoxic/ischaemic change, and have also shown to be specifically damaged in previous cases of NMS I have seen. But there are so few papers describing the pathology of NMS it is difficult to absolutely exclude the possibility of its presence in this case.

41

I have been asked if NMS could have caused the axonal damage. It may be that NMS could be a cause of axonal injury, as not enough is known about to say that it could not. I suspect that it could cause similar changes to hypoxic/ischaemic damage but Mr Hamill only had the pyrexia the day or so before he died, and the changes in the axons were there longer than a day. So it cannot be considered the condition caused his unconsciousness.

Even if I had thought NMS was the diagnosis, it would not explain why Nr Hamill died. The other people who have suggested NMS have not really given a reason why it could have caused the death. They have not suggested, for example, that he died in renal failure. The potassium levels were not high enough to cause death. Dr Lawler, in his report and glossary for this Inquiry containing pages 72226 to 72250 and pages 72270 to 72278, and Dr Reid have mentioned that a blood result came back after death that recorded a creatinine kinase level of about 924. This level does not support a diagnosis of NMS because with NMS, the creatinine kinase levels would be in the region of tens of thousands perhaps 50,000-60,000, and not below 1000. Further without giving precise details of this case I have asked my neurosurgical and neurology colleagues what they would think of this level of creatinine kinase in a man who had been assaulted, had a lot of bruises and muscle damage and had been in intensive care and the wards for a period of time. They said they would not be particularly concerned because it would be fairly normal for a man who had been assaulted to have a raised creatinine kinase, purely due to the muscle damage.”

19. This view was reiterated by him in his oral evidence and he was not challenged on the point.

Para 57

“12 *Can I ask you about Neuroleptic Malignant Syndrome?*

13 *Would it be fair to summarise what you have said in your*

14 *statement that you don't rule anything out definitively*

15 *in terms of NMS, but you think it is highly unlikely*

16 *here to be a mechanism?*

17 *A. Neuroleptic Malignant Syndrome is a rare condition that*

18 *has only been recognised to any great extent in the last*

19 *20 or 30 years. It is a condition that occurs as*

20 *an idiosyncratic and unexpected reaction to certain*

21 *types of medication.*

22 *Now, in 1997, there were very few cases reported in*

23 *the literature as to the pathology of this. Since 1997,*
24 *there have been loads of papers written about it. It is*
25 *a condition that is manifested by the patient developing*

58

1 *a very high temperature and a thing called autonomic*
2 *instability, where your heart rate will change and you*
3 *may sweat a lot. Those were two of the features present*
4 *in Mr Hamill that were part of that syndrome. So we*
5 *considered whether or not we thought Neuroleptic*
6 *Malignant Syndrome was present and Professor Crane and*
7 *I debated this at length.*
8 *I think to put it into context -- and it has*
9 *possibly been suggested in the subsequent reports that*
10 *maybe we did not think about it -- there was another*
11 *patient in the Royal in the same year, and I don't want*
12 *to give a name for confidentiality reasons, whom I did*
13 *diagnose Neuroleptic Malignant Syndrome in. So it is*
14 *something I am very aware of.*
15 *I treated a patient previous to this case, as*
16 *a junior doctor, who developed Neuroleptic Malignant*
17 *Syndrome and died. I had written a series -- and*
18 *presented a series of cases in a paper to the British*
19 *Neuropathological Society describing the pathology of*
20 *Neuroleptic Malignant Syndrome. At that stage, that was*
21 *the largest series I think in world literature. So we*

22 *were very aware of this diagnosis and we considered it.*

23 *The reasons that I didn't think this syndrome was*

24 *present -- the main reason was I felt that the brain*

25 *pathology in itself was to explain everything that had*

59

1 *happened.*

2 *There is no controversy, I think, between all the*

3 *expert witnesses that this patient had a traumatic brain*

4 *injury. Everything is accepted. The grading of it is*

5 *debated by one of the authors, and two of them suggest*

6 *the possibility of Neuroleptic Malignant Syndrome as*

7 *being what has caused his death at the end.*

8 *I felt that the -- medics always like to look for*

9 *one diagnosis rather than two. I felt there was enough*

10 *pathology in the brain to explain everything that*

11 *happened to Mr Hamill.*

12 *The other reasons why I didn't think there was*

13 *enough to make the diagnosis of Neuroleptic Malignant*

14 *Syndrome was he lacked a lot of features I had seen in*

15 *my case series.*

16 *One of the particular features of Neuroleptic*

17 *Malignant Syndrome clinically is an almost inability to*

18 *bend the patient's arms and legs. You know what the*

19 *signs of meningitis are besides the rash; you get*

20 *a stiffening of the arms. The patient I had looked*

21 *after, as a junior doctor, was so stiff you could not*
22 *actually -- they call it lead pipe rigidity. I am not*
23 *aware that that was present in Mr Hamill's case. The*
24 *temperature can be explained by damage to the*
25 *hypothalamus.*

60

1 *Dr Lawler suggests we did not know about the*
2 *creatinine kinase result until after the post mortem.*
3 *That would not have swayed me either way. Creatinine*
4 *kinase is an enzyme that is present in muscle.*
5 *In the cases I had written up of NMS, the enzyme*
6 *level in the blood was in the order of 50,000 to 60,000.*
7 *In the case of Mr Hamill, it was about 900, 970,*
8 *something like that.*
9 *There are numerous papers that describe the causes*
10 *of creatinine kinase and one of those is assault or*
11 *injections in the hospital. So everything could be*
12 *explained by his brain injury and his management in the*
13 *hospital environment to explain all the symptoms that*
14 *others think may be Neuroleptic Malignant Syndrome.*
15 *But this is a rare disease. There may be a spectrum*
16 *we don't know about. For that reason, I don't like to*
17 *absolutely exclude it being part of the diagnosis.*

20. Professor Crane and Dr Lawler both say that NMS was specifically considered as a possible cause of death. Dr Lawler in particular claims experience of this syndrome and was not challenged about this when giving his medical evidence. He discusses

the findings of Dr Reid and Dr Lawler both of whom focus on NMS because some of the clinical symptoms were present prior to death. However, and crucially in the family's opinion none of the pathology that both Dr Herron and Professor Crane would expect to find in a case of NMS was present.

21. Dr Reid qualifies her report (72526 at 72533) by saying:

“The neuropathology in this case has been hampered by no photographs of the brain...The number of slides is also small and if they are representative of the lesions, miss out some of the areas of the brain which are important to take in cases of diffuse axonal injury, for example sections of the posterior part of the corpus callosum and further sections of the upper brain stem”

Indeed Dr Reid's conclusions are set out under the heading:

“FROM THE INFORMATION AND SLIDES AVAILABLE”

She comes to the view that:

“b. The lesions seen histologically showing a macrophage response with little in the way of ongoing damage are not, in my opinion, enough to cause his sudden death. The probability of his death through Neuroleptic Malignant Syndrome is one which I would agree with.”

22. As Dr Reid was not called to give evidence the panel simply do not know whether her view might have been altered by her having seen further evidence of DAI throughout the brain.

23. Dr Herron, who had the benefit of examining the brain itself says the following in his Inquiry statement having noted haemorrhaging in the brain stem

Para 24

“The bulk of the worst pathology in this case was in the lower brain structures which are more critical for survival, particularly for respiration and cardiovascular function. I thought there was severe damage in this region and I would still say that this was a case of severe traumatic diffuse axonal injury.”

24. As the pathologists found no evidence of NMS post mortem and Dr Lawler in his report (72226 at 72243) identifies only some of the clinical features of NMS which, in

the view of Professor Crane and Dr Herron can be explained by the brain injury.

25. It is the family's submission that there is simply insufficient scientific evidence available for there to be finding that NMS was a factor in Robert Hamill's death. It is clear that this was a matter that was given careful consideration as a cause of death and expressly ruled out by the pathologists at the time both of whom had experience of the syndrome in particular Dr Herron who had made a study of it. If the panel accept, as the family say they should, that the issue of his treatment and in particular the administering of neuroleptic drugs do not play any part, on the evidence, in Robert Hamill's death then it does not fall to be considered as an intervening act and so no issue as to causation arises.

CAUSATION

26. In the alternative if the panel do find that the administering of the neuroleptic medication was an intervening act the family submit that it is insufficient to break the chain of causation for the following reasons of legal principle.
27. There can be no dispute that there is a factual connection between the assault on Robert Hamill and his death. The assault was the *sine qua non* of his admission and subsequent treatment in hospital. The question then arises whether the assault was the legal cause of death or whether the NMS was a *novus actus interveniens* sufficient to break the chain of causation.
28. The legal cause of death must be an operative and substantial cause but it need not be direct. In *McKechnie* (1992) 94 Cr App Rep 51, head injuries inflicted by D which prevented doctors operating on a duodenal ulcer which burst, killing V, were held to be a legal cause of death. Each case will be a matter of fact and degree as to whether the event in question is sufficiently proximate to be the legal cause.
29. That case involved the prevention of medical treatment for an existing condition. In Robert Hamill's case we are dealing with his admission to hospital for treatment as a result of an assault. One aspect of which may have caused his death as a result of his sensitivity to a drug. This could be argued to fall within the concept of the "eggshell skull rule". It is well recognised that D must take his victim as he finds him. This usually relates to particular vulnerability to injury but there seems to be no reason in principle why it should not extend to a situation where V is abnormally pathologically susceptible to a treatment which ordinarily might reasonably be expected to have a therapeutic benefit. The concept has been extended to a situation where life-saving treatment has been refused by V on the grounds of religious belief. *Blaue* [1975] 1 WLR 1411 Jehovah's witness refusing blood transfusion.
30. While it is obviously foreseeable that the victim of an assault may require medical

treatment but it is also foreseeable that such treatment may be negligently performed or injuries misdiagnosed. Failure to provide proper treatment will either aggravate the original injury or simply allow it to take its course.

31. In *Jordan* (1956) 40 Cr App R 152, D stabbed V and he died. On appeal new evidence showed that the wound was almost healed but that as a result of a mistake he was given antibiotics to which he had, earlier in his treatment, proved to be highly allergic. The CA held that if the jury had been aware of this they would have concluded that the death was due to the medical treatment.
32. The significant distinction between that case and Robert Hamill's is that the treatment in *Jordan* was negligent. There is no evidence to suggest that the administration of chlorpromazine Robert Hamill was inappropriate. There is no evidence of any prior knowledge on anyone's part of his sensitivity to the drug. Dr Lawler takes the view in his report that it was a perfectly proper treatment in the circumstances. The authors of *Blackstone's* 18th Ed. assert that the Courts hardly ever categorise *incorrect* medical treatment as a *novus actus interveniens*. *A fortiori* then, cases in which medical treatment is properly administered.
33. In *Cheshire* [1991] 1 WLR 844, V died as a result of complications arising from a tracheotomy necessary as the result of a gunshot wound inflicted by D. The gunshot wounds had healed at the time of death. D's conviction was upheld by the CA on the basis that the complications were a natural consequence of his act. Beldam LJ having reviewed the authorities said:

“...when the victim of a criminal act is treated for wounds or injuries by a doctor or other medical staff attempting to repair the harm done, it will only be in the most extraordinary and unusual case that such treatment can be said to be so independent of the acts of the defendant that it could be regarded in law as a cause of the victims death to the exclusion of the defendant's acts...”

Cheshire has subsequently been followed by the English CA in *Mellor* [1996] 2 Cr App R 245 and *Gowans* [2003] EWCA Crim 3935.

34. Applying these criminal law principles the panel even if it finds as a fact that the medical cause of death was NMS, in the family's submission it should not find other than Robert Hamill's death was caused, in law, by the assault.

The Cause of the Incident

1. Those witnesses in a position to say just how the events leading to the death of Robert Hamill began can be divided into three broad groups;

Group 1 Non-participants; P42, William David Jones, Carol Ann Woods, Beverly Irwin, Stephen Thornbury, Julie Sherwood and Derek Little.

Group 2 Catholics; D, E, F, Maureen Mc Coy and Colin Prunty

Group 3 Protestants; Andrew Allen, David Woods and Rory Robinson.

The evidence of P 42

2. P42, who gave evidence on January 20th, lived in a flat on Thomas Street with a view down towards the corner of Thomas Street where it intersected with Market Street. The following day he wrote out an anonymous statement giving his account of his observations that was handed into the police by his then girlfriend's father who was a policeman. He was not identified as the author of the document until several years later,¹ by which time, according to him, his mental and physical health had deteriorated to such an extent that he no longer had any memory of the incident at all.
3. The document is to be found at page **01038**. The gist of it is that P 42 observed two men and two women walking along Thomas Street when one of the women, who had observed a crowd standing at the bakery at the corner, advised the men that they should not perhaps proceed. According to the document, one of the men responded robustly stating that it was his country and he would go wherever he liked. There then began some taunting with the man putting a bottle he was carrying on the ground at the corner and urging those in the crowd at the corner to take him on. He and one of those at the corner were standing facing each other when another one from the corner stepped out and punched the man who had been doing the taunting, before running off in the direction of St Mark's Church. The man who had been punched then did the same to the man squaring up to him and ran in the direction of the first man but then, one by one, others came to join the fight.
4. This statement was put by Mr Underwood QC to all of those witnesses who might have been among those described by P 42. He did so on the basis that those witnessed by P 42 may have included D, E, F, Robert Hamill, Colin Prunty and Maureen McCoy. This is so because it describes the start of a fight at the intersection of Thomas Street and Market Street which is precisely the place that Robert Hamill and D were attacked. It also describes a warning being given by one of the women that appears to be consistent with the evidence of Maureen Mc Coy that she did stop in the area of the British Legion and heard F give such a warning to those she was with. Taken at its height, the statement from P 42 suggests that the incident was caused by

¹ He was spoken to by police on 8th October 2002 - page 01805 and re-interviewed about it on 27th November 2002 - see statement of H at paragraphs 28 & 29 page 80723; P41 said police contacted her father during or after 1999 saying they needed to know who wrote the letter - paragraph 16 page 80910

some unidentified Catholic confronting a crowd of Protestants, against the advice of one of his female companions. There are a number of problems with this statement however, not the least of which is the fact that virtually all of the contents of it are denied by the Catholics who appear to have made up the first group of patrons of St Patrick's to make their way down Thomas Street that night. We propose now to analyse the evidence of all of those concerned before returning to the question of the reliability or otherwise of the statement from P 42 that is document **01038**.

Colin Prunty and Maureen McCoy

5. These two were a couple in April 1997 and were out for the evening together. They gave evidence on January 21st. Maureen McCoy has said that she and Colin Prunty were walking down Thomas Street when she saw that D,E,F and Robert Hamill had stopped in the area of the British Legion at which point F said not to go any further as there was a crowd down there. Ms McCoy has said that she was reassured by the presence of the police Land Rover, which she was able to see from at least the point of Jamesons. Her evidence is that she and Prunty began to cross the junction ahead of the others. A crowd of about a dozen appeared on their right aggressively shouting sectarian slogans. That is when the fighting started behind them.
6. Colin Prunty on the other hand does not say that they caught up with D, E, F and Robert Hamill at the British Legion and gives no account of F warning them. Rather, he says they caught up with them as they approached the bakery where he believes they hesitated because of the crowd gathering at the corner there. Just at that moment the attack occurred, while D, E, F and Robert Hamill were still in front of him and McCoy. It was an unprovoked attack by around 20 people, mostly on Robert Hamill who was still a little in front.

E, F and D

7. E and F are sisters and E is married to D who was a cousin and friend of Robert Hamill. D gave evidence on January 23rd. E and F gave evidence on the previous day.
8. D was perhaps not the most effusive of witnesses but this may be due to the fact that he was knocked unconscious almost as soon as he began to cross the junction of Thomas and Market Streets. He has very little memory of events and had no recollection of meeting Maureen McCoy and Colin Prunty or of any misgivings voiced by F. He says he was just on his way home and was the victim of an unprovoked attack that left him unconscious for the rest of the events.
9. E gave evidence that she; her sister F, her husband D and Robert Hamill were alone and is very clear that no one else had joined their company. When reminded by Mr Underwood that she had told police in 1997 that there was a couple up ahead she accepted that but was unable to say just how far up ahead or who they were. She knows both Colin Prunty and Maureen McCoy and denies that she saw them there or that there was any exchange between F and them. She was clear that if such a thing had happened she would have remembered it.² She is very clear in her evidence that

² January 22nd page 6 line 24

the attack on her husband and D was utterly unprovoked and roundly rejected any suggestion that she was covering up to protect Robert's memory.³

10. F, her sister, gave evidence the same day. She was entirely sober that night as she takes no alcohol at all. She was very clear in her evidence that she did not see Maureen McCoy and Colin Prunty that night and has no recollection of the exchange that Maureen McCoy describes occurring between them. She also says that she would have remembered such an exchange occurring and is clear that they did not stop at the British Legion.⁴ She says the boys were a few steps in front of them and the attack happened very suddenly. She utterly refutes the version of events put forward William Jones⁵ and David Woods⁶, which are summarised below. She also clearly rejected the statement from P 42 when the contents of it were put to her by Mr Underwood QC⁷.

Carol Ann Woods and William Jones

11. Carol Ann Woods and David William Jones lived in a flat above Jameson's Bar. Ms Woods is the sister of David Woods, about whom we shall hear more. She gave evidence to the Inquiry on March 12th. She is of interest to the Inquiry because she made a series of statements to the police between May and July 1997, beginning with one made on 16th May, the day after her brother was arrested on suspicion of being involved in the murder of Robert Hamill.⁸ In that statement she said she was in the flat with her boyfriend around 2 a.m. when they heard shouting and the sound of people running outside as a result of which they went over to the window. Her boyfriend was first there and she came behind him. She had a view of the Eastwoods corner of Thomas Street and of that part of Market Street that faced Thomas Street. She describes two women and three men in their thirties in the corner and around seven people in a second group, mostly men, around that part of Market Street that she could see. She formed the view that the two groups were on friendly terms as there was no shouting between them. Mr Jones then remarked that someone he thought was her brother had just been hit. After looking down and seeing that it was her brother, she ran downstairs and brought him up and gave him a glass of water. She noted marks on his face and that he appeared quite drunk. After a few minutes she went back over to the window and observed two men on the ground with someone screaming near them, one was lying down and the other sitting up.
12. In her evidence she said that she had little recollection of events now and that she could not remember if she knew when she gave the statement that her brother had been arrested the previous day. It is highly unlikely that she did not know this, as by now Robert Hamill had died and the incident was receiving a great deal of publicity. It is hardly conceivable that she did not know that her brother had been arrested in connection with it. In any event, we must submit that the incident involving her brother, however it came about occurred well into the sequence of events that night and at least after Robert Hamill and D had been subjected to attack while lying on the

³ January 22nd page 21 lines 18 & 19

⁴ January 22nd pages 61 & 86

⁵ January 22nd page 79

⁶ January 22nd page 84

⁷ January 22nd page 86

⁸ 09116

ground. Ms Woods made two subsequent statements to police on the 19th May and 3rd July in which she gives some further detail.⁹ In each of these statements she is quite clear that the time between bringing her brother up the stairs and going back to the window was fairly short, at most 5 minutes. By this time, there is no crowd around the man lying on the ground and a woman is shouting at police. The other man is sitting up. In her statement of 3rd July she says that she observed a policeman and a police woman but there was no crowd around those on the ground. She also observed an ambulance on looking out the second time.

13. The evidence is that D was knocked unconscious almost immediately after being attacked and that he lay on the ground for quite some time. He did not regain consciousness until shortly before being put into the Land Rover up to fifteen minutes later.¹⁰ If this was the stage at which Carol Ann Woods looked out the window for the second time, then the people observed by Mr Jones could not have been the group made up of Robert Hamill, D, E, F, Prunty and McCoy unless a very long time had elapsed before she returned to the window after settling her brother, which is not supported by her contemporaneous statements. She was adamant when giving her evidence that she was standing right behind Mr Jones when he claimed to have seen the man hitting her brother.
14. If this contention is accepted then it would follow that the group observed by her boyfriend running down Thomas Street and one of whom he alleged struck David Woods could not have included Robert Hamill or D.
15. The suggestion that those he saw might have included D and Robert Hamill comes from his statement to police of May 16th ¹¹ in which he recounts his observations of three men and three women coming down Thomas Street in a group. He says the men are running and gives descriptions of them as follows; (1) approximately 5'10" medium build dark short hair, he was wearing a black leather jacket, which was waist length and dark trousers; (2) approximately 5' 8" in height, slight build, dirty fair hair short, he was wearing a grey jumper with a pattern all over it (3) approx 5'10", stocky/well built, blond/fair hair shaved into side and back and brushed back on top. He had a full face. He was wearing a pale blue shirt, dark tie, black trousers, the shirt was tucked into the trousers he looked neat and tidy in his appearance. He was wearing black shoes. This man was approximately 28 to 32 years old"
16. Mr Jones made a further statement to police on May 29th ¹² in which he says that it took only seconds to go down and get Davy Woods up. He checked David for injuries and then looked out the window again, no more than two minutes later by which time he says the fight is over and police have arrived. This, if accurate, is strongly supportive of the contention that the assault he witnessed on David Woods could simply not have been carried out by Robert Hamill.
17. It has to be accepted the description of number (3) fits that of Colin Prunty. This he accepts himself. It may not be so easy however to say the other two are Robert Hamill

⁹ 09119 & 09121 respectively

¹⁰ The first call was for back-up at 1.45.37 hours - page 06583. Both ambulance men said that the two injured men were lying on the road when they arrived at 1.58 - pages 09186 & 09188

¹¹ 09111

¹² 09114

and D. The man described as (1) can only be said to be similar to Robert Hamill because he is wearing a leather jacket and is of medium build and of similar height. There is evidence that Robert's hair colouring was lighter than that described by Mr Jones. Similarly, D undoubtedly has dark hair yet the witness describes number (2) as having fair hair. He also says he was wearing a grey patterned jumper whereas the evidence is that he was wearing a striped T shirt. Colin Prunty, when probed about this only recalled a jumper but was not able to advance any further description of what D was wearing. Although there was some mention in an Inquiry interview with F that D might also have been wearing a leather jacket, we submit that the evidence of D, E and F, along with the actual clothing recovered from D, strongly suggests that he was only wearing a T shirt. Either way, he could not have been said to have been wearing a grey patterned jumper.

18. How then do we reconcile a contention that (1) and (2) are not Hamill and D with the description by William Jones of someone like Prunty in this group of people? Either he saw someone remarkably like Prunty or Prunty and Mc Coy were not as close to D, E F and Robert Hamill as they are saying but were in fact further back and part of a different group.
19. We do not suggest that Prunty and McCoy are lying in their evidence but the reliability of it may be questionable in some respects. Both, by their own admission, had a lot to drink, Prunty, in the region of 10 pints and Mc Coy, a similar number of bottles of cider. A fair sup, by any stretch of the imagination. They give starkly different accounts of their proximity to D, E, F and Robert Hamill. Prunty says that Hamill was ahead about 30 to 40 yards on his own and that he and Mc Coy were behind D, E and F until they reached the bakery. McCoy on the other hand claims that they all caught up around the British Legion and that she and Prunty then walked ahead of the others. D, E and F are all adamant that they were not with anyone other than Robert Hamill and they all deny that they were running or had any reason to run at that stage. We submit that it is very possible that McCoy and Prunty could have been viewed as being loosely connected to a further group of patrons of St Patrick's Hall coming down Thomas Street, one of whom may have assaulted Davy Woods. Indeed, if the assault on D and Robert Hamill was already underway, those coming behind might have had good reason to be running. There are reasonable grounds for submitting that there is no evidential basis for concluding that Robert Hamill and D were the (1) and (2) described by Mr Jones.

Andrew Allen, David Woods and Rory Robinson

20. These young men were part of the Protestant crowd in the centre of Portadown on the night of the 27th April. Andrew Allen and Rory Robinson were among those arrested following the making of the statements by Tracey Clarke and Timothy Jameson on May 10th. We will return to the roles we believe each of them played in the assault on Robert Hamill. They are grouped together in this section of our submission however as there is some evidence that they were together at the bottom of Thomas Street when the trouble started and Allen and Woods claimed they were assaulted by Catholics coming down Thomas Street.
21. David Woods gave evidence on February 27th. He had been arrested on 16th May

having been identified by Andrew Allen as being in his company that evening and as being someone who was involved in events that night. He told the Inquiry in evidence that he had alighted the bus entirely alone and that he headed immediately towards Thomas Street, which was his route home. As he headed up Thomas Street he encountered a group of people, maybe five in number coming down Thomas Street making a racket. As he drew level with Jamesons one of them approached him and hit him. He makes no mention of Allen or Robinson and insisted he was entirely alone. He denied the version of events outlined in the statement from P 42 when asked by Inquiry Counsel.

22. Andrew Allen gave evidence on March 10th. He claimed to the Inquiry that he could remember nothing of the events in 1997 but the answers he gave to police when interviewed then were put to him from document **07305**. He informed the police then that he got off the bus along with Rory Robinson and David Woods and that the others must have stopped at Boss Hogs for food. He said they walked on to the junction of Thomas Street and Market Street together, although he was maybe a few steps behind them. They stopped together at the corner and waited for the crowd to catch up as they wanted to know if there was a party going on anywhere.¹³ There was a crowd of three or four girls and three or four fellows coming down the street making noise. He thought they were from Jamesons or the Legion of somewhere. The girls walked on past but one of the fellows just punched Davy Woods. Another one of them walked across the road and hit Rory Robinson and they started fighting and a third one came at him and they moved out to the middle of the road.¹⁴
23. Rory Robinson gave evidence on March 11th. The Panel is unlikely to forget his evidence as he denied any memory of anything. He also denied any knowledge of or interest in the political conflict in Northern Ireland and initially denied the fact that he had an overtly political tattoo on his arm the existence of which was later accepted on his behalf by his counsel. He however gave a different version of these events to the police in 1997¹⁵ than those accounts given by Woods and Allen. He denied that he was involved in fighting at all and makes no mention to police of being with Woods or Allen. Mr Underwood, QC put to him that he was seen with Woods and Allen by Pauline Newell¹⁶ yet he continued to deny even knowing them.
24. Clearly, Andrew Allen and David Woods could not both have been telling the truth about the circumstances of the start of this incident. Both of course had a very powerful incentive to lie to the police about this as Allen at least had been arrested on suspicion of murder. Woods was under arrest although only, it would seem, because Allen had brought him into the frame by saying he was with him and that he had been assaulted. It is entirely possible, if not probable that both were involved in the initial attack on the Catholics during which Woods was injured. Woods we submit, like Robinson, was very anxious to distance himself from anyone else who may have been involved in these events. Unfortunately, Mr Jones did not appear as a witness so the veracity of his account of seeing the alleged assault on David Woods could not be tested.

¹³ 07308

¹⁴ 07314

¹⁵ 07617

¹⁶ 09128

The Jamesons Bar staff

25. Beverly Irwin gave evidence on January 27th. She said that when she was closing the shutters around 1.30 am there were people coming down Thomas Street shouting “Fucking Orange bastards”. She at first thought they were shouting at her and called over to another member of staff, Stephen Thornbury. She replied to Mr Underwood QC in direct examination that she could not honestly say what time exactly this was but she thought it was very close to 1.30 am.¹⁷ She later however acknowledged to Mr Mc Grory QC that she informed Detective Constable Keys in 1997 that this was at 1.45 am¹⁸ and that her recollection then would have been a lot better.¹⁹ Ms Irwin also accepted to Mr Mc Grory that she was unable to say whether or not these people were the same ones involved in the confrontation as she had not witnessed it and could give no descriptions of those she had seen.²⁰
26. Stephen Thornbury gave evidence on January 27th. He recalled being called over by Beverly Irwin when shouting was heard and accepted to Mr Underwood that it could have been as late as 1.30 or 1.45 am. He had previously heard the windows being banged and some time had elapsed before he went over to Beverly Irwin, although he could not say how much time. This witness had little memory of these events and was taken through his police statement made a month later.²¹ In that he said that he had popped his head out and looked down to the junction and observed people squaring up to each other. He went back to the bar to work but the commotion became louder and he then went and looked out a window. His evidence is that at this point he saw a man lying on the ground with a woman and a policeman standing over him and observed an ambulance. When pressed by Mr Underwood QC as to the time gap between his first observation from the shutter door and his later sightings from the window, he accepted that it may have been five or ten minutes but he said he could not be sure after all this time.²² It is our submission therefore that the attack on Robert Hamill and D could well have already occurred before Ms Irwin and Mr Thornbury looked out from the side door as described.
27. Julie Sherwood also gave evidence on January 27th. She was with Beverly Irwin at the side door with a bottle trolley and heard shouting, which gave her the impression that a fight had taken place. This is what she informed D/C Keys in 1997.²³
28. Derek Lyttle also gave his evidence on January 27th. He recalled the shutter doors being rattled so presumably this was after Beverly Irwin had closed them. He thought people were running. He looked out the toilet window at some stage and saw two people on the ground.

¹⁷ January 27th page 102 line 12

¹⁸ 07771

¹⁹ January 27th pages 125 & 126

²⁰ January 27th page 128

²¹ 09125

²² January 27th page 136

²³ 07773

29. Taken together, these witnesses, in our submission, are not really able to assist the Panel in determining just how the incident began and who were the aggressors. Those who might seek to submit that their evidence supports the case that the Catholics were involved in taunting Protestants at the corner would be mistaken, in our view, as the shouting they heard could well have been coming from those Catholics coming down Thomas Street after the initial assaults had taken place. It is likely that there were a number of other Catholics following those caught up in this incident down Thomas Street who may well have been shouting and rattling shutters. There is simply nothing in the evidence of the Jamesons Bar staff to say otherwise.
30. We return now to the evidence of P 42, or rather we should say the statement of P 42 that he was handed into the police in 1997 for it is the evidential value of this statement that we question.
31. P 42 was eventually identified and interviewed by the police, briefly at his home and again, it would seem, in Portadown police station. His then girlfriend, who is now his wife and who dropped him to the police station in 2001²⁴ claims that he returned in a traumatised state and felt that he had been treated as a suspect rather than someone who was trying to be of assistance. Unfortunately there is no police record of that interview at all. The witness himself was of little assistance to the Inquiry as he first said that he had no memory at all but agreed that he could now recall the contents of his statement but could not elaborate on it. He did say that he wrote out the statement the morning after but could not explain why it began with the words, “On the date of the fight..” and not, “Last night..” The Panel may take the view that the statement could have been written some time later and is not as contemporaneous as the witness now suggests.²⁵ It is deeply unsatisfactory that there is no police record of the interview between this witness and police in Portadown Police station in 2001, but we do know that he claimed to have no memory when spoken to at his home by DS H on 27th November 2002.²⁶ The Panel will also recall the manner in which this witness gave his evidence during his application for anonymity and screening during which he was virtually incoherent. He was a good deal more coherent when giving his evidence a very short time later, if not of much help except to say that he recalled what was in his statement but nothing else. The Panel may well take the view that this witness was feigning ill health to secure a ruling that he could give evidence while screened. Just why he might do this is a mystery but we submit that the true extent of his memory loss may be a lot less severe than he says it is. While we can offer no motive as to why this witness would have invented the observations reported in his statement, his conduct since then in respect of his dealings with the police and the Inquiry must limit the extent to which the Inquiry can rely on it as an accurate account of the early stages of these tragic events.
32. The statement gives no time of the observations and offers no descriptions of those alleged to be involved in terms of the people or the clothing they were wearing. As P 42 could not be identified, there is no contemporaneous testing of the observations. Since the point of his identification P 42 had been of no assistance whatsoever to the police or to this Inquiry. Whether this is through ill health or some other reason is

²⁴ Para 17 page 80910

²⁵ Police appeared to have received the statement on 29th May 1997 - see exhibit sticker page 01037

²⁶ Notebook entry of DS H page 72308

neither here nor there but it renders the evidential value of this statement, in our respectful submission as virtually useless.

33. If the Inquiry is to rely on this statement then it might be tempted to infer that Maureen McCoy was the person giving the warning to her friends and that the man engaged in the taunting was one of Robert Hamill, D or Colin Prunty. We submit it would be improper and unfair to draw such inferences in the face of clear and unequivocal denials of any such conduct in evidence from all of these people, including Maureen McCoy.
34. It is also highly relevant that the accounts of P 42 and Mr Jones are wholly inconsistent with each other. They cannot both be describing the origins of the incident. The P 42 statement describes provocative taunting by a man carrying a bottle, a detail about which there is no other evidence. Mr Jones however described an assault on his girlfriend's brother in quite different circumstances. Neither, we respectfully submit, should be relied upon in any way as evidence that Robert Hamill or any other Catholic was guilty of any misconduct.

Allister Hanvey

The evidence against Allister Hanvey:-

1. **Tracey Clarke** made a statement on 10th May 1997¹ in which she implicated Allister Hanvey, Dean Forbes, Stacey Bridgett, Mark Hobson and Rory Robinson in the assault on Robert Hamill. She attended a DPP consultation on 17th October 1997² and said she wouldn't give evidence against Allister because she loved him and it would be hard to give evidence against the others because she knew them all. She subsequently denied the truth of the statement. Detective Superintendent Robert Cooke who attended the consultation gave evidence on 15th September 2009. He said that he believed Tracey Clarke had a real fear of retribution by Loyalist paramilitaries. "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".³ The Panel has to take a view as to whether Tracey Clarke fabricated the story in her statement or told the truth. It is however our submission that the Inquiry should attach full weight to the statement for the following reasons:-

- a. It gave a contemporaneous account of events and all of those implicated by her were at the scene.
- b. The statement contained allegations which were shown to have a factual basis for example:-
 - (i) She alleged that Robert Atkinson had telephoned Allister Hanvey and told him to get rid of the clothes he was wearing **There was evidence in the form of copy billing from BT in relation to the phone calls from the Atkinson house.**⁴ The case of Robert Atkinson will be addressed in more detail elsewhere in our submissions but, if the Panel conclude that he did advise Mr Hanvey on escaping detection, this is supportive evidence that Allister Hanvey was guilty of wrongdoing
 - (ii) She said that she saw Michelle Jameson helping one of the injured parties who was lying near Eastwoods. **Michelle**

¹ Page 262

² Page 17591

³ September 15th page 14 lines 6 - 12

⁴ Page 9350

Jameson made a police statement ⁵ in which she said she went over to a man who was lying near Eastwoods and she knelt down and listened to his breathing.

- c. At no time did Tracey Clarke deny the truth of her statement **until** she was interviewed for the Robert Hamill Inquiry. She then cherry-picked uncontroversial parts of the statement which she said were true or which might be true and those parts where she had made allegations about Hanvey and the others which, she claimed, were not true.
- d. In her Inquiry statement,⁶ Tracey Clarke suggested that Andrea McKee was a willing participant in the fabrication of the statement of 10th May 1997. This is an unlikely scenario. Michael Irwin said in evidence on 9th September 2009⁷ that when he met Andrea McKee on 8th May 1997 at the cemetery she appeared very frightened and that she seemed to be telling the truth. Andrea McKee gave evidence to the Inquiry on 11th February 2009 and she said that she did not take any part in Tracey Clarke's police interview.⁸ In his evidence on 29th April 2009, Detective Constable John McAteer, who recorded Tracey Clarke's statement, discounted as "a lot of nonsense", any suggestion that either police or Andrea McKee put words into Ms Clarke's mouth⁹. Detective Chief Inspector P39, who was also present, told the Inquiry on 1st May 2009 that it was her impression that Tracey Clarke was telling the truth and that she wasn't under any sort of pressure from Andrea McKee.¹⁰
- e. Tracey Clarke also claimed in her Inquiry statement ¹¹ that the police officer told her to say the names of those involved and she gave Allister Hanvey's name because she wanted to hurt him and she was being vindictive. She said that police were shouting at her and saying things to her and banging the table saying that she wasn't going to get out. She agreed in evidence on 1st September 2009 that despite that, she gave a statement, a lot of which was true.¹²
- f. Tracey Clarke's step-father James Murray made a police statement on 16th November 2000 ¹³ in which he related things which he claimed Tracey had

⁵ Page 592

⁶ paragraph 24 page 80188

⁷ September 9th page 73 line 10 - page 74 line 8

⁸ February 11th page 56 lines 20 - 21

⁹ April 29th page 100 lines 8 - 16

¹⁰ May 1st page 34 lines 2 - 7

¹¹ paragraph 26 page 80188

¹² September 1st page 35 lines 3 - 5

¹³ Page 17338

told him about the assault. Mr Murray attended the Inquiry on 29th January 2009. He said that he couldn't remember making his statement at page 17338. He was asked by the Chairman if he was being truthful at the time when he made it and he said he would have been.¹⁴ In the statement he recounted that on the morning of 27th April 1997 he heard about the incident on the radio. Prior to the radio news, Tracey told him about the big fight. She said she stayed to watch because it was great crack. She was sitting on the chair at the kitchen with her back to the back door - that was always her seat. She said they all came back from the Coach and there was a fight. **She said a lot ran up to the fight** and Allister Hanvey was there. He wasn't sure if Tracey was there when the news came on. He remembered sometime on that day Tracey said she didn't want to go out with Allister anymore because of what he'd done. He thought that was because of the injuries Hamill had. Tracey was saying that Allister was an animal if he'd done that to Hamill. Mr Murray also said that Tracey told him, after she met Allister for lunch, that Allister felt quite proud of what he'd done and he said "sure he was only a fenian bastard" and that was the type of attitude he had. It is submitted that this statement has a ring of truth about it. Tracey Clarke said in her statement of 10th May 1997 "I can't remember what was said but it was something like, 'Fight Fight'. **We all ran down to see what was happening**" She also said "Allister said he jumped on his head and kicked his head. I told him that is how he got the fractured skull and he said he doesn't have a fractured skull anymore".¹⁵

- g. No matter how vindictive, it is highly unlikely that a teenager would implicate her boyfriend in a murder simply to hurt him. Even if she was capable of such a thing, it would not explain why she would implicate others, who were unconnected with her, in the same crime. We believe the explanation is that she was indeed telling police the truth. The Panel should also bear in mind that Tracy Clarke and Hanvey reconciled and that she bore him two children. We submit that such a union could never have occurred had she in fact invented an untruthful story that he was a murderer, even if she did later decline to give evidence. Hanvey however could forgive the initial telling of what she saw because he knew it to be true and because she withdrew it.
- h. The Inquiry is aware of the great lengths to which this witness, who is the estranged wife of Allister Hanvey and the mother of his children, went to avoid giving evidence.

¹⁴ January 29th page 148 line 2

¹⁵ Page 262

2. **Timothy Jameson** made a statement on 9th May 1997¹⁶ in which he implicated Allister Hanvey and others in the assault on Robert Hamill. He attended a DPP consultation on 21st October 1997¹⁷ claiming that he could not remember what he saw. He said that he could not distinguish in his mind between what he saw and what people had said had happened. He then stated that he could not remember anything about the fight and that he was drunk. He stated that when he had made his statement, **he was simply agreeing with what the police said to him and he put in his statement what they told him. In evidence on 12th February 2009 Timothy Jameson said that the Detective Constable who had recorded his statement “was being very intimidating, very forceful”.**¹⁸ We would draw the following points to the attention of the Panel:-

- a. Timothy Jameson’s statement came about because Reserve Constables McCaw and G supplied information to Detective Inspector Irwin to the effect that Timothy had admitted that he had ‘put the boot in’.¹⁹ Despite this, Mr Jameson was treated as a witness rather than as a suspect. This is a matter that will be revisited when considering the conduct of the RUC in the handling of this witness. It is relevant in the context of this discussion however to support the contention that Timothy Jameson was present and in the thick of the events that led to Robert Hamill’s death. He therefore knew exactly who had attacked Robert Hamill.
- b. It is too much of a coincidence that Timothy Jameson identifies many of those also identified by Tracy Clarke. It is inconceivable that two young people who are not, at that time known to each other should invent evidence for different reasons and name pretty much the same people. (Jameson also names “Fonzy” Allen as being involved). The similarities in their contemporaneous accounts are powerful indications that each was telling the truth at that time. .
- c. Edward Honeyford, the detective who recorded the statement on 9th May 1997 and was also present at the consultation on 21st October 1997, denied putting words into Timothy Jameson’s mouth. In his Inquiry statement²⁰ he said “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 rolled his eyes as Timothy Jameson said that”. In evidence on 29th January 2009, Mr Honeyford said “That was common. That was par for the course in those days. A witness would retract, and that was their means of retracting”.²¹

¹⁶ Page 15883

¹⁷ Page 17591

¹⁸ February 12th page 68 lines 18 - 19

¹⁹ Statement of G page 15878

²⁰ paragraph 16 Page 80476

²¹ January 29th page 26 lines 13 - 15

- d. It is worthy of note that Timothy Jameson's father, Bobby Jameson **arranged an appointment for him with a solicitor on 21s May 1997, some twelve days after making his statement.** Mr Jameson senior's Inquiry interview transcript was referred to by Counsel to the Inquiry on 22nd September 2009.²² When asked why he had taken Timothy to see the solicitor, he replied "Yes, well, I probably was concerned that, as you've said, there were things that didn't -- wouldn't have been fair to Timothy's language in the statement and I was concerned that there was things said that may have been interpreted by the police not what actually Timothy said".
- e. We would refer the panel to a fax dated 20th December 2006 from McBurney & Co Solicitors to the Robert Hamill Inquiry²³ which states:-
- f. "It is my recollection that Mr Jameson indicated on 21st May 1997 that substantive averments made to RUC Officers were based upon rumour and supposition as opposed to personal knowledge. **He stated that on the night in question he was inebriated and could not actually recall details of the incident. I advised him to fully explain and clarify the position to the prosecuting authorities as soon as possible.** His message, through his father, to our Mr (blank) (on 22nd October 1997) was merely noted and to my recollection I had no further dealings with Mr Jameson in the matter"
- g. **There is no mention by the solicitor of any allegation that words had been put into Timothy's mouth by police. Further, the appointment was in May yet Timothy waited until the consultation in October to retract the statement despite the solicitor's advice to explain and clarify the position to the prosecuting authorities as soon as possible.**
- h. The message from Mr Jameson to the solicitor on 22nd October 1997, the day following the consultation at which he was present, is contained in a telephone memo ²⁴and reads:-
- i. "Last Thursday his son had to attend High Court to be interviewed by DPP. Was interviewed by Mr Kerr, QC. He indicated he had drink taken the night in question and could not actually remember anything afterwards Was talk about it he heard comments of others and reported it in his statement but could not actually remember details of the incident. They were not pleased but feels we must now just wait to see what happens".

²² September 22nd pages 74 - 76

²³ Page 72988

²⁴ Page 72851

- j. Again there is no mention of an allegation that the words in the statement were from a policeman and not from Timothy.
- k. When Mr Gordon Kerr, QC was questioned by Mr McGrory QC on 16th September 2009,²⁵ paragraph 16 of his Inquiry statement²⁶ was put to him. Mr Kerr had stated in relation to Bobby Jameson's attendance at the consultation:-
- l. 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".²⁷
- m. Mr Kerr QC recalled in evidence Mr Jameson senior's discomfort. He also recalled, significantly we submit, that "Mr Jameson senior was definite in his views about what his son would be doing vis a vis the case.." Mr Kerr did not recall any protest from Mr Jameson Snr in relation to the way in which his son had been treated.
- n. Bobby Jameson was summoned to appear at the Inquiry but did not respond. We submit that the evidence concerning the role played by Bobby Jameson in the withdrawal of his son's evidence is significant. Firstly, Mr Jameson Snr, decided that legal advice was necessary in the context of his son not testifying. His son only informed Mr Mc Burney that he had made up these allegations based on rumour and supposition. Mr McBurney properly advised the Jamesons that, if such was so, then they should immediately report this to the prosecuting authorities. This was not done and we submit that young Jameson (and his father) knew very well that what his son had said may well have been supported by other evidence and that a withdrawal on this basis may have raised more problems than it solved for them. In fact they waited until the consultation on October 22nd by which time Tracy Clarke had by now indicated her refusal to testify and a half hearted allegation against the police was made. If this was in any way genuine surely it would have been raised when seeking legal advice and would have been pursued by an understandably angry parent who was clearly not behind the door in intervening? The likely explanation is that Mr Jameson Snr understood, far better than his young son, the consequences of becoming a prosecution witness in any murder case let alone this one. If young Timothy Jameson had given evidence against those who murdered Mr Hamill his life would never have been the same again and his father well knew it. He would have become at least a social pariah and at worst a target for Loyalist paramilitaries and may never have been able to return to Portadown again.

²⁵ September 16th page 94 - 95

²⁶ Page 81413

²⁷ September 16th page 95 lines 5 - 6

- o. If Reserve Constable G is to be believed then Timothy Jameson had admitted to him to having some degree of involvement in the incident on 27th April 1997. This being the case, it is likely that he named the others he knew to be involved but leaving out his own part, such as it may have been.. It is also very possible that his admission to Reserve Constable G was no more than an act of bravado and not a true admission of wrongdoing on his part. In any event, he then discussed the matter with his father who quickly formed the view that some way out would have to be found. This would explain why Timothy's father took him to see a solicitor for advice and at least created a record of his alleged concerns about the validity of his statement should he be called upon to testify in Court.
 - p. We respectfully submit that significant weight should be given to Timothy Jameson's statement because the information outlined above would point to his statement being true albeit with the omission of any reference to involvement by him.
3. Allister Hanvey told police in his statement of 7th May 1997²⁸ that he was wearing his "black CAT zipped up jacket". When interviewed by police on 10th May 1997²⁹ he said that the jacket which he had claimed to be wearing was "the only jacket I have" and described it as a black Caterpillar jacket with puffed up sleeves. It was put to him that a policeman said he was wearing a dark coloured baseball type jacket with greyish sleeves. He said that he didn't possess such a jacket and had never owned a jacket with grey sleeves and that the policeman was wrong. Allister's uncle Thomas Hanvey made a statement on 11th May 1997.³⁰ He claimed that Allister was wearing a navy or black quilted jacket on the relevant night. Kenneth Hanvey told police on 12th May 1997³¹ that his son Allister was wearing a black bomber jacket "CAT". However:-
- a. Reserve Constable Paul Warnock said in his statement of 27th April 1997³² that he noticed Allister Hanvey in the crowd and he was wearing "jeans with a dark coloured baseball type jacket with greyish coloured sleeves..." We submit that his description is in fact closer to the silver baseball jacket described below that it is to the black CAT jacket Hanvey claimed to be wearing that night.

²⁸ Page 559

²⁹ Pages 6607 - 6610

³⁰ Page 9193

³¹ Page 9902

³² Page 712

- b. As stated above, James Murray made a police statement on 16th November 2000.³³ He related things which he claimed Tracey had told him about the assault including Allister having got rid of the clothes and burnt them. He said that Tracey had bought Allister a silver jacket from Paranoid for Christmas 1996 and he never saw it after the incident. Mr Murray described the jacket as “silver, like anorak material without the lining in it. I remember the jacket had an orange stripe on the sleeves the jacket only came to his waist and it looked too small for him.” Mr Murray couldn’t help the Inquiry from his recollection about the jacket and, as stated above he said that he couldn’t remember making his statement.³⁴ He was asked by the Chairman if he was being truthful at the time when he made it and he said he would have been.³⁵ Mr Underwood QC showed Mr Murray an Action record print³⁶ where it was recorded that police had shown him a diagram of a jacket on 11th February 2001. It was recorded “which he thought the jacket was similar. He thought the one Allister was wearing was shorter”
- c. Jonathan Wright made a statement on 11th May 1997³⁷ in which he said “Allister was wearing light blue jeans, track suit top, grey colour, with a zip up the front of it. The top had orange stripes on both arms which went down to the elbows”. In evidence to the Inquiry on 11th March 2009,³⁸ Mr Wright confirmed that this was a true account.
- d. Julian Lyons, the owner of ‘Paranoid’ gave evidence on 30th January 2009. He had a recollection of selling a jacket to Tracy Clarke for Alastair Hanvey but only a blue Danielle Poole jacket not a silver Skanx one. He was asked by Mr Underwood QC why he was so reluctant to accept to Constable H in 2001 that he could well have sold a silver Skanx bomber jacket to Tracy Clarke when he did in fact deal with that company. Mr Lyons claimed that he was not going to engage in the confirmation of possibilities when he had no recollection of ever stocking such a jacket. However, the Inquiry statement of Steven Hughes, the owner of Skanx³⁹ was put to Mr Lyons by Mr McGrory QC.⁴⁰ Mr Hughes referred to his police statement of 24th January 2001 in which he described a particular jacket as “a matt silver jacket with a zipped front. It had orange two-inch braiding down the full length of each sleeve...”. Mr Hughes stated “I have been told other witnesses have described a jacket someone was wearing

³³ Page 17338

³⁴ Page 17338

³⁵ January 29th page 148 line 2

³⁶ Page 5116

³⁷ Page 9137

³⁸ March 11th page 86

³⁹ Page 81408

⁴⁰ January 30th page 76

on the night Robert Hamill was attacked as a bright silver waist-length anorak style jacket with silver sleeves and orange stripes down the sleeves and a black waistband. That does sound similar to the one that I designed and sold to Paranoid in Portadown. The jacket was part of the Autumn/Winter 1996 collection.....” Faced with evidence from the owner of Skanx that he had indeed designed a jacket of this description and had supplied one to Paranoid, Mr Lyons eventually said “If he is saying he sold me that jacket, I agree that it is possible, but I have no recollection of either buying or selling that jacket”.

- e. Just why Mr Lyons was so reluctant to accept that he had in fact purchased such a jacket from the designer is a mystery to us but stock the jacket he undoubtedly did. It is beyond coincidence, we submit, that Jonathan Wright should describe Alastair Hanvey as wearing a grey jacket with orange stripes on the arms for it not to have been this jacket. That the jacket disappeared is of further significance in the context of the allegation the Hanvey had been warned to destroy the clothing he was wearing that night. It is our respectful submission that Allister Hanvey was clearly lying about what he was wearing and that Thomas and Kenneth Hanvey also told lies in order to cover for him. This again would strengthen the evidence that he was guilty of wrongdoing.

- 4. **Sergeant P89** said that “There was one particular individual who was very hostile. He was very reluctant to move back and had to be physically forced by myself by pushing him back. It was clear to me that this individual was close to assaulting me. I can recall Reserve Constable Atkinson say words to the effect do you know who he is watch him that fellow is an expert or black belt in martial arts. He mentioned the fellows name as Hanvey.....” ⁴¹P89 gave evidence on 24th March 2009. He said that he saw Robert Atkinson talking to Hanvey and saw him try to calm Hanvey down or get him to leave. P89 got the impression that Hanvey was intoxicated. ⁴²
- 5. **Reserve Constable Murphy** saw Allister Hanvey amongst a crowd either at the junction of Thomas Street/High Street/Market Street or in West Street when the loyalist crowd had been pushed back. ⁴³
- 6. **Reserve Constable Warnock** said that Allister Hanvey was a prominent figure at the front of the crowd. He remembered asking another police officer what his name was and was told that it was Allister Hanvey. He didn’t remember definitely who the police officer was but believed it may have been Reserve Constable Atkinson. Warnock knew that Hanvey was in the Tae Kwon Do Club and remembered his photograph being in the local paper. ⁴⁴

⁴¹ Page 11084

⁴² March 24th page 13 lines 19 - 22

⁴³ Page 34807

⁴⁴ Page 17258

7. **Reserve Constable Atkinson** said that he might have spoken to Hanvey and asked him to move back but he denied asking him to assist him in moving the crowd back.⁴⁵ Allister Hanvey said that a policeman approached him and asked him to help move some of the people back towards the church. He said that he didn't know the policeman's name but gave a description of him (mid 40s, 5' 10", stocky build, gingerish, greyish hair, moustache) and said he knew him from seeing him in the town.⁴⁶ This description fitted Atkinson. Hanvey knew Atkinson but did not identify him by name. It is submitted that this was a deliberate attempt to use his association with Reserve Constable Atkinson to his advantage, knowing full well that he would not contradict him.
8. **Father Dooley** stated that he received a call from a male person who he assumed to be a police officer because of his knowledge of the events of 27th April 1997. The caller said amongst other things that a **"person called 'Handy' was involved in this karate club and it was he who felled Robert Hamill."**⁴⁷ Father Dooley's Inquiry statement is at page 80242. He states at paragraph 5 "I wrote down what the person said on two small bits of green paper and then I sat down the next morning and wrote it out in longhandI changed two small bits of it afterwards. I was given two names one I thought was Handy, when I picked it up on the phone and I discovered afterwards from watching the news that it was Hanvey...."
9. **Trevor Leatham** who was a prison officer gave evidence to the Inquiry on 30th January 2009. He said that it was correct that he had bumped into Allister Hanvey when he was on remand and he asked him if he had done what was alleged and Hanvey said that he did not know because he couldn't remember what he did that night.⁴⁸ He also said that he had heard rumours that "there was Es involved, drug taking involved and maybe he might have been high on the night this happened"⁴⁹. Mr Leatham confirmed that he had had a discussion with Robert Atkinson within about one week of the incident happening.⁵⁰ In his Inquiry statement⁵¹ Trevor Leatham said at paragraph 8 that Atkinson told him "When they got to the scene of the fighting he saw Allister Hanvey standing back watching the fight. Robert told me that Allister was either drunk or high on drugs so he told him to "fuck off home out of the road". Allister apparently stood and argued with Robert for a while". Robert Atkinson said in

⁴⁵ Page 61271

⁴⁶ Page 559

⁴⁷ Page 2541

⁴⁸ January 30th page 21

⁴⁹ January 30th page 23

⁵⁰ January 30th page 23 lines 10 - 12

⁵¹ Page 80643

evidence that he had read Mr Leatham's statement and he didn't recall the conversation. He said that Trevor had a drink problem.⁵²

The Panel must decide whether or not Mr Leatham was being truthful but it is to be wondered what he would stand to gain from lying about such a matter. It is also worthy of note that Hanvey has a conviction for drugs.⁵³

10. Allister Hanvey told police that he went back to his Uncle Thomas Hanvey's house.⁵⁴ Thomas Hanvey supported this.⁵⁵ Allister's father Kenneth Hanvey said that he said that he went to Thomas's home at approx 9.30 am. – 9.45 am and brought Allister home.⁵⁶ *In evidence on 12th February 2009, Kenneth Hanvey said that he couldn't recall what happened on the morning of 27th April 1997.*⁵⁷ There is evidence which would indicate that this is not true:-

- a. Allister Hanvey's ATM machine card was used to withdraw £10 out of the Ulster Bank on High Street, Portadown at 8.46 am on 27th April 1997.⁵⁸ There was no indication that the card had been lost or stolen. The ATM was close to where witnesses Christopher Henderson and Jason McClure claimed that they were with Allister Hanvey.⁵⁹ They claimed that they had all been at a party at Tracey McAlpine's house and left around 5.00 or 6.00 am with Mr Hanvey and went to Z Cabs to get a taxi home. In evidence on 19th February 2009.⁶⁰ Christopher Henderson said it must have been around 5 o'clock when they left - "I have some recollection of it being light, potentially being light. So I would say, you know, it was very early morning". It is interesting to note that the First Trust Bank account from which the withdrawal was made was opened on 13th October 1994 and closed on 6th May 1997. No person other than Mr Hanvey was permitted to withdraw funds from the account which was in his sole name. Mr Underwood, QC asked Allister Hanvey on 13th March 2009 how his card was used to take £10 out of this account at 8.46 am on 27th April 1997 and he replied "I have no explanation for that whatsoever".⁶¹ The Chairman asked Mr Hanvey if he had lost his cash card or lent it to anyone and he replied "I can't remember".⁶² Mr Hanvey told Mr Underwood, QC that he had no recollect of closing the account on 6th May when asked why he had done this. Mr Underwood, QC asked him if he had closed the account in the

⁵² May 11th page 77 lines 23 - 25

⁵³ March 13th page 95; details held by NI Criminal Records Office page 71122

⁵⁴ Page 559

⁵⁵ Page 9193

⁵⁶ Page 9902

⁵⁷ February 12th page 5 line 11

⁵⁸ Page 17323

⁵⁹ Page 17308

⁶⁰ February 19th page 40 lines 4, 5 & 6

⁶¹ March 13th page 13 line 18

⁶² March 13th page 14 line 6

hope of covering his tracks about being there and taking the £10 out, to which he replied “no”.⁶³ It is submitted that it was no coincidence that an account which was opened for two and a half years should be closed around the time Tracey Clarke said “I spoke to Alister Hanvey on the Tuesday and I told him about what I had seen and that I had told the Police everything and that he was in deep trouble..”⁶⁴

- b. While there is an unexplained gap of some hours between the time that Henderson and McClure say they left the party with Hanvey and the use of the ATM machine their evidence is nonetheless contradictory of the evidence of Hanvey that he went to his uncles from the town and remained there until his father collected him at around 9.30 am the following morning.
- c. Others placed Allister Hanvey at Tracey McAlpine’s house:-
 - i. Kelly Lavery⁶⁵
 - ii. Pauline Newell⁶⁶
 - iii. Tracey Clarke⁶⁷
 - iv. Iain Carville⁶⁸
 - v. Steven Bloomer⁶⁹
- d. This again is substantial evidence that Allister Hanvey was lying.

- 11. We submit that Mr Hanvey’s evidence is a tissue of lies. He told Mr McGrory, QC that he never confronted the fact that Tracey Clarke had made a statement implicating him in a murder⁷⁰ and he told the Chairman that he never talked about it even before he made things up with Ms Clarke.⁷¹ It is unconceivable that this was the case. Mr Hanvey claimed on 12th March 2009 that his memory of events was “Not very good at all”⁷² He referred the Inquiry to his original statement and said that he had “no recollection”⁷³ He told Mr Underwood QC, “I can’t

⁶³ March 13th page 16 line 2

⁶⁴ Statement of 10th May 1997 page 264

⁶⁵ Page 7090; February 17th pages 75 - 76

⁶⁶ Page 9129; February 17th page 15 line 22 - page 16 line 1

⁶⁷ Page 70900

⁶⁸ Page 9184

⁶⁹ Page 585

⁷⁰ March 13th page 77 lines 1 - 6

⁷¹ March 13th page 77 lines 7 - 8

⁷² March 12th page 203 lines 3 - 4

⁷³ March 12th page 204 lines 1 - 15

remember being in custody 12 years ago. I was in custody 12 years ago”⁷⁴ It is unrealistic to suggest that someone who had spent almost six months on remand on a murder charge would not remember being in custody.

12. It is our respectful submission that there is overwhelming evidence that Allister Hanvey played a principal role in the assault on Robert Hamill.

⁷⁴ March 12th page 223 lines 22 - 23

Marc Hobson

1. **Marc Hobson** was acquitted of the murder of Robert Hamill but was convicted of affray in relation to the incident.
2. Mr Underwood, QC referred Mr Hobson to his statement of 9th May 1997.¹ He had been at Dean Johnston's flat with Allister Hanvey and Jonathan Wright. They went from the flat to a Chinese in West Street. They left the Chinese and started walking down the town. They got as far as Call-a-Cab and a drunk man stopped them and asked for 'a fag'. Allister walked on towards the town. Jonathan gave the fellow a cigarette and the Marc and Jonathan walked on towards the town centre. Hobson said "We got to just in front of the big church in the town centre and the police were moving people up the street towards us. I sat on the wee wall just in front of the church with Jonathan and I could see a body lying on the street in the middle of town." Mr Underwood, QC said "So you didn't go into the crowd?" He replied "No, I didn't." He was asked "You didn't part yourself from Mr Wright?" He answered that he didn't.² Mr Hobson denies any wrongdoing but we submit that the evidence against him points to the contrary.
3. We would draw the Panel's attention to the attitude displayed by Mr Hobson at the Inquiry. Mr Adair, QC said "I have some questions for you, Mr Hobson. You don't find this amusing this, I presume today?" He replied No, seeing I got done years for something I didn't commit, no". Mr Adair, QC said, "You have been sitting grinning during parts of your evidence. Have you found something amusing?" He said "Maybe it is just what I do when I'm nervous". It was put to him "You have been sitting yawning in parts of your evidence. Are you tired?" He said "Yes, maybe I am." Mr Adair, QC asked "Or are you just treating this whole thing with contempt?" to which Hobson replied "No. Considering I got time for something I didn't do".³
4. **Tracey Clarke** stated on 10th May 1997 that 'Muck' (Hobson's nickname) was one of the people who were kicking and jumping on the person on the ground. (Hobson confirmed to Mr Underwood, QC that he was also called Muck back in 1997.)⁴ Tracey Clarke attended a DPP consultation on 17th October 1997⁵ and said she wouldn't give evidence in Court. Tracey Clarke's statement was put to Hobson by Mr Underwood, QC who asked him if he could give any reason why Tracey Clarke would have it in for him or any other friends of Allister Hanvey. Hobson said "The only thing I can think of is that they were having an on/off relationship and she wanted to get back at him, get back amongst his friends to hurt him".⁶ He was then

¹ Pages 562 - 563

² March 12th page 125 lines 4 - 7

³ March 12th page 144 line 15 - page 145 line 2

⁴ Statement of Tracey Clarke page 262; March 12th page 131

⁵ Page 17591

⁶ March 12th page 132 line 13 - page 133 line 7

asked if his friendship with Allister Hanvey was close enough that if anybody wanted to hurt him, they might use him. He replied 'no'.⁷ In dealing with the case of Allister Hanvey, we set out in detail the reasons for our submission that the Inquiry should give full weight to Tracey Clarke's statement of 10th May 1997 and our submission in that regard remains the same in respect of Marc Hobson.

5. **Timothy Jameson** made a statement to police on 9th May 1997⁸ in which he also implicated Marc Hobson in the fighting that night. He attended a DPP consultation on 21st October 1997⁹ claiming that he could not remember what he saw. He said that he could not distinguish in his mind between what he saw and what people had said had happened. He then stated that he could not remember anything about the fight and that he was drunk. He stated that when he had made his statement, **he was simply agreeing with what the police said to him and he put in his statement what they told him. In evidence on 12th February 2009 Timothy Jameson said that the Detective Constable who had recorded his statement "was being very intimidating, very forceful"**.¹⁰ He had said in his statement "When I got as far as Ronnie's Pub I could see a crowd of approximately fifteen to twenty persons fighting in the middle of the town. I walked towards the crowd. There was fellows punching each other and I observed a fellow with a Umbro sweater, grey colour and I think blue jeans, fighting with another fellow. This fellow I know to see, he lives in (blank) and is called Marc, he is also called 'Muck'. I know this fellow to see about town, Marc has very short brown hair, goatie beard and is overweight. I think he was wearing a black leather jacket. I was standing four to five feet from Marc. The street lights were on. Marc was punching this fellow in the face with his fist, that's the fellow with the Umbro sweater on. This fellow was fighting back, but Marc was getting the better of him, Marc knocked this fellow to the ground, he was lying on the middle of the road, opposite the bakery on the corner 'Number Seven', on the side of the street the cars drive up the town. This fellow lay there for about one minute and got up again. I didn't see Marc hit him while he was on the ground. Marc then started fighting with another fellow. This was a man wearing a blue shirt and tie in his mid 30's with short hair, I think ginger colour. This man was trying to stop the fighting and I saw Marc grabbing this man and throwing him out of his way." Mr Underwood, QC put this statement to Marc Hobson who agreed that he was called 'Muck' in 1997, he had very short brown hair, a goatee beard, was overweight and was wearing a black leather jacket. However he denied punching a fellow in the face or fighting with anybody else. He also said he didn't see a man wearing a blue shirt and tie. When asked why Jameson would have said this, the response was "You would need to ask him that" and, when told that Jameson said he was forced to make the statement, he said "There is your answer then".¹¹ It is our submission that the Inquiry should give significant weight to the statement of 9th May 1997 for the same reasons outlined by us in the case of Allister Hanvey.

⁷ March 12th page 133 lines 11 - 13

⁸ Statement of Timothy Jameson page 15883

⁹ Page 17591

¹⁰ February 12th page 68 lines 18 - 19

¹¹ March 12th page 129 line 16 - page 131 line 23

6. Jonathan Wright made a statement on 11th May 1997¹² in which he said that he didn't see any fighting. He made another statement on 15th May 1997.¹³ He told police that when he and Marc Hobson got to the front of the Church, they walked a few yards further down the centre of the street. He saw a fight further down the town in the middle of the street between Thomas Street and Woodhouse Street. He was about thirty yards from the fight. There were about 20 to 30 people in the middle of the street. He saw a person standing behind the crowd in the middle of the street. This man was wearing a blue shirt and striped tie; he was wearing dark trousers which appeared smart. This man was shouting towards the crowd of Protestants to come on. There was fighting going on in the crowd he was shouting at. **Marc then left Jonathan and ran down into the crowd fighting in the middle of the road.** Jonathan stood at the edge of the flower beds facing the Abbey National. **He saw Marc being pushed about by the crowd and saw him lift his hand and reach out for somebody but didn't see him hit anybody.** He said there was a lot of shouting "Fenian bastards," and fenian cunts. There were 2 or 3 from the Catholic crowd shouting too - they were trading insults, calling the Protestants, 'Orange bastards.' The fighting lasted about five to ten minutes. He said he saw Rory Robinson in the middle of the crowd running around like a headless chicken. He saw Stacey Bridgett trading punches with one person. They were fighting a wee bit to the left of the main fight more towards the Alliance & Leicester Building Society. He said he saw a boy lying on the street at the mouth of Thomas Street. He was lying on his chest and wasn't moving. He was wearing dark clothes. Jonathan saw a police landrover parked on the main street at the Halifax. There were about five to six policemen trying to break the fight up. He saw people trying to push police away from the main fracas. The mood of the crowd was violent towards the police. He heard bottles being smashed. The police got the crowd under control and the crowd started leaving. **Marc came back out of the crowd** and Jonathan told him to come on. They walked up the town centre to the Church then Jonathan parted from him and walked home. This statement was put to Marc Hobson by Mr Underwood, QC. Mr Hobson's response was "It is lies, plain and simple lies." He told Mr Underwood that he didn't go into the crowd and didn't part himself from Mr Wright.¹⁴
7. Mr Wright attended a DPP consultation with Mr Gordon Kerr, QC on 17th October 1997. Mr Davison's note of the consultation stated that Mr Wright had a good memory of events and was able to relate the incidents more or less in accordance with his statement. **However, it said that "while in his statement he refers to his friend Marc as being involved in fighting during consultation he described him as pulling people out of the fight".** It is noted that Mr Wright did not indicate any unwillingness to give evidence.¹⁵ Jonathan Wright made a further statement on 13th March 1998¹⁶ in which he said that his statement of 11th May 1997 was correct and the second one wasn't. He said "At the time I made it up as I was afraid and I now know that it is known by others in Portadown what I said in the second statement and

¹² Page 564

¹³ Page 568

¹⁴ March 12th page 124 line 8 - page 125 line 7

¹⁵ Note of consultation page 17591

¹⁶ Page 581

because of that fact I am not prepared to give evidence in Court regarding the second statement". Mr Wright said in his Inquiry interview that "It was the police's words. That was made--it was made under pressure".¹⁷ We respectfully submit that the Inquiry should give full weight to Jonathan Wright's statement of 15th May 1997. This submission is based on the following:-

- a. Jonathan Wright was asked by Mr Underwood, QC about his statement of 15th May 1997. Mr Wright confirmed that the officer who took his first statement took this one. He said that he was put under pressure. Mr Underwood, QC asked Mr Wright how information, that he said wasn't true, got put into his statement. He said "Yes, the police officer basically -- he had told me that I wasn't telling the truth, that I had withheld information and that he thought I knew more than what I was telling.....Basically what happened was he was making suggestions to me about events that had happened that he knew that had happened that night. He basically said that he knew that Allister and Marc was at the scene and, basically, I hadn't told him the whole truth in my first statement"¹⁸ Mr Wright said that he was very adamant that he had told him everything that he knew in the first statement but he just didn't accept that.¹⁹ He went on to say that he signed the statement because he just wanted to get out of there. Mr Underwood QC asked him "When you said you felt you had to tell him something, do you mean you did actually tell him things that are in here or are you just saying that you signed it?" Mr Wright said "No. Well, I made things up. I just -- I just had to tell him something that would get me out of there, you know". He was asked if he accepted that some of the things that were put into this statement he did say, but he said them under pressure to get out. His answer was "Most definitely yes".²⁰
- b. Detective Constable Honeyford who recorded the statements of 11th and 15th May 1997 attended the Inquiry on 29th January 2009. Mr Underwood, QC referred him to his statement where he dealt with Jonathan Wright.²¹ He said in his statement "I remember very little about Jonathan Wright and rely entirely on the record contained in the documents."²² It was put to Mr Honeyford "He says, and has said since, that you took him into an interview room in order to make this statement and made threats to him. In particular, he says he wanted a solicitor and you wouldn't let him have one and you told him that unless he made a further statement, he wouldn't be able to go on holiday. You threatened charging him.....He says you told him his father, who worked for the Church of Ireland, would be humiliated if he didn't give you a statement". Mr Honeyford said "That is totally wrong". He also said "I don't remember him saying he was going on holidays and I certainly wouldn't have said that to a witness There is just absolutely no point in it.....That's the first

¹⁷ Page 31 Inquiry interview

¹⁸ March 11th page 87 line 20 - page 90 line 22

¹⁹ March 11th page 90 lines 12 - 14

²⁰ March 11th page 91 lines 1 - 12

²¹ Paragraphs 25 & 26 page 80478

²² January 29th page 29 line 25 - page 30 line 8

I have even known his father works for the Church of Ireland, is now. I can honestly say I never knew that”. It was further put to him “He says that you intimidated him to the point where he broke down and said “Yes, I’ll make a statement”, and then you brought some other policeman in....” Mr Honeyford said “No, there was no other policeman. Had there been any other policeman interviewing the witness with me, it would have been well documented and I certainly wouldn’t have said those things to him. I am disappointed that people have to say those things”.²³

- c. Mr Underwood, QC referred Mr Wright to the DPP consultation which he attended and said “What you are doing here in this consultation according to this note, is that you are making it better for Marc Hobson -- Marc was your friend, wasn’t he?” He replied “Oh, yes.” He was then asked if he didn’t see a fight, why didn’t he just say when he went to the consultation “Look, sorry, I was under such pressure on the second statement, I really can’t rely on that”. Mr Wright said “Because I was afraid that if I had told him that, that I had lied to the police, I would get into, you know trouble.....”²⁴
- d. It was put to Mr Wright by Mr Underwood, QC that it had taken some time for him to take the second statement back. He said “Well, as I said earlier, I knew that I had lied to the police, I had made a false statement up. I didn’t want to get into more trouble than what I thought I could be in. Well, I had called the police station as well and I had asked to speak tothat policeman yes....I left a few messages and had asked could he get back to me, that I needed to speak to him again, and that I wanted to retract this second statement.”²⁵
- e. Mr O’Hare asked Mr Wright “Can we take it that you were absolutely appalled by the conduct of this police officer on the night of this second Statement?” He replied that he was shocked and he was angry. He was upset. The statement wasn’t true. He agreed that he had been threatened and intimidated and had words put into his mouth by this police officer. Mr O’Hare asked him if he told his father, when he got home, what had happened in the police station. Mr Wright said that he didn’t because he was ashamed of what he had done. He was embarrassed. He didn’t want him to know what he had done. He had failed his friends. Mr Wright said that he just bottled it up. He just kept his head in the sand and he just didn’t want anybody to know about it”. Mr O’Hare asked him “No, isn’t the truth of the matter, Mr Wright, that you didn’t want it to get out, the word to get out on the street, that you had made a statement implicating Hobson, Bridgett and Robinson....Because you knew that if word did get out about that, it could cause you difficulties; isn’t that right?” He replied ‘no’. Mr Wright said that he told no one.²⁶ He further

²³ January 29th page 38 line 2 - page 39 line 10

²⁴ March 11th page 96 line 10 - page 87 line 24

²⁵ March 11th page 99 lines 1 - 22

²⁶ March 11th page 137 line 24 - page 141 line 25

confirmed that, until he withdrew his statement in March 1998, he hadn't told anybody nor did he make any complaint to the police about the conduct of this police officer. When it was put to him that he had attempted to contact the very policeman who had threatened him about his girlfriend, his father, charging him with murder, he said 'yes' he had phoned the police station.²⁷

- f. Mr McGrory, QC questioned Mr Wright who confirmed that he had visited Mr Hobson in prison a few times. He also said that the case wasn't discussed. Mr McGrory QC put it to Mr Wright that at some point Marc Hobson became aware that he had made a statement. He said he that he didn't know. He wasn't approached by Marc or anybody. It was then put to him that Marc Hobson had told the Inquiry in an interview that he became aware that Wright had made a statement when he got his papers. Mr Wright said that he didn't know. When Mr McGrory, QC suggested to him that he was made aware by Hobson or members of his family that there was a statement in those papers that caused him a serious difficulty, Wright's response was "No, that is totally false. Nobody every approached me, nobody ever threatened me, nobody intimidated me. It was never discussed at any point".²⁸
- g. When asked by Mr McGrory, QC if he was absolutely certain that there was no contact between him and Hobson about this case in the months after 15th May, before his committal proceedings, which took place in April 1998, Wright said 'absolutely positive'. It was put to him "But you have said you visited him in prison. Would you have been in telephone contact with him?" He replied "Well, Marc would have telephoned me if there would have been maybe a mid-week visit on and maybe his parents were going down and he maybe had one or two free spaces for that day. Marc would have telephoned me to say did I want to go down..." Mr McGrory, QC asked him if Hobson was aware at any time that he was called for consultation with the Director of Public Prosecutions' office. He said he had no idea.²⁹ Mr McGrory, QC drew Mr Wright's attention to a record of telephone calls made from the prison to his home.³⁰ This document showed that there were a number of phone calls made from the prison to his home between 22nd June 1997 and 21st October 1997. Mr Wright didn't dispute that these calls were made to his home. There were a series of calls on 17th October 1997 which was the date of the consultation. One was at 18.8, one at 18.13, one at 18.22 and one at 18.35 - all short calls. Mr McGrory, QC suggested to Mr Wright that this was no coincidence and that in fact, probably Marc Hobson knew that he had the consultation and was very, very anxious to know what he had said. Mr Wright said that he had no idea whether Marc knew or not. Mr McGrory, QC asked Mr Wright "Of those who were imprisoned in the Maze at that time, would it really only have been Mr Hobson who was phoning you?" He replied that Stacey could have called - "If I would have been called, it would have been

²⁷ March 11th page 144 lines 1 - 15

²⁸ March 12th page 6 line 23 - page 8 line 12

²⁹ March 12th page 8 line 13 - page 9 line 4

³⁰ Page 21212

from Marc definitely and Stacey possibly”. He agreed that of the two, the most frequent caller would have been Marc. The record also showed a call on Saturday 18th October 1997 at 11.29 in the morning. It lasted for 11 minutes. Mr Wright couldn’t recollect this call. Mr McGrory, QC suggested to Mr Wright that it was a virtual certainty that on the morning of Saturday 18th October he told whoever he was speaking to in the prison about the consultation the previous evening. He also suggested that he would have been anxious to let that person know, particularly if it had been Marc Hobson, if had told the DPP that he had been pulling people out of the crowd rather than doing anything wrong. Mr Wright maintained that he didn’t recollect the call.³¹ We submit that Mr Wright was not telling the truth about the extent of his contact with his the friend, Hobson.

- h. Mr McGrory, QC referred Mr Wright to the matter of the committal proceedings and to a letter from Richard Monteith’s office to the department of the Director of Public Prosecutions dated 18th March 1998.³² This letter requested a number of witnesses, chief amongst who was Mr Wright, to give evidence at the Preliminary Enquiry on 20th April 1998. Mr Wright had no recollection of having been notified of this. It was pointed out to him that in order for Mr Monteith to write the letter, he needed to have had the papers by then. Mr McGrory, QC then put to Mr Wright that he didn’t give evidence and he suggested to him that the reason for that was because by then his third and final statement had been made. It was also put to Mr Wright that Marc Hobson had already told the Inquiry that when he got his papers, he was horrified when he saw his statement of 15th May and that he spoke to him about it. Mr Wright was also told that Hobson had said that after all of this, the relationship between them more or less ceased. Asked if he would agree that the friendship that the two of them had up until these events ended, Mr Wright said “I don’t recall if I seen him once he got out of prison, I don’t remember”.³³ In Hobson’s Inquiry interview Mr Pinfield said “I want to be clear on something: you just said that Jonathan Wright gave a statement to the police which is false, he was put under pressure and the police told him that he wasn’t going to be going on a holiday, which seems to me remarkably specific for something that happened nine years ago, that you would be able to say that the police told him that he wasn’t going to be going on holiday. Now Jonathan Wright has been interviewed recently and he also said that the police put him under pressure and said he wouldn’t be able to go on holiday. Do you spot a coincidence there? Hobson said “I don’t even talk to Jonathan Wright anymore.”³⁴ He also said that he had contact with Wright up until he got his papers.³⁵

³¹ March 12th page 15 line 19 - page 21 line 17

³² Page 28226

³³ March 12th page 27 line 20 - page 30 line 9

³⁴ Pages 17 & 18 Inquiry Interview

³⁵ Page 20 Inquiry Interview

- i. Mr McGrory, QC put it to Mr Wright that when Marc Hobson had been interviewed by the Inquiry, he told them³⁶ “....that that 15th May statement was a lie and that his understanding was that you were going on holidays.....and that the cops brought you in, that you had told the truth and then they put you under a lot of pressure.....and that you were young and naïve.....But the most significant part of that is that he told the Inquiry that he knew that you had been pressurised on 15th May because you were going on holidays”. Mr Wright responded “Well, Marc would have known that I was going on holidays, yes.” Mr McGrory, QC suggested to Mr Wright that there was no conceivable way Marc Hobson could have known that the reason he was saying that the statement was pressurised because he felt under pressure because of he holiday unless he had told him. Mr Wright maintained that there was “never any contact. I have told you this before. There was never once, at any point, contact”³⁷ Once again we submit that Jonathan Wright was not telling the truth to the Inquiry.

 - j. We respectfully submit that the timing of the telephone calls on 17th and 18th October 1997 was not a coincidence. Neither was the timing of the withdrawal statement a coincidence. We believe that the evidence referred to above indicates that Jonathan Wright told the truth in his statement of 15th May 1997; that Marc Hobson knew about the consultation on 17th October 1997 and that once Hobson knew about the statement from his committal papers, pressure was brought to bear on Wright to withdraw the statement.
8. **Andrew Allen** was interviewed by police on 15th May 1997. He told police that he, David Woods and Rory Robinson had been hit for no reason by boys who came down Thomas Street. He was asked what happened then and said “He came at me, he started throwing punches at me, I backed out into the middle of the road....He was still coming at me, I turned and ran up Thomas Street”. He was asked if they were the only three there in that area at that moment out of the group that got off the bus and he said that was right - the other group was down the street. He then said “There was another boy standing there and he starts throwing punches at me.” Asked if this was in Thomas Street, he said “Yes”. Then asked, “Whereabouts in Thomas Street, how far did you run on?” He said “I never got up that far, it must have been, it was just across from the big window in Eastwoods, you know the end of it, you know Eastwoods clothing there”. He confirmed that he was still really in the mouth of Thomas Street and then “When he started throwing punches at me, all I could do was put my hands up and swing, the next thing.....And then I just, three or four boys just came running in and he was knocked to the ground.” He confirmed that these were boys from the big crowd that got off the bus with him and he said “**Mark Hobson was one of them and I don’t know the rest.....yes they knocked him to the ground, this boy got up and ran down the street**”.³⁸ Marc Hobson wasn’t at the Coach Inn but had said in his statement of 9th May 1997³⁹ that he and Jonathan walked on towards

³⁶ Page 17 Inquiry Interview

³⁷ March 12th page 39 line 10 - page 41 line 14

³⁸ Pages 7315 - 7319

³⁹ Pages 562 - 563

the town centre and that they were going down the town to 'meet the ones' getting off the bus from the Coach. This evidence of Allen would accord with that of Timothy Jameson referred to at Number 5 above where he said "Marc was punching this fellow in the face with his fist, that's the fellow with the Umbro sweater on. This fellow was fighting back, but Marc was getting the better of him, **Marc knocked this fellow to the ground, he was lying on the middle of the road, opposite the bakery on the corner 'Number Seven', on the side of the street the cars drive up the town. This fellow lay there for about one minute and got up again.**"

9. Mr Underwood QC referred Mr Hobson to the statement of Constable Neill.⁴⁰ He had described the fighting and said "During this, a male, late 20s, round face with a goat beard and very short hair, wearing a leather-type soft casual waistcoat was near me and I saw him kick at the injured man I now know as Robert Hamill. The male with the goat beard was moved back as best as possible. Other police had arrived at this stage and were standing with Rory Robinson, 20s, short black hair, thin with pointy features. Both these persons were taunting injured people and those that were looking after them."⁴¹ Mr Underwood, QC said "And you know later, of course, there was a confrontation in which this officer identified the person he is describing there -- the first person he is describing there as you?" Mr Hobson confirmed that his evidence was that this was a misidentification "without doubt". Constable Neill gave evidence to the Inquiry on 19th May 2009. Mr Green asked him "Are you saying that it was something that you simply saw out of the corner of your eye or were you looking directly at Mr Hamill in order to be able to see this?" Constable Neill replied "I was looking directly at Mr Hobson. That's how I was able to identify him."⁴² Constable Neill also stated on 27th April 1997 "The situation calmed down somewhat after this. I remember during this, a particular group of people I believe R/Constable Atkinson was involved and the male with the goat beard and the leather waistcoat was involved, he was involved in assaulting someone in the group. I tried to get this person off and I had to strike him with my baton. I believe I struck him on the leg. This had occurred during the main fracas but I am no sure exactly when in that."⁴³ In his police interview of 10th May 1997, Mr Hobson was asked if he remembered being struck that night by a policeman's baton. He said 'no'.⁴⁴ Constable Neill submitted a baton report dated 28th April 1997 in which is recorded "Unknown male, stocky build, goat style beard, short dark hair, wearing leather waistcoat.....Unknown male struck on leg."⁴⁵ Constable Neill also referred to this in his Inquiry Statement in which he said "My baton had been drawn earlier and I struck Hobson a blow to his thigh."⁴⁶ McCollum LJ said in his judgment in R v Hobson "I am satisfied beyond a reasonable doubt, therefore, that Constable Neill has accurately identified the accused, Paul Rodney Mark Hobson as being the person standing over Mr Hamill and later involved in the struggle with Reserve Constable Atkinson".⁴⁷ Campbell LJ in Hobson's Court

⁴⁰ Page 9669

⁴¹ March 12th page 139 line 23 - page 140 line 13

⁴² May 19th page 105 line 25 - page 106 line 3

⁴³ Page 9670

⁴⁴ Page 51698

⁴⁵ Pages 9931 - 9932

⁴⁶ Paragraph 32 page 81036

⁴⁷ Page 8742

of Appeal judgment said “Having considered the identification evidence and the detailed criticism of it we have no doubt that the conviction based upon it is safe.”⁴⁸

10. Constable Cooke’s statement of 27th April 1997⁴⁹ was put to Hobson by Mr Underwood, QC. He had stated “I recognised the following persons at the front of the crowd: Stacey Bridgett from (blank). His nose was bleeding. [Somebody else] from (blank). He was wearing a multi coloured checked shirt. Rory Robinson of (blank), was wearing a yellow coloured shirt with a fine check through it and beige coloured trousers.” Mr Underwood QC said “And then the next name that has been blanked out is xxxxxxx, and it gives an address: “...was wearing a black leather jacket and blue denim trousers. On several occasions while we were holding this crowd back and tried to move them towards West Street, I spoke to Robinson and xxxx and asked them to move up the street. Both refused to move and each of them tried to push past myself and other police on several occasions”. Mr Underwood, QC then referred to a later statement by Constable Cooke dated 26th May⁵⁰ where he said “In addition to the statement made by me on 27th April 1997, the person I named as xxxxx was in fact Marc Hobson. I have known both xxxx and Hobson for around three to four years as a result of my general police duties in the Portadown area. On this occasion, I made a genuine mistake and put the wrong surname to the face. I’m certain the face I saw in the crowd was Hobson.” Mr Underwood, QC asked Hobson if that officer was right, that he had known him for three or four years. The response was “How am I supposed to know that? I didn’t know him. So that was news to me.” When asked if he had made a misidentification, Hobson said “Yes.”

11. Mr Hobson was referred by Mr Underwood, QC to P40’s statement⁵¹ where he said “I observed two males lying in the middle of the road adjacent to Thomas Street. There was a crowd at that side of the street. I made my way across the street to Thomas Street and assisted other police in moving the crowd back. I observed one of the males in the crowd. This male had very short black hair, a black moustache and a goatee-type beard. He was approx five nine tall and was of stocky build. He had a black leather jacket and was wearing blue jeans. This male had been very aggressive and had been taunting the Nationalists and had to be physically moved back several times”. Hobson denied that this was him. Mr Underwood, QC referred him to where P40 was asked more about this.⁵² He said “Male, very aggressive”. He was asked “Doing what?” He replied “Taunting Nationalists, ‘Hope he fucking dies’” Asked “Where were the Nationalists? What was taunting?” P40 answered “‘Hope he fucking dies. ‘Pointing finger and saying, ‘Hope he fucking dies’” Mr Hobson denied that this was him. P40 gave evidence to the Inquiry on 26th March 2009. Mr Underwood, QC referred him to his statement⁵³ where he had described the male with the goatee-type beard and he put to him, “You were never asked, I think, to attend an identification

⁴⁸ Page 8759

⁴⁹ Page 9226

⁵⁰ Page 11063

⁵¹ Page 6350

⁵² Page 6352

⁵³ Page 696

parade or a confrontation or look at mugshots of this person. Is that right? P40 said 'yes.' He was then asked if he got a clear enough view of him that if he had, for example, a week or two later been asked to attend a confrontation or an ID parade, he would have been able to pick him out. P40 said 'yes'.⁵⁴

- 12.** It is a matter for the Panel to reach a decision on whether or not Mr Hobson told the truth. It is however our respectful submission that the evidence outlined above shows that his account is sullied with lies from start to finish and that not only was he part of the general affray but he did indeed play an active role in the murder of Robert Hamill.

⁵⁴ March 26th page 6 lines 5 - 25

Stacey Bridgett

1. Stacey Bridgett, who was described by Reserve Constable P40 as ‘a local troublemaker’¹ and his friend Dean Forbes had been at the Coach Inn, Banbridge and they returned on the bus which arrived in Portadown at approximately 1.40 am on 27th April 1997. Bridgett was carrying a ‘green glass bottle of cider’.² Accounts vary in respect of some details. However, there is agreement between the land rover crew and Messrs Bridgett and Forbes that they were engaged in conversation at the mouth of Woodhouse Street when Constable Neill’s door was suddenly opened by a man who pulled him out. The man was saying “You sat there and watched that happening”.³ Mr Bridgett was later arrested and charged with the murder of Robert Hamill but the DPP subsequently withdrew the charge.⁴ He was interviewed by police on 6th May 1997⁵ and on 10th May 1997⁶ and he gave evidence to the Inquiry on 27th February 2009.⁷ He denied any wrongdoing in relation to the assault on Robert Hamill but our respectful submission is that he was involved. This submission is based on a body of evidence which contradicts his version of events.

The evidence against Stacey Bridgett

2. **Tracey Clarke** stated on 10th May 1997 that Stacey Bridgett was one of the people who were kicking and jumping on the person on the ground.⁸ She attended a DPP consultation on 17th October 1997⁹ and said she wouldn’t give evidence in Court. Tracey Clarke’s statement was put to Stacey Bridgett who said “That statement is untrue”.¹⁰ In dealing with the case of Allister Hanvey, we set out in detail the reasons for our submission that the Inquiry should give full weight to Tracey Clarke’s statement of 10th May 1997 and our submission in that regard remains the same in respect of Stacey Bridgett.
3. **Jonathan Wright** made a statement on 11th May 1997¹¹ in which he said that he didn’t see any fighting. He made another statement on 15th May 1997.¹² He told police that when he and Marc Hobson got to the front of the Church, they walked a few yards further down the street. He saw a fight further down the town in the middle of the street between Thomas Street and Woodhouse Street. Marc left Jonathan and ran down into the crowd fighting in the middle of the road. Jonathan stood at the edge of the flower beds facing the Abbey National. He saw Marc being pushed about by the crowd and saw him lift his hand and reach out for somebody but didn’t see him hit

¹ Paragraph 14 page 81148

² Statement of Denise Cornett, 27th April 1997 page 61357

³ May 19th page 11 line 17

⁴ Page 18350 - 18351

⁵ Pages 7128 - 7219

⁶ Pages 7220 - 7229

⁷ February 27th starting at page 55

⁸ Page 262

⁹ Page 17591

¹⁰ February 27th page 82 line 17

¹¹ Page 564

¹² Page 568

anybody. The fighting lasted about five to ten minutes. He said he saw Rory Robinson in the middle of the crowd running around like a headless chicken. He saw Stacey Bridgett trading punches with one person. They were fighting a wee bit to the left of the main fight more towards the Alliance & Leicester Building Society. He said he saw a boy lying on the street at the mouth of Thomas Street. The police got the crowd under control and the crowd started leaving. This statement was put to Stacey Bridgett by Mr Underwood, QC. Mr Bridgett's response was "No, I wasn't trading punches, no. He has maybe seen me getting a dig in the nose, but I wasn't trading punches, unless I put my hands like this to stop getting hit. But I wasn't trading punches. That's not true."¹³ Arguably to say someone is 'trading punches' is quite different from saying they 'were being punched'.

4. Mr Wright attended a DPP consultation with Mr Gordon Kerr, QC on 17th October 1997. Mr Davison's note of the consultation stated that Mr Wright had a good memory of events and was able to relate the incidents more or less in accordance with his statement. However, it said that "while in his statement he refers to his friend Marc as being involved in fighting during consultation he described him as pulling people out of the fight". It is noted that Mr Wright did not indicate any unwillingness to give evidence.¹⁴ Jonathan Wright made a further statement on 13th March 1998¹⁵ in which he said that his statement of 11th May 1997 was correct and the second one wasn't. He said "At the time I made it up as I was afraid and I now know that it is known by others in Portadown what I said in the second statement and because of that fact I am not prepared to give evidence in Court regarding the second statement". We respectfully submit that the Inquiry should give full weight to Jonathan Wright's statement of 15th May 1997. Our reasons for this submission are more fully discussed by us in relation to the case of Marc Hobson.

5. **Constable A** gave evidence at the Inquiry on 18th March 2009. She was the observer in a back-up vehicle driven by Constable Orr. In her statement of 27th April 1997¹⁶ she said that at 1.55 am, whilst Constable Orr was driving past Thornton's Confectionery Shop, she saw Wayne Lunt running towards a crowd at the junction of Thomas Street. Constable Orr stopped the car alongside Mr Lunt and Constable A got out of the vehicle. Wayne Lunt ran towards Church Street. At this time, **Constable A saw two males lying in the vicinity of Market Street at the junction of Thomas Street and she saw forty to fifty persons involved in a confrontation with each other and other police personnel.** She returned to the crowd to assist in the disturbance and she turned and saw Lunt behind her. As he turned to run she told hold of his arm. She placed Lunt in the land rover at 1.57 am and he left the land rover at approximately 2.05 am. **At this time she returned** to the other police members who were trying to clear the road. **She saw Stacey Bridgett and Dean Forbes in the crowd. Bridgett was wearing a cream shirt with a fine brown stripe over white jeans. He had blood coming from his nose.**

¹³ February 27th page 80 lines 11 - 14

¹⁴ Note of consultation page 17591

¹⁵ Page 581

¹⁶ Statement of A page 9235

6. At his police interview on 6th May 1997, Stacey Bridgett was asked if he, at any stage, saw anybody being put into the back of the Land Rover. He said that he didn't but he heard from old gossip around the town that somebody was put in. He heard that "some young fellow got lifted or something, then the police let him go or something like that there. A Protestant fellow"¹⁷ He said that he had asked a couple of boys about who had got lifted - "I asked Dean, I asked my brother". Bridgett was asked what Dean had said about it and he replied "He didn't know".¹⁸ Stacey couldn't remember if Dean made any remarks about seeing somebody in the Land Rover or being put in or getting out of the Land Rover. He said "Not that I can remember".¹⁹ It is submitted that this was a lie because:-

- a. Constable A said²⁰ that she saw Dean Forbes and Stacey Bridgett beside each other in the crowd, and
- b. They were mates, and it was very unusual to see them apart, and
- c. They were always involved in something unlawful together. She knew Forbes from the same places as she knew Bridgett because when you saw one, you saw the other, and
- d. She didn't know how to describe their demeanour exactly, but had known them so long that she knew their manner was aggressive
- e. Dean Forbes told the Inquiry that he had seen the policewoman catch somebody and put him in the Land Rover and he was in there for a couple of minutes. At that stage the other police officers were trying to push everybody back up the town.
- f. Stacey Bridgett was asked in his interview for the Inquiry if he knew Wayne Lunt and he said "I knew him from years ago. He used to live in our estate years ago but I didn't know him.....knew of him, yeah, to see him"²¹
- g. If Forbes was beside Bridgett and he saw Lunt being caught and put into the Land Rover then surely Bridgett must have seen this too. Even if he hadn't seen it and, as he told police, asked Forbes about it, why would Forbes not have told his friend what he had seen?

¹⁷ Page 7185

¹⁸ Page 7185

¹⁹ Page 7186

²⁰ Paragraph 24 page 80376

²¹ Inquiry interview transcript of Stacey Bridgett page 40

- h. It is submitted that Mr Bridgett lied because he wanted to distance himself from the incident. The injured parties were still on the ground when Constable A put Lunt into the Land Rover. Bridgett said in his Inquiry statement “**I do not remember seeing anyone lying on the ground** when I saw the fighting. I did not get involved in the fighting, neither did I kick or punch anyone in the ground.”²² Constable A stated that **Stacey Bridgett was part of the crowd which was a couple of feet from the bodies lying on the road.**²³
7. **Constable Gordon Cooke’s** statement of 27th April 1997²⁴ was put to Mr Bridgett by Mr Underwood, QC.²⁵ Mr Cooke said “At 1.47 am on this date, I heard police....call for urgent assistance at Portadown town centre. I made my way to the scene, arriving about three to four minutes later. In Market Street, I saw two persons lying in the left-hand carriageway near the junction with Thomas Street and a crowd of approximately 30 to 40 people about ten feet in front of them with several police officers in between them trying to hold the crowd back.....Two females and a male were close to the injured persons. They were quite hysterical and were shouting and screaming towards the crowd and were shouting for an ambulance to be called.....**Persons in the crowd were shouting and jeering toward the police and the injured persons and the members of the crowd were constantly trying to push past police to try and get towards the injured persons.....**Other police also arrived at the scene around this time. I approached the crowd along with other police and started to move them back towards West Street. **I recognised the following persons at the front of the crowd: Stacey Bridget. His nose was bleeding.**” Mr Bridgett told the Inquiry that he wasn’t at the front of the crowd He said he was there and his nose was bleeding but he wasn’t at the front of the crowd.²⁶
8. **Denise Cornett** who was the front seat passenger in the Land Rover, stated, that when Constable Neill’s door was pulled open, “the two boys who I had been talking to **told me not to get out and they ran off.** I could hear a noise and jumped out of the vehicle”²⁷ This differs from the accounts of Bridgett and Forbes:-
- a. Stacey Bridgett told the Inquiry “Whenever we were talking to the Land Rover, a guy came over and either opened the Land Rover door or else it was slightly ajar and he pulled it open and he grabbed the policeman and said something about, “yous sat and watched. Yous didn’t do nothing”, or something like that. He was throwing a wobbler, basically...We didn’t hear anything that was going on. I didn’t hear it and the police definitely didn’t hear it, because they were talking to me. We were having an amicable conversation.....”²⁸ Mr Underwood, QC referred Mr Bridgett to his police

²² Paragraph 20 page 80117

²³ Paragraph 23 page 80376

²⁴ Page 9225

²⁵ February 27th page 87 line 10

²⁶ February 27th page 88 lines 20 - 22

²⁷ Paragraph 12 page 80210

²⁸ February 27th pages 66 - 67

interview of 6th May 1997.²⁹ Mr Bridgett told police “He [the man who grabbed the policeman] just went round the back of the Land Rover and away and then **I just went round the back of the Land Rover, you know, to go up the street** and I couldn’t see him”. Bridgett told the Inquiry “At that point, **I sort of proceeded to the back of the Land Rover and then I could see just the whole scuffle** sort of going on”.³⁰ He proceeded to relate that he got punched at the back of the Land Rover. Some small, stocky guy came over and just punched him on the bridge of the nose - “whenever I got to the back of the Land Rover, there just seemed to be people everywhere. I am not too sure where he came from. I assume it was from the Thomas Street side”. Asked where the man went, Bridgett replied “**I don’t know after that, because I run.....I run up the street.**” He was asked where he ran to and said “All I know, it was further upI think I said in my statement it was **Dorothy Perkins or somewhere.** I am not too sure what route I to get up there. All I know is I went over the central reservation”.³¹ Mr Bridgett also said that he didn’t know what happened to Dean Forbes - “I sort of lost track of Dean after we have been talking to the police. I don’t know where he went”.³²

- b. In his police interview of 6th May 1997, Mr Bridgett said “I went round the back of the landrover you to go up the town to get out of the road because **I seen the scuffle breaking out** and he punched me on the nose.”³³ He said “**we just sort of walked round the back of the landrover. I was just at the back of the landrover and looked and seen it (the scuffle), but I walked up to Woodhouse Street to try and get out of the road and then I was assaulted. I got my nose busted.**”³⁴ He had seen a few punches being thrown and ‘kicks and what have you’ but didn’t see anyone being put down. He just saw “boys were standing, they were digging, that was it.” **Mr Bridgett said that he didn’t see Dean after that.... “He must have blew the town or something. I don’t know.”** He said that he didn’t know if Dean was there when he got hit on the nose. Stacey told police that, after being hit, he went to go up towards the Church. He stood and let the blood drip out of his nose. “Then I tried to say to a policeman, you know it was all confusing, so I went up towards up the town and stood at St Marks Church and then the police came and they moved everybody on. A young girl wiped my nose and I went home.”³⁵ When interviewed by police on 10th May 1997, Stacey Bridgett said that he was in the middle of the road between the traffic island and Dorothy Perkins, letting his nose bleed. He went round and saw P40 and, addressing P40 by his first name, said ‘look at my nose’. Mr Bridgett said that P40 told him to ‘get off side’ He said he was at a safe distance from the altercation - the fighting was

²⁹ Page 7180

³⁰ February 27th page 70 lines 8 - 9

³¹ February 27th pages 72 - 73

³² February 27th page 82 lines 19 - 20

³³ Page 7138

³⁴ Page 7140

³⁵ Pages 7140 - 7142

going on all around Eastwoods.³⁶ He said that he went away up past St Mark's Church and waited to see if Dean was coming up as well because the police were moving everybody on, everything was calm and he walked on with everybody after it was all over. He couldn't see Dean Forbes. **He was asked if he met up again with Dean that night but said that he didn't remember, he didn't think so. He went straight home.**³⁷ P40 was asked in his interview for the Inquiry if he had seen Stacey Bridgett at all with any blood on his face and he said 'no'.³⁸

- c. Dean Forbes told the Inquiry that he and Stacey Bridgett "were standing at the passenger side door on the inner part of the door, just talking away to the two police officers in the front....we had stood maybe for about five minutes and the next minute the driver side door swung open and a man shouted, "Are you going to let these 'uns get away with this?"....."³⁹ Asked what he could see after the doors opened, Mr Forbes said that was when he could see people actually fighting in the middle of the street. "The door was only slightly open, but you could see, you know, a fight going on.....**The policewoman got out of the Land Rover and told me and Stacey to get on up the town. So that is when we backed off from the Land Rover**"⁴⁰ Mr Forbes told the Inquiry that by the time he got round to the back of the Land Rover, there were bottles being 'chucked'. "It was just more or less people fighting and more or less getting tore into each other, as I would say it". It was put to him that Mr Bridgett got a bloody nose and had said that it happened around the back of the Land Rover. He said that he didn't see that happen.⁴¹ **"The policewoman had said to back off, to head on up the town and I started to walk back towards the Abbey National." He couldn't say what happened to Mr Bridgett** because he thought that just once the policewoman said to get offside, he just headed on.
- d. The accounts of Stacey Bridgett and Dean Forbes are contrary to Constable A's statement⁴² **"Like Bridgett, Forbes was pushing forward"**. Constable A said that **Bridgett was part of the crowd which was a couple of feet from the bodies lying on the road. Dean Forbes was beside Stacey Bridgett.** She told the Inquiry that she was clear about what she said of Bridgett and Forbes in her statement, namely, **"I have known them so long that I knew their manner was aggressive.** Mr Underwood, QC put to her that their evidence had been "Nothing to do with me. I wasn't there. I was watching it from a safe distance. I was a calm spectator who was not involved". **Constable A disagreed.**⁴³

³⁶ Pages 7241 - 7243

³⁷ Pages 7245 - 7246

³⁸ Interview transcript pages 84 - 85

³⁹ March 10th pages 34 - 36

⁴⁰ March 10th pages 36 - 38

⁴¹ March 10th page 40 lines 16 - 19

⁴² Paragraph 24 page 81690

⁴³ March 18th pages 107 and 108

9. A small spot of Stacey Bridgett's blood was found on Robert Hamill's jeans.⁴⁴ Lawrence Marshall, Forensic Scientist said in his statement of 12th March 2008 "The fact that the blood stain on the jeans was a spot as opposed to an elongated shape which suggested to me that a drop of blood had been projected through the air as oppose to direct contact between two surfaces, which would have resulted in a smear. **It is possible that the blood was dropped onto the jeans while Robert Hamill was lying on the ground** but I remain unable to give any further opinion on the mechanism for staining...."⁴⁵
10. Mr Marshall gave evidence to the Inquiry on 13th May 2009. He was asked about a file note made by Mr Davison of the DPP⁴⁶ which recorded a telephone conversation on 17th November 1997. Mr Davison recorded that Mr Marshall had informed him that "A small spot of blood (identified as Bridgett's blood) was found on Hamill's trouser let 1 or 2 inches above the bottom of the hem. It was a round spot no bigger than a one pence coin.The fact that he blood was not in an elongated shape means that there is nothing to indicate what direction the blood came from....**Mr Marshall was reluctant to offer any interpretation as to how the blood got there but said it was consistent with Hamill lying on the ground and a drop of Bridgett's blood falling as he stood over Hamill.**"⁴⁷ Mr Marshall told the Inquiry when asked if he could offer an opinion on how the blood might have got there, "No. There is insufficient blood on the bottom of the jeans and it is from several different sources. There is insufficient, really, to form an opinion".⁴⁸ Mr Underwood, QC put to Mr Marshall, "**So if, for example you had Mr Bridgett saying he was never any closer than ten feet....would you have been able to reach a conclusion that that was false?**" Mr Marshall said, "Given these jeans, yes, I would say that was false."⁴⁹
11. Mr Marshall, when questioned by Mr Emmerson, QC said "I am only aware of his nose bleeding today". Mr Emmerson, QC said, "**You said in answer to Mr Underwood that it is possible to exclude altogether the proposition that a blood spot could travel ten feet. Is that right?**". Mr Marshall said "**In most normal circumstances, yes.**" Asked if there were some circumstances in which that might happen he said "Yes, but I would imagine them to be more deliberate attempts to.....Spitting. If you have a cut in your hand and you do that in a very vigorous fashion, you may project blood further.....I don't think this stain...looked like a sneeze, no. It was too -- sneezed blood tends to be much finer spots, and this was a one-penny-sized spot of blood." Mr Emmerson, QC put to him "In the course of presumably people moving backwards and forwards, jostling and of the sort that

⁴⁴ Report of Lawrence Marshall, Forensic Scientist, 24.20.97 pages 17798 - 17807; paragraph 16 page 80765

⁴⁵ Paragraph 17 page 80765

⁴⁶ Page 18040

⁴⁷ May 13th page 12 lines 13 - page 13 line 5

⁴⁸ May 13th page 14 lines 17 - 19

⁴⁹ May 13th page 15 lines 20 - 25

seems to have been taking place on this occasion, that type of jolt is presumably capable of projecting, presumably, blood from a bleeding nose? Mr Marshall said **“I would have thought so, but I can’t imagine blood from a nosebleed being projected a terribly long distance”** Mr Marshall was asked **“So you would stick, would you, by the hypothesis that, other than in some very exceptional circumstance, it couldn’t be as much as ten feet?”** He replied “Yes. As I said exceptional circumstances”⁵⁰ We therefore submit that despite the skilful efforts of Mr Emerson, QC, Mr Marshall’s evidence remains that the formation of the blood spot on Robert Hamill’s trousers strongly suggests Mr Bridgett was a good deal closer to Robert Hamill than ten feet. Mr Marshall’s evidence about Mr Bridgett’s blood being found on Robert Hamill’s trouser leg was put to Bridgett by **Mr Underwood, QC who asked him if he could explain this. He replied “I can’t, no”.**⁵¹ **He accepted that he had a nosebleed and he accepted that** there were people on the ground, **but said he didn’t see anyone on the ground** at that time. Mr Underwood, QC put to him the proposition that Tracey Clarke and Jonathan Wright were telling the truth when they told police that he was involved in the fighting and that either he was standing over and kicking Mr Hamill while he was on the ground or was so close to him during the fighting that his blood dripped on him. Mr Bridgett said that their statements were untrue. Asked again if he had no explanation to offer about how his blood could otherwise have got there, Bridgett said “No. It’s really -- it is a question for a forensic scientist. I can’t explain it.”⁵²

12. It was put by police to Bridgett in his interview on 6th May 1997 that he was part of the crowd- **“you cross over from the side, the relatively quiet side for the want of a better description, that is the side the police landrover is on, to the far side of the street, over to the Dorothy Perkins side. While you are in that area there you are actually seen jumping up and down** saying ‘I jumped on his head, I jumped on his head’”. Bridgett responded “I am thinking about it but whoever said it is a liar.” He said he didn’t jump on anybody’s head; he didn’t kick anybody or punch anybody. It was put to him that one of the women who was attending one of the injured people had pointed him out and said ‘That’s the boy there that I seen jumping on his head’. Bridgett said “She must have some eyes on her. She could not have seen me because I was away on up the street.”⁵³

13. Mr McGrory, QC questioned Mr Bridgett about Reserve Constable Silcock’s statement⁵⁴ where he said “A large crowd of youths were in the vicinity of these men. They were aggressive both verbally and physically.....on several occasions, I pushed youths away from the injured men as they appeared to try and kick the men.....one of the rowdy youths was pointed out to me by a woman wearing a white top, who alleged that this youth had jumped on the head of one of the injured men. This youth was wearing a grey charcoal top. He also had blood coming from his nose. A member

⁵⁰ May 13th pages 43 - 45

⁵¹ February 27th page 85 line 11

⁵² February 27th page 86

⁵³ Pages 7199 - 7200

⁵⁴ Page 700

of this crowd called to this person calling him Stacey. He responded to this name”.⁵⁵ Mr Bridgett denied that this was him. In his interview for the Inquiry, Mr Bridgett said that he didn’t know anyone else in Portadown called Stacey at the time.⁵⁶ Arguably, the name ‘Stacey’ was not a common name and the possibility of it being called out to someone else present at the scene is remote to say the least.

14. Mr McGrory, QC also put to Mr Bridgett, Reserve Constable Silcock’s Inquiry interview where he had said of Bridgett “His eyes were -- I have never seen (inaudible) such a look of excitement in his face”.⁵⁷ Mr Bridgett’s response was that Dean Silcock also said he was wearing a grey charcoal top. It was put to him that “we know of nobody else who had blood coming from their nose”. He maintained that it wasn’t him. And he said that Mr Silcock was mistaken. Constable A stated that Stacey Bridgett was part of the crowd which was a couple of feet from the bodies lying on the road.⁵⁸ She said in her Inquiry interview “Well, I knew that he’d been involved in something. Stacey Bridgett normally is involved in something. He had blood coming from his nose. He had been in a fight at some stage.”⁵⁹ The evidence of Reserve Constable Silcock would lend weight to Constable A’s statement that Forbes’ and Bridgett’s manner was aggressive.⁶⁰

15. Mr Bridgett’s police interview of 10th May 1997⁶¹ was put to him by Mr Underwood, QC. Police had asked him about a sore foot that he had at the time and wanted to know how he received the injury. He said that he injured it when he was in work a couple of weeks previously. He said it would have been probably after the night of the incident, he didn’t know. Mr Underwood, QC asked him if he was sure that he didn’t hurt it by kicking someone, to which Bridgett replied “I am 100% positive”.⁶² He had told police that he injured his foot when gutting out a house in Carleton Street. He said that a brick fell on his foot. When asked if there was anyone with him who saw it happen or did he tell anybody that it had happened, he said ‘no’. He just got a couple of painkillers for it. He didn’t tell his parents or any family members and he didn’t require any medical attention for it. He said “My Ma knows that I had a sore foot”. Asked if he had a limp as a result of it, he said “No it wasn’t a limp, it was just a wee bit sore on it. I just took a couple of painkillers”. He was asked where he got the painkillers and said “I went to the Vickey shop up the road and got painkillers. Just old Anadin Extra”. This was maybe a couple of days after it happened, he couldn’t remember.⁶³ He was asked if he mentioned to the foreman that he had hurt his foot or if he got it put in any industrial accident book. He said that it was no big deal.⁶⁴ It is submitted that it would be too much of a coincidence that Stacey Bridgett just

⁵⁵ February 27th page 96 line 10 - page 97 line 9

⁵⁶ Interview transcript of Stacey Bridgett page 35

⁵⁷ February 27th page 97 line 19 - page 98 line 13

⁵⁸ Paragraph 23 page 81690

⁵⁹ Inquiry Interview page 80

⁶⁰ Paragraph 24 page 81691

⁶¹ Page 7260

⁶² February 27th pages 90 line 13 - page 91 line 13

⁶³ Pages 7262 - 7264

⁶⁴ Page 7272

happened to sustain an injury to his foot soon after the incident. It is submitted that it is suspicious to say the least that Bridgett alleges that he was alone when the injury happened, he told no-one, he didn't report it at work and he didn't need medical attention.

- 16.** It is a matter for the Panel to decide if he was being truthful in his account of his movements on 27th April 1997. It is our respectful submission that the evidence against him is so substantial that his account is simply not credible. We further submit as stated by us in relation to Dean Forbes, that he and Forbes joined the affray immediately after their conversation with the land rover crew. The statement from Tracey Clarke would suggest that Bridgett joined in the attack of Robert Hamill as he lay defenceless on the ground. This is not inconsistent with Jonathan Wright's evidence that he saw Bridgett trading punches with someone.

Wayne Lunt

1. **Wayne Lunt** was arrested in relation to the murder of Robert Hamill but the DPP subsequently withdrew the charge.¹
2. **Constable A** gave evidence at the Inquiry on 18th March 2009. She was the observer in a back-up vehicle driven by Constable Orr. In her statement of 27th April 1997² she said that at 1.55 am, whilst Constable Orr was driving past Thornton's Confectionery Shop, she saw Wayne Lunt running towards a crowd at the junction of Thomas Street. He was of slim build, approximately 5'9" in height, wearing white trainers, white jeans, a white peaked cap and had a red, white and blue scarf wrapped round his face. She noticed that he was carrying a bottle upside down. Constable Orr stopped the car alongside Mr Lunt and Constable A got out of the vehicle. Lunt ran towards Church Street. At this time, Constable A saw two males lying in the vicinity of Market Street at the junction of Thomas Street and she saw forty to fifty persons involved in a confrontation with each other and other police personnel. She returned to the crowd to assist in the disturbance and she turned and saw Lunt behind her. As he turned to run she told hold of his arm. At this time he began kicking out with his feet, striking her once on the left shin and once on the left ankle. She placed Lunt in the land rover at 1.57 am to ascertain his name and address. This was done as Lunt was continually trying to pull away from her and some members of the crowd were also trying to pull him back into the crowd. Lunt left the land rover at approximately 2.05 am to be spoken to at a later date.
3. Constable A made a statement on 24th June 1997.³ She stated that Mr Lunt left the police land rover at 0205 hours. At this time she was approached by a male who started to shout at her "What the fuck did you let him go for, he was one of the ones that did it."
4. In evidence Constable A said "When I noticed Lunt running and the bottle down by his side. I noticed that he was running towards a crowd in the town centre and I just assumed that he was going to this crowd and he was going to be throwing that bottle"⁴ She was clear that he was holding the bottle upside down. Mr Underwood, QC asked Constable A "Right, so you were happy enough to release him?" She replied "It wasn't that I was happy enough to release him, no, but if I wanted to detain him any longer, I was going to have to take him to a police station which was going to take me and it was going to take at least two other constables off the ground because the way he was fighting. The way in which I first detained him, the crowd were trying to pull

¹ Pages 18349 - 18351

² Statement of A page 9235

³ Page 9238 - 9239

⁴ March 18th page 94 line 25 - page 95 line 3

him off me. It was going to take at least three people off the ground and we couldn't afford it".⁵

5. **Wayne Lunt** gave evidence to the Inquiry on 24th February 2009. He said that he was walking down towards the centre of the town and he thought the police car came up from behind him. He was about halfway between the church and the junction to Thomas Street. He confirmed that he was just walking and he had a bottle in his hand. He said the bottle wouldn't have been empty because there would have been stuff in it. That's the reason he would have had it in his hand. Mr Lunt was shown photographs⁶ which were taken the morning after the incident of a couple of bottles lying in a triangle of vegetation. Mr Underwood, QC told Lunt that one of those bottles was picked up afterwards and it had his fingerprints on it. He was asked if he could recall what happened to the bottle he was carrying and he said 'no'. It was put to him that the reason Constable A gave for picking him up was that she thought he was going towards the fight with a bottle, holding it in a way that could have been used as a weapon. He was asked if he would accept that. He replied "No, I wasn't holding it that way." Mr Underwood, QC put it to him that the woman police officer took the view that he was using the scarf perhaps to hide his identity. He said that wasn't true.⁷
6. A message log dated 10th May 1997 records a call to Crimestoppers - "The following persons were involved in the murder of the young lad that died in hospital in Portadown. Two brothers Phillip and Wayne Lunt from Mark Hobson.....Andrew Osbourne.....plus one other who is living in England but comes home at week-ends toHis name is either Berkley or Birkenhead or 'Bev' or something."⁸
7. **Colin Prunty** gave evidence to the Inquiry on 21st January 2009. He was referred by Mr Underwood, QC to his police statement⁹ where he had talked about one of the fellows in the group that was kicking Robert Hamill. He said "He was wearing a Rangers scarf and he was took away and put in the back of the land rover. He, like everybody else in the group, was kicking Robert, he was definitely kicking him but I can't say where." Mr Prunty confirmed that a woman police constable let the man out of the Land Rover and he went over to the police woman, who was in the back of the Land Rover and said, "What are you letting him go for? Make sure you get his name." He was asked "Could you have gone further than that and said, "What are you letting him go for? He is one of those that did it"?" He replied 'yes'.¹⁰ Mr Prunty said that while the man was in the back of the Land Rover 'he was just smirking'. Mr Underwood, QC drew his attention to his Inquiry statement where he said "He was

⁵ March 18th page 100 lines 1 - 11

⁶ Page 235 & 236

⁷ February 24th page 12 line 17

⁸ Page 943

⁹ Page 9103

¹⁰ January 21st page 121 line 20 - page 122 line 12

inside the Land Rover being aggressive, making fun of what had happened and saying, ‘Fenian bastards’”. He told the Inquiry that he remembered him saying ‘Fenian bastards’.¹¹ In a statement of 3rd November 1997¹² Prunty identified Dean Forbes from video footage as the person who had been put into the back of the land rover. Mr Underwood, QC referred to this and took Mr Prunty to his Inquiry statement¹³ where he said “As a result of this identification, “which is seeing the video,” on 3 November 1997 I went again to the DPP’s office in Belfast and was shown 2 photographs of suspects at Portadown Police Station. I picked out 1 person whom I recognised and who was the person I had seen on the video. I could not be totally certain that this was the person I had seen in the back of the Land Rover on the night of the incident, but I thought that it was him. It was at this point that I made my second statement to the police”. Mr Prunty confirmed that at that point by 3rd November, he was confused.¹⁴ In the judgment in the case of R v Hobson, McCollum LJ said “It would also appear that Mr Prunty’s observation, if correct, would have provided a prima facie case of serious involvement in the attack on Mr Hamill against the man arrested at the scene and taken to the Land Rover. It may be understandable that Constable A did not personally follow up the remarks made to her by Mr Prunty, but it seems very strange that she did not regard him as a potential witness and that the facts were not placed before the officers investigating the case. Indeed on the basis of Mr Prunty’s police statement there appears to have been sufficient material available on the papers in the case to merit serious investigation of that man’s involvement and it should have been easy to relate Mr Prunty’s observation of the man to the arrest of him by Constable A”.¹⁵

8. Mr Underwood, QC put the evidence of Colin Prunty to Mr Lunt.¹⁶ Lunt confirmed that he went in the Land Rover with a Rangers scarf and he didn’t see anybody else in the Land Rover. He was asked if he was smirking when he was getting out of the Land Rover. He said “No. I had just been arrested”. He confirmed that he wasn’t being aggressive or saying things like ‘Fenian bastards’. He didn’t remember anybody having a swing at him.

9. **Wayne Lunt** confirmed to the Inquiry that before he went into town on 27th April, he was with some friends at Michelle Jamieson’s house and he had had quite a lot to drink that night. He said that he was quite drunk. Mr Underwood, QC asked him what was going on when he got to the summer seats at the church. He said there were a lot of people down in the centre of the town. Mr Underwood, QC referred him to his police interview of 10th May 1997 where he had said “Aye. We were sitting there like for about -- say it was about, I don’t know, about five, ten minutes we were sitting there, and the crowd started coming back.”¹⁷ He told the Inquiry that he couldn’t

¹¹ January 21st page 123 lines 4 - 15

¹² Page 9105

¹³ Paragraph 30 page 81099

¹⁴ January 21st page 130 lines 6 - 22

¹⁵ Pages 8748 - 8749

¹⁶ February 24th pages 14 - 19

¹⁷ February 24th page 6 lines 1 - 15

remember who all were there. It was put to him that some people said that while they were up by the church and the summer seats area, they saw a fight or at least something breaking out down by the junction and people ran down towards it. Mr Lunt confirmed that he had no recollection of that.

10. Mr Lunt was referred by Mr Underwood, QC to Michelle Jamieson's statement of 9th May 1997¹⁸ in which she said "There were loads of people running about and there was shouting and screaming. I heard things like, 'Come on then', 'Come ahead', being shouted. I realised there was a fight going on between Protestants and Catholics. I stayed at the roundabout thing for a couple of minutes and during that time I could hear bottles smashing. I walked on down towards the crowd. I walked down the centre of the street and then crossed over to the right-hand side of the street. As I was doing so, I heard a woman screaming. She had her hair in a bob. It was brown. She was wearing a black jacket, I think. She was down on her knees over a man who was lying on the street face downwards. He was lying near to Eastwoods shop. She was screaming for help and an ambulance." Mr Underwood, QC said "So here is Michelle Jamieson, who you start off with, seeing that, walking down or going down into the town to get a closer look and seeing it very close by. Again, any recollection of that?" Lunt said 'no'. He said "It's hard to remember anything from 12 years ago". Mr Underwood, QC brought Lunt's attention to his interview of 10th May 1997¹⁹ in which he had told police that he walked down from the summer seats or the church to see what was going on and he saw police lined up. Lunt's response to this was "I can remember a bit of shouting and that, so I did walk down. I can remember seeing a couple of police. That's about it. It's very vague."²⁰

11. Mr Ferguson, QC questioned Mr Lunt about his having been picked up at Drumcree and asked him what he was doing when he was picked up. He said "Probably getting involved.....I really can't remember what I was doing at the time." He agreed that the problem at Drumcree was that the Protestant community, or a number thereof, were prevented from marching on Drumcree and Mr Ferguson, QC asked him if he was hostile to the RUC because of what they were preventing him doing at Drumcree. His answer was "I could have well been. I can't remember". He was asked "You didn't resent the fact that the RUC had prevented you from exercising what you would have regarded as your right to march in that area?" He said "At the time probably. Again, I can't remember." He agreed that probably at the time that would have been his frame of mind and he was asked if that frame of mind then continued up until the night of the incident He said 'No'.²¹

12. Mr McGrory QC questioned Mr Lunt. He asked him if he accepted that the bottle with his fingerprint on it must have been the bottle he was carrying. Lunt said "Well, if my fingerprints were on the bottle, obviously, yes". Mr McGrory, QC put to him "Unless, of course, you lifted another bottle." He said 'no'. He agreed that he ran away from

¹⁸ Pages 9146 - 9147

¹⁹ Pages 6826 - 6827

²⁰ February 24th page 8 line 11 - page 9 line 8

²¹ February 24th pages 30 - 31

Constable A because he was afraid of being arrested. Mr McGrory, QC put to Lunt “You didn’t tell this Inquiry, either at interview or today that, in fact, you were convicted of an offence arising out of an incident at Drumcree, did you?” He said “No, it wasn’t brought up. I didn’t need to delve into my past”. Mr McGrory, QC referred Lunt to his criminal record which showed two entries, one conviction arising out of an incident on 10th July 1995 and a conviction on 10th April 1996 for riotous behaviour. Mr McGrory, QC asked him if he remembered that. He said “Well, I can’t remember, no.” Mr McGrory, QC suggested to Lunt that the reason he ran away from Constable A was not that he had some vague notion that he had been in trouble before but he knew very well that he had a previous conviction for riotous behaviour. Lunt denied this.²²

13. It was also suggested to Lunt that Constable A did not run after him and arrest him because he had previously been in trouble - that wouldn’t be a good enough reason for a police constable to after him. Lunt said “Basically, I did not run away because of my previous convictions. They didn’t even occur to me at that time.” It was put to him “But that’s the reason you have given this Inquiry, that you thought that because you had been in trouble at Drumcree, you needed to get offside. Isn’t that correct?” He replied “No, I didn’t want to be arrested at the time, at that night.” Mr McGrory, QC asked him “But if you weren’t doing anything wrong, why would she arrest you?.....What I am suggesting to you is she came running towards you because you were running into the crowd with a bottle turned upside down....in a threatening manner.” Mr Lunt denied this.²³ Mr McGrory, QC referred Mr Lunt to a record of his arrest on 6th March 1997.²⁴ It said “Circumstances of arrest”.....singing songs - shouting about Bobby Sands - singing sectarian songs”. It was pointed out to Lunt that six or seven weeks before the incident in April 1997, he was arrested for singing sectarian songs. Mr McGrory, QC suggested to Lunt that he was engaging in similar behaviour and that’s why Constable A came after him. Lunt denied this. Mr McGrory, QC referred him to his conviction for disorderly behaviour on 24th October 1997 and showed him a record of his bail conditions when he was released on bail on 6th March 1997. He asked him if he remembered being released on bail only six weeks before the night of 27th April. Lunt said he had no memory at all. He was asked if he knew what being released on bail meant and he said “If you are released on bail, obviously if you are seen doing any trouble, you can be arrested”. Mr McGrory, QC asked him if he was seriously suggesting that when Constable A leapt out of the car and approached him, that he didn’t have that very much in his mind. Lunt said it didn’t even occur to him.²⁵

14. **Wayne Lunt** was further asked by Mr McGrory, QC if it would have occurred to him that one way of avoiding re-arrest was to make sure nobody could recognise him. Lunt said ‘no’. It was put to him that a baseball cap and scarf around the bottom of his face would prevent anybody from recognising him. He said he always wore his scarf

²² February 24th page 47 line 3

²³ February 24th page 47 line 17 - page 48 line 15

²⁴ Page 72045

²⁵ February 24th pages 49 line 25 - page 53 line 13

like that.²⁶ It was put to Lunt that Mr Prunty had been very consistent in terms of what he said about the man wearing the Rangers scarf - Mr Prunty had said from the very beginning that a man wearing the Rangers scarf was in the crowd that we kicking at Robert Hamill. Lunt said "That's not true". He was asked if he was suggesting that Mr Prunty saw nobody wearing a Rangers scarf and he said "No, he could have seen me wearing the Rangers scarf, but I wasn't in the crowd and I certainly wasn't kicking Robert Hamill". He accepted that the difficulty was that "we have no description of anybody else wearing a Rangers scarf...in any form, let alone one raised up above their jacket".²⁷

15. Simon McNally gave evidence to the Inquiry on 20th February 2009. He made a statement on 21st May 1997²⁸ in which he said he was with Gareth Cust, Kyle Woods and Andrew Hill listening to music in the shed at the back of his house. He had gone to get something to eat and walked on into the town. Andrew Hill got separated from him at about the footbridge and he, Gareth Cust and Kyle Woods walked along West Street into Mandeville Street and got on to Church Street. Then he walked down to the church. He said "I could see a crowd of people in the town walking up towards the church. They were somewhere near the Alliance & Leicester branch where a police Land Rover was. I could see people near the Land Rover and the Land Rover doors were open. We knew we shouldn't have been there, so we walked into West Street heading back in the direction of home". He then walked into his mum and walked up home.

16. Mr Underwood, QC referred Simon McNally to Kyle Woods' statement.²⁹ He had said that he was with Simon McNally, Andrew Hill and Gareth Cust and they left Simon's house about 1.20 to go to the Chinese. Andrew Hill got separated. He said "There was some commotion in the centre of town, so Gareth Cust, Simon and I walked down towards the church. We walked down West Street, then up the wee lane at the back of the church, and then turned left and walked down towards the centre of the town, but stopped when we reached the front of the church. We didn't go any further than that. I saw a crowd of people in the centre of the town. There was a police Land Rover at the Alliance & Leicester and a crowd coming up towards it from the bottom of the town. There were people standing at the Land Rover talking to the policemen. There was a boy. He was fat and he was shouting "Tiocfaidh ar la". I don't really remember what happened next, but I do recall seeing two people lying on the ground at about Eastwoods and the crowd punching and kicking at them. I also heard glass breaking but I didn't see anyone throwing any bottles. I saw police trying to push the crowd back. The atmosphere was very intense and I didn't want to be there." He then said they started to walk out of town and met Simon's mother. Mr Underwood, QC asked Simon McNally to tell the Inquiry what he saw and he said "I just seen a crowd of people standing about and I seen the police Land Rover at the left-hand side of the

²⁶ February 24th page 54 line 25 - page 55 line 8

²⁷ February 24th page 56 line 24 - page 57 line 16

²⁸ Page 9160

²⁹ Page 9133

town and that was it". Mr Underwood, QC put to him "It is inconceivable that your friend, who was with you, could have seen all this and you not see it?"³⁰

17. Gareth Cust's statement³¹ was put to Mr McNally by Mr Underwood, QC. He had said "At about 1.00 am we went down to the Chinese at Jervis Street. We got something to eat and stayed about it for a while. While we were there we heard sirens. The sound was coming from the town centre. We walked down past McGowan Buildings to see what was happening. I saw a police Land Rover or police car with its lights flashing and an ambulance." Mr McNally said "I don't remember hearing sirens. At this point, I don't remember hearing them at all."

18. Mr Underwood, QC referred Simon McNally to Wayne Lunt's police interview.³² Lunt had said "I forgot to mention one other person that I met when I was on my way down, a wee fella called Simon McNally". He was asked by police if this was whenever he was walking down the street towards the crowd. He said "No, whenever I went down into the town centre." Lunt went on to say "and he was also with me when I was arrested". Mr Underwood, QC asked McNally "Is this why you are not telling us the truth; that you were right in the middle of it with Wayne Lunt when he was picked up?" He replied "No. I would have been arrested too, probably, if I was with him." Mr Underwood drew Mr McNally's attention to his Inquiry Statement³³ where he said "I have also been asked about various people who are connected with this and I can say that at the time I knew Wayne Lunt, Dean Forbes, Stacey Bridgett, Marc Hobson, Allister Hanvey and Timothy Jameson. However, I am positive that I did not see any of them in the town centre that night."

19. Wayne Lunt said in his police interview "And then I walked up and I met Simon McNally's mum and I walked up with her."³⁴ In her Inquiry statement, Mrs McNally said "It is said that Wayne Lunt saw me that night in the town centre near the police Land Rover at Woodhouse Street. This is not true. I did not go down towards Woodhouse Street that night and although I know of Wayne Lunt, I would never have spoken to him. I did not see him at all that night."³⁵

20. Mr McKenna questioned Mr McNally and drew his attention to his statement³⁶ where he said that he came into the house before 1.00 am on Sunday morning to ask his mother for permission to go to the Chinese restaurant. Mr McKenna told him that his mother had said in her statement³⁷ that it was at approximately 12.30 am when he came into the house. McNally had said that he went into town, stood at the church,

³⁰ February 20th page 1 line 2 - page 5 line 25

³¹ Page 9162

³² Page 6925

³³ Para 24 page 80953

³⁴ Page 6881

³⁵ Para 18 page 80947

³⁶ Page 9160

³⁷ Page 9639

saw a crowd of people and came back home but his mother said that just after 1.00 am she decided to go and look for him and she saw him outside Intersport, shouted “Are you ready?” and he went home. Kyle Woods had said in his statement³⁸ that they went to the Chinese at 1.20 and McKenna pointed out to McNally that this put him in or around the town centre around 1.30/1.45. Mr McNally said he couldn’t remember times. He just knew it was between 1.00 and 2.00. Mr McKenna then put it to Mr McNally that they didn’t go to the Chinese restaurant at all. McNally said “No we didn’t”. He agreed that they went straight on into the town centre but denied that he heard sirens or anything. Mr McKenna then put to him “We know from the evidence of the ambulance personnel that, in fact, the ambulance didn’t leave the hospital until 1.50 in the morning. So it was well after 1 o’clock before you headed into Portadown, wasn’t it Mr McNally?” He said he wasn’t too sure. Between 1.00 and 2.00, that’s all he remembered.

21. Mr McKenna referred Mr McNally to Wayne Lunt’s statement³⁹ where he said “When I was leaving, after I’d left the Land Rover.....Simon McNally’s mum walked up the road with me to the Chinese.” McNally said he didn’t recall that. He denied that his mother was in town after Lunt was released. Mr McKenna said “You were asked during your interview, and, in fact, it is in your statement, whether you knew certain of the personalities involved on the night who were subsequently arrested. You agreed that you knew them: Wayne Lunt, Dean Forbes, Stacey Bridgett, Marc Hobson, Allister Hanvey, all identified as being there, people that you knew.” Mr McKenna put to him “You, in fact, saw them there on that night, didn’t you?” He said he didn’t. He denied seeing what they did.⁴⁰

22. Lisa Hobson gave evidence to the Inquiry on 20th February 2009. Mr Underwood, QC referred her to her questionnaire⁴¹ in which she said she saw scuffling with crowds and police. She also said she saw a person lying outside Eastwoods clothes shop “Girlfriend or someone with him. This was around 2.00 am”. Mr Underwood, QC asked her who she was with when she saw scuffling, police and somebody on the ground. She said “There was me, Joanne Bradley, Heidi Reaney, Michelle Jamieson, Wayne Lunt and Andrew Hill”.⁴² She said she met Joanne Bradley at the start of the night and then they must have met the rest of them at Michelle’s house. It was put to her that some documents suggested that Andrew Hill came there with some other friends and met one of her crowd somewhere around the town. She said that she couldn’t remember. Mr Underwood referred her to a police document⁴³ which stated “She is very vague about what happened at that time but states they got separated. She did recall seeing Lunt being put in the police Land Rover and claimed he had not been involved in the fight, but could not say he was in her view between the start of the fight and Lunt being placed in the Land Rover.” Asked if she could recall this now,

³⁸ Page 9133

³⁹ Para 27 page 80711

⁴⁰ February 20th pages 11 - 14

⁴¹ Page 8107

⁴² February 20th page 37 lines 16 -17

⁴³ Page 3499

she said “I didn’t see him being put in the Land Rover. I seen him being let out of it.”⁴⁴

23. Mr McKenna referred Ms Hobson to her Inquiry statement⁴⁵ centre together. She said “Wayne Lunt was arrested for hurling abuse at the police”. Mr McKenna asked her if that was right and she said “He must have told me that’s what he was arrested for.” Mr McKenna said “But he was arrested for little more than hurling abuse, wasn’t he”. She said “I don’t know”.⁴⁶ Mr McKenna put to Ms Hobson that she had described in her evidence that there was a crowd throwing bottles at police and he suggested to her that she was there from the beginning of the disturbance, because she was in town from some time shortly after 1 o’clock, if her timings were correct. She said she didn’t recall what time she reached town at. Mr McKenna further suggested that she saw Wayne Lunt enthusiastically engaged in throwing bottles at police. She said “No, I didn’t see him”. Mr McKenna then referred her to Constable Cooke’s statement.⁴⁷ He saw various people amongst the crowd. He described a male person wearing a grey Umbro sweatshirt, fawn trousers and black and white trainers and a female with long, dark, curly hair. Ms Hobson said “I did have long, black, curly hair.” Constable Cooke said he later spoke to these persons at 5.50 in the morning and she identified herself to him.⁴⁸

24. Andrew Hill gave evidence to the Inquiry on 29th April 2009. He said that he walked into town with Simon McNally, Kyle Woods, Gareth Cust and Lisa Hobson. When he got there, there was scuffling at the top of Woodhouse Street. He was just at St Mark’s Church when he saw that and was still with the people that he came into town with. He was probably about 100 metres away from the scuffling. He confirmed that it was sectarian shouting on both sides that he heard. He didn’t recognise anybody. He didn’t see anybody kicking anybody or kicking at anybody. He confirmed that the scuffling was still going on when he left and he didn’t get involved.⁴⁹

25. Mr Underwood, QC referred Mr Hill to Reserve Constable Warnock’s statement of 27th April 1997⁵⁰ in which he said “On arrival in the town centre at about 0150 hours and in the area of Thomas/Market, I observed police and a large crowd numbering approximately 30 - 40 persons having a confrontation.....I then returned to the town centre where the crowd on my arrival was still disorderly. Police then started to push the crowd back towards Church Place and into West Street. Whilst doing so, I noticed the following persons in the crowd and what they were wearing: namely, Allister Hanvey, who was wearing jeans with a dark-coloured baseball type jacket with greyish coloured sleeves and also a person known to me as Andrew Hill....who was wearing jeans, blue in colour, and a navy bomber type jacket”. Mr Hill said he

⁴⁴ February 20th page 41 lines 13 - 21

⁴⁵ Para 18 page 80461

⁴⁶ February 20th page 67 lines 1 - 14

⁴⁷ Page 6364

⁴⁸ February 20th page 70

⁴⁹ April 29th pages 2 & 3

⁵⁰ Pages 6367 & 6368

was wearing blue jeans and a denim jacket. He was asked if he was there when people were being pushed up the street and he said 'no'. He was asked if he was in the crowd described by this officer and he replied "No, definitely not."

26. Mr Underwood, QC then referred Mr Hill to Constable Neill's statement⁵¹ where he said "I again assisted at the line, trying to move the crowd back up towards West Street. Robinson was still in the front line and squared up to me on a couple of occasions when asked to move back, drawing his arms behind him. I also saw Andrew Hill ofin this crowd wearing a soft denim-type jacket and jeans. He appeared to be injured. The situation calmed down somewhat after this." Mr Underwood, QC asked Hill if this was true and he said "No, definitely not.....He must have been mistaken, because I definitely didn't receive any injuries that night."

27. Mr Underwood further referred Mr Hill to Constable Cooke's statement⁵² where he said "Persons in the crowd were shouting and jeering towards police and the injured persons and members of the crowd were constantly trying to push past police to try and get towards the injured persons...I also recognised the following persons among the crowd, Timothy Jameson and Andrew Hill. Andrew Hill was wearing a navy jacket and blue denims." Mr Hill said "That definitely wasn't me. I wasn't that far down".

28. Mr Underwood, QC referred Mr Hill to Sarah McCartney's questionnaire.⁵³ When asked if there was anything she would like to add, she said "Heard on Sunday from [somebody] that there had been a fight between Protestants and Catholics. Heard from Angela Buckley....that Andrew Hill...had jumped on the head of one of the fellas". Mr Hill was asked if he gave anybody any reason for saying that to police and he said "No. I actually wasn't aware of this until a few weeks ago".

29. Simon McNally's statement and Kyle Woods' statement were put to Mr Hill. McNally had said that Andrew Hill got separated from him, Gareth and Kyle and "At about Intersport I met my mum who had come into town to look for us. I looked back and saw Andrew Hill coming up towards us from the church direction." Mr Underwood, QC asked him "What do you say about that; that one of the people you say you were with, doesn't say you were with them?" He said "You would need to ask him that, like". Mr Woods had said that Andrew Hill went over to talk to a boy and a girl at the red footbridge. Mr Underwood asked him if that was Wayne Lunt and Lisa Hobson. He said he didn't recall who that was. Mr Woods said "Andrew Hill had met with us as we walked out of the town again and he walked with us too." It was put to him "So the other person you say you were with says you were separated. What do you say about that?" He said "Again, you would need to ask him".⁵⁴

⁵¹ Page 6335

⁵² Page 6363

⁵³ Page 8146

⁵⁴ April 29th pages 4 - 11

30. Mr Adair, QC asked Mr Hill if he knew Wayne Lunt. He said “Yes”. Asked what Lunt was doing, Hill said “Well, walked into West Street with him, from West Street into town. He was in our company.” Mr Adair, QC asked him what Lunt was doing at the time the scuffling was going on and he said “We left at that stage, and walked back up West Street. So we left him and Lisa in the town.” He said that during the few minutes he was there Lunt was ‘just standing about’. Mr Adair, QC asked “So Wayne Lunt wasn’t down amongst this hostile crowd either. Is that your evidence?” Hill replied “Whenever I was present, no, he wasn’t”. He confirmed that he hadn’t seen Lunt being chased by a police officer or being put in the back of a Land Rover.⁵⁵ (Mr McGrory, QC put it to Mr Hill that he was lying for one of two reasons or for both of these reasons. “The first one is that you saw exactly what went on, because you were down there?” Hill said “No, definitely not.” Mr McGrory, QC said “You are someone who is in a position to identify those who attacked and murdered Robert Hamill?” Hill said “No”.⁵⁶ Mr McGrory, QC said that the second reason he might be lying, apart from who else he could identify as being involved was that he may well have been involved in it himself. Hill said that was definitely not correct.⁵⁷ It is a matter for the Panel to decide whether or not Wayne Lunt was telling the truth when he claimed that he did nothing wrong. However, we respectfully submit that his evidence is a web of lies and there is support for the belief that he was deeply involved in the incident which resulted in Robert Hamill’s death. We base our submission on what can be gleaned from the above evidence for example:-

- a. Mr Lunt told the Inquiry that he was walking down towards the centre of town and he thought the police car came up from behind him. (See 5 above)
Constable A said that whilst Constable Orr was driving, she saw Wayne Lunt running towards a crowd. (See 2 above).
- b. Mr Lunt told the Inquiry that he wasn’t in the crowd. (See 13 above).
Constable A said that she placed Lunt in the land rover at 1.57 am to ascertain his name and address. This was done as Lunt was continually trying to pull away from her and some members of the crowd were also **trying to pull him back into the crowd.** (See 2 above)
- c. Mr Lunt was not forthcoming about his criminal convictions in relation to Drumcree or the fact that he was on bail at the time of incident. We submit that this was a deliberate effort on his part to conceal this information from the Inquiry. The fact that he was on bail at the time explains why he might have been hiding his identity with the scarf and baseball cap. (See 12 and 13 above).
- d. Colin Prunty’s evidence about the involvement in the attack by the man with the Ranger’s scarf has been consistent from the outset. It also lends weight to the

⁵⁵ April 29th page 15 line 17 - page 16 line 16

⁵⁶ April 29th page 18 lines 10 - 17

⁵⁷ April 29th page 23 lines 5 - 10

probability that Lunt was involved in the attack before Constable A arrived on the scene and was returning with a bottle when she saw him. The confusion surrounding Prunty's subsequent identification of Dean Forbes as the man with the Ranger's scarf has distracted from the consistency of the evidence that the only identified as wearing a Ranger's scarf was seen by him kick Hamill and also identified as the man in the back of the Land Rover. (See 14 above).

- e. It is submitted that Simon McNally must have seen more than he admitted to as his friend Gareth Cust who was with him saw quite a lot. McNally knew Wayne Lunt, Dean Forbes, Stacey Bridgett, Marc Hobson, Allister Hanvey and Timothy Jameson who were all at the scene and yet he denies seeing any one of them. (See 16, 17 & 18 above).
- f. Lunt told the police that after getting out of the Land Rover, he walked up and met Simon McNally's mum and walked up with her. Mrs McNally said she would never have spoken to Lunt and she denied seeing him that night. (See 19 above).
- g. It is submitted that Lisa Hobson also saw more than she said she saw and lied in order to protect Wayne Lunt. (See 22 & 23 above).
- h. Andrew Hill was identified in the crowd by three policemen, one of whom said he appeared to be injured. Hill denied that it was him they saw. (See 25, 26 & 27 above). Simon McNally and Kyle Woods said that Hill got separated from them. He said he was with them. (See 24 & 29 above). Hill was with Wayne Lunt and Lisa Hobson at some stage. (See 22 & 30 above). We submit that Hill lied either to protect Wayne Lunt or others involved in the attack on Robert Hamill or he himself was also involved in the attack.

Dean Forbes

1. Dean Forbes and his friend Stacey Bridgett had been at the Coach Inn, Banbridge and they returned on the bus which arrived in Portadown at approximately 1.40 am on 27th April 1997. Accounts vary in respect of some details. However, there is agreement between the land rover crew and Messrs Forbes and Bridgett that they were engaged in conversation at the mouth of Woodhouse Street when Constable Neill's door was suddenly opened by a man who pulled him out. The man was saying "You sat there and watched that happening".¹ Mr Forbes was later arrested and charged with the murder of Robert Hamill but the DPP subsequently directed 'no prosecution'.² He was interviewed by police on 6th May 1997³ and 10th May 1997⁴ and he gave evidence to the Inquiry on 10th March 2009.⁵ He denied any wrongdoing in relation to the assault on Robert Hamill but our respectful submission is that he was involved. This submission is based on a body of evidence which contradicts his version of events.

The evidence against Dean Forbes:-

2. **Tracey Clarke** stated on 10th May 1997 that Dean Forbes was one of the people who were kicking and jumping on the person on the ground.⁶ She attended a DPP consultation on 17th October 1997⁷ and said she wouldn't give evidence in Court. Tracey Clarke's statement was put to Dean Forbes who said that he couldn't honestly say why she had named him.⁸ In dealing with the case of Allister Hanvey, we set out in detail the reasons for our submission that the Inquiry should give full weight to Tracey Clarke's statement of 10th May 1997 and our submission in that regard remains the same in respect of Dean Forbes.
3. **Timothy Jameson** made a statement to police on 9th May 1997⁹ in which he also implicated Dean Forbes in the fighting that night. He attended a DPP consultation on 21st October 1997¹⁰ claiming that he could not remember what he saw. He said that he could not distinguish in his mind between what he saw and what people had said had happened. He then stated that he could not remember anything about the fight and that he was drunk. He stated that when he had made his statement, **he was simply agreeing with what the police said to him and he put in his statement what they told him. In evidence on 12th February 2009 Timothy Jameson said that the Detective Constable who had recorded his statement "was being very**

¹ May 19th page 11 line 17

² Direction page 10620

³ Pages 6928 - 7025

⁴ Pages 7026 - 7127

⁵ March 10th starting at page 28

⁶ Statement of Tracey Clarke page 262

⁷ Page 17591

⁸ March 10th page 53 line 25

⁹ Statement of Timothy Jameson page 15883

¹⁰ Page 17591

intimidating, very forceful”.¹¹ He had said in his statement that he saw Dean Forbes punch a fellow in the face. Mr Forbes said that Timothy Jameson’s allegation against him wasn’t true and he didn’t know why he would make something like that up.¹² It is our submission that the Inquiry should give significant weight to the statement of 9th May 1997 for the same reasons outlined by us in the case of Allister Hanvey.

4.

- a. **Constable A** gave evidence at the Inquiry on 18th March 2009. She was the observer in a back-up vehicle driven by Constable Orr. In her statement of 27th April 1997¹³ Confectionery Shop, she saw Wayne Lunt running towards a crowd at the junction of Thomas Street. Constable Orr stopped the car alongside Mr Lunt and Constable A got out of the vehicle. Wayne Lunt ran towards Church Street. At this time, Constable A saw two males lying in the vicinity of Market Street at the junction of Thomas Street and she saw forty to fifty persons involved in a confrontation with each other and other police personnel. She returned to the crowd to assist in the disturbance and she turned and saw Lunt behind her. As he turned to run she told hold of his arm. She placed Lunt in the land rover at 1.57 am and he left the land rover at approximately 2.05 am. At this time she returned to the other police members who were trying to clear the road. **She saw Stacey Bridgett and Dean Forbes in the crowd.** Dean Forbes was wearing a light coloured check shirt over cream coloured trousers.
- b. Dean Forbes was asked by Mr Underwood, QC about his account in his police interview¹⁴ of seeing Wayne Lunt being put into the Land Rover and coming out again. His version was that at that stage **he was just standing** in front of the War Memorial and then, when the rest of the crowd was getting pushed back, **Constable A “just comes over to me and she says, ‘Come on, out of the town...’”**. He told Mr Underwood QC that he had seen the policewoman catch Lunt and put him in the Land Rover and he was in there for a couple of minutes. At that stage the other police officers were trying to push everybody back up the town.
- c. Constable A was referred by Mr Underwood QC to her disciplinary interview¹⁵ in which she had said that if she had wanted to detain Lunt any longer, she was going to have to take him to a police station which was going to take her and at least two other constables off the ground because of the way he was fighting. She said “The way in which I first detained him, **the crowd were trying to pull him off me. It was going to take at least three people off the ground and we couldn’t afford it.....The crowd were still there. They were still trying to get at the two bodies lying on the ground”**. She told Mr Underwood QC **that it was more than affray - it was a riot**

¹¹ February 12th page 68 lines 18 - 19

¹² March 10th page 55 line 11

¹³ Statement of A page 9235

¹⁴ Page 6949

¹⁵ Page 10454

situation.¹⁶ She said **“It was a very scary situation to be in.....the fact that we were very close to being overrun by a crowd or rioters”**.¹⁷ In response to a question from Mr Greene, Constable A’s evidence was that the police were all in a line trying to push the crowd up the street. **The crowd at that stage was being aggressive. She was asked “And whilst perhaps not individually doing anything that would have merited an arrest, they were a hostile and aggressive crowd as a unit, is that right?”** She agreed that it was and it was at that stage she was able to recognise Dean Forbes and Stacey Bridgett.¹⁸

- d. Constable A’s assertion that he was in the crowd was put to Forbes and he was asked if he was part of the crowd. He replied **“I had been standing talking to her probably for three or four minutes and the officers were still trying to force people back.”**¹⁹ Mr Underwood, QC then drew Mr Forbes’ attention to his police interview²⁰ where he had said “....whenever A, the police officer, came up to me and she says -- she turned round and she said to me, **‘Oh wouldn’t you know, you would be involved in this’**, she says. Here’s me -- ‘involved in what?’ And I just says, ‘I am not that bloody stupid to get involved in things like this here whenever you all know me’.” Asked by Mr Underwood, QC why Constable A would accuse him of being involved, he said “I don’t know why she thinks I would be involved, but I always got on well with her any time I bumped into her. So I don’t know why she would say.....”²¹ **Asked what state she was in when she said it, he replied “She just seemed to be smiling”**.²² Constable A had said in her Inquiry statement²³ that Stacey Bridgett had blood coming from his nose and **“Like Bridgett, Forbes was pushing forward”**. Constable A said that **Bridgett was part of the crowd which was a couple of feet from the bodies lying on the road. Dean Forbes was beside Stacey Bridgett**. She told the Inquiry that she was clear about what she said of Bridgett and Forbes in her statement, namely, **“I have known them so long that I knew their manner was aggressive.** Mr Underwood, QC put to her that their evidence had been “Nothing to do with me. I wasn’t there. I was watching it from a safe distance. I was a calm spectator who was not involved”. **Constable A disagreed.**²⁴
- e. Constable A paints a picture of pandemonium, a riot, a scary situation in the middle of which she sees an aggressive looking Dean Forbes and his friend Stacey Bridgett. Dean Forbes would have us believe that he was just an innocent bystander. Then, when he is “overtaken by the crowd being pushed

¹⁶ March 18th page 101 line 5

¹⁷ March 18th page 112 lines 20 - 21

¹⁸ March 18th page 138 line 8 - page 139 line 3

¹⁹ March 10th page 60 lines 8 - 10

²⁰ Page 7084

²¹ March 10th page 61 line 12

²² March 10th page 61 line 15

²³ Paragraphs 23 and 24 page 81690

²⁴ March 18th pages 107 and 108

back,”²⁵lo and behold, the frightened Constable A has time to talk to him for three or four minutes, smile at him and say “Oh wouldn’t you know, you would be involved in this”. It is submitted that Mr Forbes’ evidence in this regard is ludicrous.

5

- a. Denise Cornett who was the front seat passenger in the Land Rover, stated that when Constable Neill’s door was pulled open, “the two boys who I had been talking to **told me not to get out and they ran off**. I could hear a noise and jumped out of the vehicle”.²⁶ This is at odds with Dean Forbes’ account namely that he and Stacey Bridgett “were standing at the passenger side door on the inner part of the door, just talking away to the two police officers in the front....we had stood maybe for about five minutes and the next minute the driver side door swung open and a man shouted, “Are you going to let these ‘uns get away with this?’”.....”²⁷ Asked what he could see after the doors opened, Mr Forbes said that was when he could see people actually fighting in the middle of the street. “The door was only slightly open, but you could see, you know, a fight going on.....**The policewoman got out of the Land Rover and told me and Stacey to get on up the town. So that is when we backed off from the Land Rover**”²⁸ Mr Forbes told the Inquiry that by the time he got round to the back of the Land Rover, there were bottles being ‘chucked’. “It was just more or less people fighting and more or less getting tore into each other, as I would say it”. It was put to him that Mr Bridgett got a bloody nose and had said that it happened around the back of the Land Rover. He said that he didn’t see that happen.²⁹ “**The policewoman had said to back off, to head on up the town and I started to walk back towards the Abbey National.**” This does not correspond with Denise Cornett’s assertion that the two boys **ran off**.
- b. **Dean Forbes couldn’t say what happened to Mr Bridgett** because he thought that just once the policewoman said to get offside, he just headed on. In his interview on 6th May 1997³⁰ Dean told police that he wasn’t with Stacey when he got a smack in the nose. **He said that the next day he saw Stacey over in the park and Stacey said “look at my nose....I got hit at the back of the landrover or something....”** However, he then said “**The only time I saw**

²⁵ March 10th page 60 lines 11 - 13

²⁶ Paragraph 12 page 80210

²⁷ March 10th pages 34 - 36

²⁸ March 10th pages 36 - 38

²⁹ March 10th page 40 lines 16 - 19

³⁰ Pages 6965 and 6966

him was way later on that night... whenever I was heading home.....by the time you know the police pushed everybody right up you know to Mandeville Street it would have been just shortly after that that at the bridge, about fifteen minutes after that..” Asked if he noticed anything wrong with Stacey at that stage or if anything was discussed, he replied **“Aye his, his nose just. But there was no he, he was just by himself standing.....he says did you see me getting hit and I goes no. And then some young girl you know said that he got hit but then she didn’t say nothing more about it.”**³¹ He told police in his interview of 10th May 1997 ³² that he and Stacey went round the back of the land rover and he didn’t know where Stacey went from then. He was asked **“When did you see him later on” and he replied “Just up at the Chinese where the Bridge is.....well you could say just whenever they got the crowd pushed right up the town to Mandeville Street, it would have been about three or shortly after three or so.....I noticed that his nose was sore...but I had already knew that.....a girl had already said you know coming up the town, you know that she was over at him or something giving him a hanky or something”**. He then told police that **when he met Stacey again up near the bridge, he and Stacey walked down the road towards their estate and they called at Tracey McAlpine’s door but there was nobody in.**³³ On the one hand Dean Forbes is telling police that he didn’t see Bridgett until the next day and on the other hand he is saying that he met up with him later that night. Mr McGrory, QC put it to Mr Forbes that Mr Bridgett had told the Inquiry that he didn’t see him again that night after he left the Land Rover. Mr Forbes said that he wasn’t aware of that and he didn’t know why Bridgett would say that.³⁴

- c. Stacey Bridgett was interviewed by police on 6th May 1997. He told police that he was just at the back of the land rover and **he walked up** to Woodhouse Street to try and get our of the road and then he was assaulted - he got his nose ‘busted’. **Again, this does not correspond with Denise Cornett’s evidence that the two boys ran off.** He had seen a few punches being thrown and ‘kicks and what have you’ but didn’t see anyone being put down. He just saw “boys were standing, they were digging, that was it.” **Mr Bridgett said that he didn’t see Dean after that.... “He must have blew the town or something. I don’t know.”** He said that he didn’t know if Dean was there when he got hit on the nose. Stacey told police that, after being hit, he went to go up towards the Church. He stood and let the blood drip out of his nose. “Then I tried to say to a policeman, you know it was all confusing, so I went up towards up the town and stood at St Marks Church and then the police came and they moved everybody on. A young girl wiped my nose and I went home.”³⁵ When interviewed by police on 10th May 1997, Stacey Bridgett said that he was in the middle of the road between the traffic island and Dorothy

³¹ Pages 7006 - 7007

³² Pages 7071 and 7072

³³ Page 7074

³⁴ March 10th page 84 lines 18 - 22

³⁵ Pages 7140 - 7142

Perkins, letting his nose bleed. He went round and saw P40 and, addressing P40 by his first name, said 'look at my nose'. Mr Bridgett said that P40 told him to 'get off side' He said he was at a safe distance from the altercation - the fighting was going on all around Eastwoods.³⁶ He said that he went away up past St Mark's Church and waited to see if Dean was coming up as well because the police were moving everybody on, everything was calm and he walked on with everybody after it was all over. He couldn't see Dean Forbes. **He was asked if he met up again with Dean that night but said that he didn't remember, he didn't think so. He went straight home.**³⁷ Mr Bridgett's evidence to the Inquiry was that he "sort of lost track of Dean after we had been taking to the police. I don't know where he went".³⁸

- d. The accounts of Mr Forbes and Mr Bridgett differ and are **at variance with Constable A's assertion that both boys were beside each other in the crowd**. It is submitted that they both lied in an effort to distance themselves from the assault.

- e. Dean Forbes said that he ended up "probably in the middle of the road level with the Abbey National, Dorothy Perkins"³⁹ (Very close to the Church) and, incidentally around the same area where Stacey Bridgett said he stood letting his nose bleed. Mr Forbes was asked by police if he had seen Stacey about Dorothy Perkins at all and he said he hadn't. He was then asked "If Stacey had've been there would you have seen him?" He said "Aye probably, unless he was standing in the middle of the, the big crowd that you couldn't really you know describe anybody that was standing in that crowd very well at all".⁴⁰

- f. Mr Underwood, QC referred Mr Forbes to his police interview of 10th May 1997⁴¹ where he had said that when they got to the back of the Land Rover, they noticed that there was a big row going on and there were already two fellows lying on the ground and that he did what the policewoman had told him to do and backed off.⁴² Mr Forbes had continued in the interview to tell that shortly after, when he moved further back, he could see the fellow on the ground getting kicked. He said "Well I saw another fellow running in and kicking him from the crowd, but I couldn't see where he was getting kicked". The other fellow was just lying there and a girl was holding him. Mr Forbes was referred to his police interview of 6th May 1997⁴³ where he said "well when he was lying on the ground, there was a boy with black hair, real dark

³⁶ Pages 7241 - 7243

³⁷ Pages 7245 - 7246

³⁸ February 27th page 82 lines 19 - 20

³⁹ March 10th pages 42 and 43

⁴⁰ Page 7005

⁴¹ Page 7064

⁴² March 10th page 43 et seq

⁴³ Page 6974

hair, with a black bomber jacket on and he just ran in with the boot and wallop right into the back of him”. He then said “That is what I mean, I saw a couple of boys. There was a boy in green, green top, he ran in. He had short hair. And then the guy in the black jacket run in with the long black hair, and that’s all I could see from the back.” Mr Forbes said that he couldn’t identify either boy.

- g. It is submitted that Dean Forbes, knowing that there was strong evidence placing him at the scene of the incident, couldn’t deny being there. Rather, he portrayed himself as an innocent onlooker. It is also submitted, as discussed below, that he carefully concocted more than one alibi for himself.

6.

a. **Ann Bowles** gave evidence to the Inquiry on 24th February 2009.⁴⁴ The record of an interview which she had with police on 10th May 1997⁴⁵ was put to her. She had told police that she, her sister and another girl purchased food from Boss Hoggs and sat on the step of the Ulster Bank to eat it and wait for the arrival of the bus from Banbridge. After the bus arrived, they walked up the High Street towards the Church. They walked past the Land Rover and when they reached Abbey National Building Society, **she saw Dean Forbes standing on a control traffic reservation and she asked him what was going on. He said “There’s a fight going on”. It was recorded that the three girls then left the scene and walked home.** The record of a further interview on 7th June 1997 was put to her.⁴⁶ It said “She stated that as they were at the Northern Bank in High Street on 27.04.97, **they saw a crowd of about 50 persons in the middle of the road** at the junction of Thomas Street/Market Street and that there was a lot of shouting. They then walked on up past the police Land Rover to the Abbey National Building Society **and it was then that they saw Dean Forbes standing in the traffic reservation in the centre of Market Street.....**” Mr Underwood, QC put to Miss Bowles Mr Forbes’ account to police of this meeting.⁴⁷ After describing seeing two fellows lying on the ground and one of them being kicked, police had asked him where exactly he was at that time. He replied “At that time, I was standing just where the flowerpots were, just in the middle of the road at the neck where they split that junction on that traffic island thing” He said that he didn’t get involved in any fighting at all and, asked what he did during the fight, he said “While that was all going on, I was standing talking to the girls....Anne and Lynn Bowles.....” Mr Underwood, QC asked Miss Bowles what she was able to see and she said “I didn’t see a punch that night. I just saw a massive mob

⁴⁴ February 24th page 61

⁴⁵ Page 7776

⁴⁶ Page 7777

⁴⁷ February 24th page 66 et seq

of people.”⁴⁸ She said that she wasn’t even speaking to Dean that long. She basically asked him what was going on and all he could tell her was a fight had broken out at the bottom of Thomas Street. She said that she didn’t see anybody on the ground.

- b. Mr Adair, QC questioned Ann Bowles.⁴⁹ He reminded her that when she spoke to police on 10th May 1997, she made no mention of seeing anybody, let alone any crowd in the street, apart from Dean Forbes. He pointed out that she had seen the mob on the street and she agreed. He asked why she had declined to make a statement and her answer was that she just felt she had nothing basically to tell the police and she wanted nothing to do with it. Mr Adair suggested to Ms Bowles that she was “symptomatic of the problem the police had in trying to investigate this crime.....saw nothing, heard nothing”. She said that was wrong, she had told him what she saw.
- c. Ann Bowles’ sister, Alison also gave evidence on 24th February 2009. The police record of their interview of her sister on 7th June 1997 was put to as was the note that she had been interviewed on the same date and had given the same details as Ann.⁵⁰ Alison told Mr Underwood, QC that she didn’t speak to Dean Forbes, it was just between her sister and him. She couldn’t remember how far she was away from him. When asked if she and her sister had stopped for very long, she replied “No, it would have just been to ask what was going on over there, more or less to find out what was going on, but we didn’t hang about”. Asked if she had no interest in it or fascination in what might have been behind her, she said “No, no involvement. Didn’t want to know anything, you know”.⁵¹ Mr Forbes account to police was then put to Alison. Mr Underwood, QC pointed out to her that police had suspected Dean Forbes of being involved in killing Robert Hamill, and his alibi was her - “He wasn’t there killing anybody; he was standing there chatting to you and able to see it all”. She was then asked “Now, can you give him that alibi or not?” She replied “No, because I wasn’t standing talking to him. From my memory, I cannot remember if I was standing talking to Dean Forbes. I can’t even say of a conversation I had with him and Lynn Bowles wasn’t even there that night”.⁵² *Dean Forbes had named the girls he was talking to as Lynn and Anne Bowles in his police interview on 6th May 1997.*⁵³ *In his interview on 10th May 1997 he said “then at the flower beds at the top of the town I was in the company of the Bowles sisters” and he named them as Anne and Lynn and he said there was another girl “I think that was the third sister”.*⁵⁴

⁴⁸ February 24th page 69

⁴⁹ February 24th page 20 et seq

⁵⁰ February 24th page 81 et seq

⁵¹ February 24th pages 86 - 87

⁵² February 24th pages 90 - 91

⁵³ Page 6983

⁵⁴ Page 7031

- d. Alison Bowles agreed with Mr McGrory, QC that she was in or about the same place as Mr Forbes in front of the church. However, when he put to her that she would have had pretty much the same view of what the crowd were doing, she said “No -- Dean Forbes obviously had seen something that I didn’t see. I am not going to say something that I didn’t see.....Yes, I would have been standing where Dean Forbes was that night, but I didn’t see what Dean Forbes seen”,⁵⁵
- e. Mr Underwood, QC drew Mr Forbes’ attention to his police interview where he was asked about his meeting with the Bowles sisters.⁵⁶ He had said “Yeah, because they came over to me and they says, you know, ‘were you in the middle of that’ and I goes, ‘No, I was over there’ and they pulled me back another bit and then this woman was standing pointing and shouting.....she was wearing a white t-shirt” Mr Forbes told Mr Underwood, QC that he was right up by the church. He could see the woman who was shouting from where he was standing. She was in the middle of the crowd. Mr Underwood, QC asked Mr Forbes if he could say why the girls pulled him back and he aid “No, they were just talking, so they were”.
- f. There was no mention by the Bowles sisters of them asking Dean if he was in the middle of that or of them pulling him back. What would they have been pulling him back from? It is submitted that the evidence outlined above points to the Bowles sisters having seen more than they admitted to. It also reveals that the Bowles sisters’ encounter with Forbes was no more than a fleeting one, if it occurred at all. We submit that Forbes has either significantly exaggerated his encounter with the Bowles sisters in an attempt to deflect his participation in the affray. That he is capable of constructing an alibi after the event is clearly demonstrated in the context of his contact with Linda Boyle discussed below.

7.

- a. Linda Boyle’s statement⁵⁷ was put to Dean Forbes by Mr McGrory, QC.⁵⁸ She had said that Dean asked her to go into school and ask Jill Ritchie if she’d seen Dean and to tell her what clothing Dean had been wearing on the night of the incident. Dean Forbes denied this. Jill Ritchie’s statement ⁵⁹was also put to him by Mr McGrory, QC. She had recounted that Linda Boyle did approach her and “she was alone when she approached me and she appeared visibly upset”. Linda asked Jill if she had seen Dean up the town. Jill said she hadn’t. Linda asked her if she knew what he was wearing and she went on to say that he was wearing a cream Ralph Lauren shirt with black jeans. Mr Forbes denied that he had asked Linda to do this and said that he didn’t know

⁵⁵ February 24th page 93

⁵⁶ March 10th page 50 et seq

⁵⁷ Statement of Linda Boyle dated 10th September 1997 page 59234

⁵⁸ March 10th page 91

⁵⁹ Page 9615

why she would make that up.⁶⁰ We would submit that one reason for doing this would be to ensure that police would be told, if asked, that he was wearing black jeans. We know that Denise Cornett had described Forbes as “wearing a light cream shirt, dark trouser and had brown short hair”.⁶¹ She said of Forbes and Bridgett that she did not know these boys.⁶² However, Constable A, who did know Forbes and Bridgett, well enough for Mr Forbes to refer to her by her first name,⁶³ said that he was wearing a light coloured check shirt over cream coloured trousers.⁶⁴ Mr McGrory, QC pointed out to Mr Forbes that he had told the police that he was wearing black jeans on the night.⁶⁵ He suggested to Mr Forbes that he had been wearing a different pair of jeans and had gone to quite extreme lengths to hide that fact. Mr Forbes denied this.

- b. In his police interview of 6th May 1997⁶⁶ Dean Forbes was asked what he was wearing on the night of the incident. He said “What I gave youse at my house a, like a beige colour Ralph Lauren shirt and the dark Sonetti trousers”. When asked if he was certain, he said “Yeah. That’s what I said in the house.....” When asked if there was no doubt in his mind that that’s what he was wearing, he said “That’s, that’s what I was definitely wearing. I’d say there was a couple of girls could probably if you asked what I was wearing”. He named Pauline Newell as one of those who could verify that.⁶⁷ Mr Forbes was shown items of clothing which were taken from his house that morning and was asked to identify them and whether or not he was wearing them on the Saturday night/Sunday morning. He was shown a pair of black Sonetti cords and he said they were his and he was wearing those on the night in question.⁶⁸ He also identified a cream coloured Ralph Lauren shirt as the one he had been wearing. A number of other items were shown to him including a pair of cream Niko jeans. He said they were his dad’s. He said he couldn’t wear them because they were too short in the leg.⁶⁹ P36 made a statement on 6th May 1997.⁷⁰ He searched Dean Forbes’ home on 6th May 1997 and he states:-
- c. “A 0726 hrs I seized a pair of black Sonneti jeans from a sports bag in the downstairs hallway.....Also from sports bag in downstairs hallway I seized a cream coloured Ralph Lauren shirt.....”

⁶⁰ March 10th page 92 line 21

⁶¹ Notebook entry page 9678

⁶² Statement of Denise Cornett para 9 page 80209

⁶³ Page 6947

⁶⁴ Page 9236

⁶⁵ March 10th page 95 line 17

⁶⁶ Page 6936

⁶⁷ Page 6937

⁶⁸ Page 7016 et seq

⁶⁹ Page 7020

⁷⁰ Page 767

- d. He then searched bedroom 1 upstairs where he seized a number of shirts from a weight bench and two shirts from the wardrobe. He seized a pair of cream jeans from bedroom 2. Constable Carroll who was present at the search seized a shirt from a clothes line in the back garden. (Exhibit SPC1)⁷¹ Dean Forbes identified this as his father's shirt.⁷²
- e. Mr McGrory, QC suggested to Mr Forbes that he directed the police to the trousers. Mr Forbes said "No, they opened my wardrobe and asked me to take out my clothes of what I was wearing that night. So I handed them to them."⁷³ This, when looked at in conjunction with Linda Boyle's evidence, supports the argument that Mr Forbes may well have tried to conceal the identity of the actual jeans he was wearing on the night in question and, it is submitted that the only reason he could have had for doing so was the fear of what forensic testing would reveal.
- f. It would appear that only the black jeans and cream coloured shirt were submitted for forensic examination.⁷⁴
- g. We note that it is recorded on a Forensic Science Post Requirements Form dated 24th October 1997⁷⁵:-

The following items are not in property register:-

Blue Check Shirt (Forbes) "No record of the whereabouts of this item. Last handed to DC Keys during interview. Forbes claimed it belonged to his father. Was this confirmed at the time?"

Entries were made in relation to five other shirts. These entries said that there was no record of their whereabouts, they were last handled by DC Keys during interview of Forbes and the items needed to be located and assessed for examination". The entry in relation to a Ralph Lauren Blue & White check shirt includes that Forbes stated he was not wearing on the night and asking if this was confirmed.

Pair of cream Nico jeans (Forbes) "No record of the whereabouts of this

⁷¹ Page 766

⁷² Page 7018

⁷³ March 10th pages 89 - 90

⁷⁴ Page 38833

⁷⁵ Page 26472

item. Last handled by DC Keys during interview of Forbes when he stated that item belongs to his father”. Was this confirmed at the time?”

In view of the fact that a police woman identified Forbes as wearing cream jeans on the night and that the police had evidence that he attempted to direct a witness to say that he was wearing black trousers, the police should have made sure the jeans were forensically tested. It should also have been verified that they were his father’s size and not his size. There is no evidence to show that this was done.

8

a. As stated above at number 5 b, Dean Forbes told police on 10th May 1997 that after meeting Stacey Bridgett at the Bridge they walked towards their estate and called at Tracey McAlpine’s door but there was nobody in. He said that this was around 3.20/30 am. He then said that he went to his own house and Stacey went home. He proceed to say that he left his own house again after watching a Sky TV programme then waiting for an and he went back over to Tracey McAlpine’s house. Only Tracey was there so he went home again. At page 34 of his Inquiry interview transcript Dean Forbes said that he didn’t go into Tracey McAlpine’s that evening. At page 39 he said that when he went to the door, Tracey said that there was nobody there and he just headed home again. He couldn’t hear anybody in the house and if there was a party going on in the house, he didn’t know about it. Mr Underwood, QC asked Dean Forbes if he went in and spent any time in the house and he said ‘no’.⁷⁶

b. There is evidence from Tracey Clarke⁷⁷, Kelly Lavery⁷⁸, Tracey McAlpine,⁷⁹ Pauline Newell,⁸⁰ Stephen Sinnamon,⁸¹ Iain Carville,⁸² Christopher Henderson⁸³ and Andrew Allen⁸⁴ which puts Dean Forbes inside Tracey

⁷⁶ March 10th page 64

⁷⁷ Page 70902

⁷⁸ February 17th page 72 line 15

⁷⁹ Page 9617

⁸⁰ Page 9129

⁸¹ Page 3419

⁸² Page 9185

⁸³ Page 2275

McAlpine's house. Mr Underwood, QC asked him if those who said he was there were wrong. He replied that he was there every other Saturday night so "unless they got their Saturday nights mixed up or something".

9. It is a matter for the Panel to decide whether or not Mr Forbes is to be believed. It is however our respectful submission that the preponderance of the evidence is against him and therefore his account of events is a total fabrication. It is our submission that he and Bridgett joined the affray immediately after their conversation with the land rover crew. The statement from Tracey Clarke would suggest that Forbes joined in the attack of Robert Hamill as he lay defenceless on the ground. This is not in any way inconsistent with the evidence of Timothy Jameson that he was also part of the general affray.

Rory Robinson, Andrew Allen and David Woods

- 1. Rory Robinson, Andrew Allen and David Woods** have been placed together at or near the scene by a number of witnesses. All three men give different versions of events. We believe the reason for this is that they are trying to conceal their own part in the incident and that this will become evident as this submission progresses. We have dealt already at some length with Robinson, Allen and Woods in these submissions with regard to the cause of the incident.
- 2. Rory Robinson** was charged with the murder of Robert Hamill but the DPP subsequently directed 'no prosecution'.¹ Robinson was interviewed by police on 10th and 11th May 1997.² He attended the Inquiry on 11th March 2009 and the Panel will doubtless recall the disgraceful manner in which he responded to questions from Counsel for the various parties.
- 3. Andrew Allen and David Woods** were arrested and questioned by police in relation to the murder of Robert Hamill. Neither was charged.³
- 4. Rory Robinson, Andrew Allen and David Woods** have denied any wrongdoing but there is evidence which would point to the contrary.
- 5. Tracey Clarke** stated on 10th May 1997 that Rory Robinson was one of the people who were kicking and jumping on the person on the ground.⁴ She attended a DPP consultation on 17th October 1997⁵ and said she wouldn't give evidence in Court. Tracey Clarke's statement was put to Rory Robinson by Mr Underwood, QC who asked him if it was true. He said 'no' and he couldn't give any reason why she would have made up the allegation against him.⁶ In dealing with the case of Allister Hanvey, we set out in detail the reasons for our submission that the Inquiry should give full weight to Tracey Clarke's statement of 10th May 1997 and our submission in that regard remains the same in respect of Rory Robinson.

¹ Direction page 10620

² Pages 7559 - 7764

³ Pages 931 and 933

⁴ Page 262

⁵ Page 17591

⁶ March 11th page 28 line 1 - page 29 line 7

6. **Timothy Jameson** made a statement on 9th May 1997⁷ in which he also implicated Rory Robinson in the fighting that night. He also implicated Andrew Allen in the murder. He attended a DPP consultation on 21st October 1997⁸ claiming that he could not remember what he saw. He said that he could not distinguish in his mind between what he saw and what people had said had happened. He then stated that he could not remember anything about the fight and that he was drunk. He stated that when he had made his statement, **he was simply agreeing with what the police said to him and he put in his statement what they told him. In evidence on 12th February 2009 Timothy Jameson said that the Detective Constable who had recorded his statement “was being very intimidating, very forceful”.**⁹ He said in his statement “I then noticed Rory Robinson fighting. I do not know who he was fighting with. I only looked over at him for a couple of seconds. Rory was hitting somebody with his fists. I couldn’t see who he was fighting with. Rory was wearing cream coloured jeans.” When Mr Underwood, QC put this statement to Robinson, his response was “**I don’t know the fellow**”¹⁰ In relation to Andrew Allen, Jameson said “I then saw another fellow kick the boy lying on the ground. This fellow has black hair and I know him to see about Portadown, he is called ‘Fonzy’. He would be in his early 20’s. I saw ‘Fonzy’ kick the fellow lying on the ground, with the black jacket in the face a couple of times”. Mr Underwood, QC put Jameson’s statement to Andrew Allen who said “**He is saying that it is me but I definitely know I wasn’t involved in anything like that**”¹¹ It is our submission that the Inquiry should give significant weight to the statement of 9th May 1997 for the same reasons outlined by us in the case of Allister Hanvey.
7. **Jonathan Wright** made a statement on 11th May 1997¹² in which he said that he didn’t see any fighting. He made another statement on 15th May 1997.¹³ He told police that when he and Marc Hobson got to the front of the Church, they walked a few yards further down the street. He saw a fight further down the town in the middle of the street between Thomas Street and Woodhouse Street. Marc left Jonathan and ran down into the crowd fighting in the middle of the road. Jonathan stood at the edge of the flower beds facing the Abbey National. He saw Marc being pushed about by the crowd and saw him lift his hand and reach out for somebody but didn’t see him hit anybody. The fighting lasted about five to ten minutes. **He said he saw Rory Robinson in the middle of the crowd running around like a headless chicken.** He saw Stacey Bridgett trading punches with one person. They were fighting a wee bit to the left of the main fight more towards the Alliance & Leicester Building Society. He said he saw a boy lying on the street at the mouth of Thomas Street. The police got the crowd under control and the crowd started leaving. Mr Underwood, QC put the statement of 15th May 1997 to Robinson whose response was “I didn’t know the fellow. I don’t know why he’s saying it”¹⁴

⁷ Page 15883

⁸ Page 17591

⁹ February 12th page 68 lines 18 - 19

¹⁰ March 11th page 26 lines 3 - 9

¹¹ March 10th page 130 lines 11 - 12

¹² Page 564

¹³ Page 568

¹⁴ March 11th page 16 line 13

8. Mr Wright attended a DPP consultation with Mr Gordon Kerr, QC on 17th October 1997. Mr Davison's note of the consultation stated that Mr Wright had a good memory of events and was able to relate the incidents more or less in accordance with his statement. However, it said that "while in his statement he refers to his friend Marc as being involved in fighting during consultation he described him as pulling people out of the fight". It is noted that Mr Wright did not indicate any unwillingness to give evidence.¹⁵ Jonathan Wright made a further statement on 13th March 1998¹⁶ in which he said that his statement of 11th May 1997 was correct and the second one wasn't. He said "At the time I made it up as I was afraid and I now know that it is known by others in Portadown what I said in the second statement and because of that fact I am not prepared to give evidence in Court regarding the second statement". We respectfully submit that the Inquiry should give full weight to Jonathan Wright's statement of 15th May 1997. Our reasons for this submission are more fully discussed by us in relation to the case of Marc Hobson.
9. **Rory Robinson** told Mr Underwood, QC that his memory was a complete blank.¹⁷ He confirmed that as far as he knew his Inquiry statement¹⁸ was accurate. In that statement, he said that he knew 'wee Davy Woods' from socialising. He didn't know Andrew 'Fonzie' Allen although it was possible he might have known him to speak to him in the town. He told police in his interview on 10th May 1997¹⁹ that he was wearing an orange checked shirt, a blue bomber jacket and cream pinstripe trousers on the night in question. (Timothy Jameson had described him as wearing cream coloured jeans). Referring to his police interview, Robinson stated that he was walking up the town after 1.30 am having got off the bus from the Coach Inn. **He walked alone up the town** on the left side of the street towards the Church at the junction of Market Street and West Street. He wasn't sure if anybody else was walking just behind him. As he was walking through the town centre he saw a police Land Rover parked in the main street. He had been told that some witnesses said he walked up the town with Andrew Allen and Davy Woods but **said that he did not walk from the bus stop with those two men.** He didn't know if they were behind him as he walked up and to his knowledge he wasn't aware of them. We submit that Robinson was deliberately distancing himself from Allen and Woods in order to deflect suspicion from himself. **He continued as far as the church without stopping.** Mr Underwood, QC took him to his police interview²⁰ where he had stated that he got as far as the church and he heard shouting 'orange bastards' and things like that. He looked around and saw a big scuffle. He was also referred to a part of his interview where he had been asked why he stood about - this was a fight. He said he didn't go about his business because of 'nosiness or something'.²¹ He proceeded in the interview to deny making any verbal chants or any attempt to go against the police.

¹⁵ Note of consultation page 17591

¹⁶ Page 581

¹⁷ March 11th page 4

¹⁸ Page 81135

¹⁹ Pages 7579 - 7581

²⁰ Page 7561

²¹ Page 7605

He said he was nowhere near the police. When the police came up the town he asked them to walk him down the street because there were still people running about and after he had seen the rows he didn't fancy walking down on his own. **He was asked if he was frightened and said "Yes, I was sort of yes."** The police asked him why **he spent thirty minutes at the church watching what was unfolding. He said "It was nowhere near me"**.²² On the one hand he was telling police that he stood around out of nosiness and on the other hand he said he was frightened and in the next breath was saying that it was nowhere near him. During this interview, Mr Robinson displayed the same disrespectful behaviour as that witnessed by the Panel when he gave his evidence. For instance, he was asked why he didn't make his way home by going around the town. He said it was too far to walk. The police put it to him "So you were not that scared" and he said he was scared enough. His attitude to police led the interviewer to say "I take it that you are being sarcastic there".²³ The police also said "Now for the purpose of the record, the suspect is leaning back in his chair, with his arms folded over his head".²⁴ We submit that his apparent 'couldn't care less' attitude is indicative of his character. It is a matter for the Panel to decide whether or not Mr Robinson was being truthful but we believe that the answers he gave to police at interview were very far from the truth.

10. Reserve Constable Robert Atkinson gave evidence to the Inquiry on 11th May 2009. He said that people had moved back up towards the Church. They were still catcalling. He was asked if there was any point after that at which people tried to get at the men on the ground. He replied "There was indeed, yes....I got in front of number 3 [Robert Hamill] here and there was several attempts to sort of come through and get at him again. And I did in fact strike a guy then and put him back up the street". **He confirmed that the person he struck was Mr Robinson.**²⁵ Mr Underwood, QC asked Mr Atkinson if he hit Rory Robinson because he was trying get to Mr Hamill. He replied "Yes. I told him to go back, I think. I'm not sure of the exact wording, but I told him to move back and **he wouldn't move back and he started to jostle and push forward as if to go past me.** So he had his warning, so he got struck". In evidence, Rory Robinson denied being struck with a baton.²⁶

11. Constable Alan Neill said, in his statement for the Inquiry "As we were pushing the crowd back I remember a male I know as Rory Robinson being in the crowd shouting abuse and trying to push past us, he was going along the line trying to push through. **At one stage the crowd was right on top of Robert Hamill** and we pushed the crowd back slowly. **Robinson confronted me face to face at one stage and appeared to be threatening me by pushing his chest out and pulling his arms back. His actions could have been enough for me to have arrested him** but we didn't have enough resources at that stage".²⁷ Constable Neill made a statement on 27th

²² Pages 7596 - 7599

²³ Page 7600

²⁴ Page 7626

²⁵ May 11th page 68 line 13 - page 69 line 4

²⁶ March 11th page 25 lines 6 - 7

²⁷ Paragraph 37, page 81037

April 1997.²⁸ He described seeing a male with a round face and goatee beard [Hobson] kick at Robert Hamill. He said “The male with the goat beard was moved back as best possible. Other police had arrived at this stage and were standing with Rory Robinson, 20s, short black hair, thin with point features. Both these persons were **taunting injured people and those that were looking after them. Robinson was moving back and forward across the line trying to get through.**” In evidence, Constable Neill said that Robinson was in the front of the line.”²⁹ When confronted with Constable Neill’s evidence by Mr Underwood, QC, Robinson’s response was “Not true, wasn’t there”³⁰

12. Constable Gordon Cooke made a statement on 27th April 1997.³¹ He said “I recognised the following persons at the front of the crowd, Stacey Bridget from (blank). His nose was bleeding. Stephen Forde from (blank). He was wearing a multi coloured check shirt. Rory Robinson of (blank), was wearing a yellow coloured shirt with a fine check through it and beige coloured trousers”.

13. Reserve Constable Dean Silcock made a statement on 27th April 1997.³² “Another youth was wearing a bright yellow/orange shirt with a black check. This youth had darkish hair. I now know this person to be Rory Robinson from (blank). **Robinson was verbally abusive to myself and members of the public.**” Mr Underwood, QC put this statement to Robinson whose response was “I keep on saying I wasn’t there”.³³

14. Constable Adams’ statement of 27th April 1997³⁴ was put to Mr Robinson by Mr Underwood, QC. The constable had stated “I then assisted to move these persons back up the town centre towards West Street. While doing so, **I noted a person who I know to be Rory Robinson to be amongst this crowd,** that he was attempting to get back down to the town centre again. I was aware that he lived at the other end of town, therefore, I allowed him to walk back towards the junction. I escorted him down past it and into the High Street.” Robinson said “From my statement, that’s true there”. When Mr Underwood asked “So you were in the crowd and you had to be escorted back down, is that right?” He replied “From my statement I wasn’t in the crowd, no”.³⁵ In his Inquiry statement³⁶ Rory Robinson said “I am told that Constable Adams said that he escorted me away from the scene. I cannot remember this happening. Moreover, I cannot remember at what time I left the scene, or how I got home.

²⁸ Page 6332

²⁹ May 19th page 125 lines 1 - 6

³⁰ March 11th page 18 line 18

³¹ Page 9225

³² Page 9220

³³ March 11th page 20 lines 1 - 11

³⁴ Page 9224

³⁵ March 11th page 20 line 18 - page 21 line 7

³⁶ Paragraph 29 page 81142

15. Donald Blevins gave evidence to the Inquiry on 12th March 2009. Mr Underwood, QC referred him to his statement³⁷ where he had said “Initially I would have been maybe a couple of yards away from the crowd.....I joined the crowd of Protestants. I saw Rory Robinson and Mark Currie near the Protestant crowd.”³⁸Mr Blevins told the Inquiry that there were two crowds, one of Catholics and one of Protestants and the crowds were shouting at each other. It is our submission that nothing Mr Robinson has said about his participation in these events can be believed.

16. **Andrew Allen** also had some difficulty with his memory when he attended the Inquiry on 10th March 2009. Mr Underwood, QC referred him to his police interview on 15th May 1997.³⁹He had told police **that he was with Rory Robinson and David Woods**. He got off the bus. There was a big crowd. They must have gone to Boss Hogs. All Andrew wanted to do was go home and he just walked on up the town. Then he got caught up in the fight. **He said that he was behind Rory and David. They had stopped just at the corner of Thomas Street. He stopped there with them waiting on the crowd to catch up** - just to see if there was a party or anything happening. He heard people shouting up Thomas Street but paid no attention. He saw three or four girls and three or four fellows walking down Thomas Street in a group. The girls were in front and they walked on past across the street in the direction of Woodhouse Street. “Well the boys, they just pulled up about level with us. I thought they were walking on past and **they turned round and they hit David Woods** who was standing in front of me”. Nothing was said. There was another boy who went across the road and **Rory Robinson - he was standing just at the edge of Eastwoods** “**And the two, he started throwing punches at him and them two started fighting and somebody came at me**”. He then turned and ran up Thomas Street. This would support Timothy Jameson’s assertion that he noticed Rory Robinson fighting. Mr McGrory, QC put to Mr Allen “..according to your account, a man starts throwing punches at you, another man runs over and hits Davey Woods and another man starts attacking Rory Robinson all completely out of the blue. Nobody says a thing. They don’t even say why they are doing this. They don’t call you anything. They say nothing”.⁴⁰It is submitted that the likelihood that such a thing could have happened in complete silence is remote to say the least.

17. **Andrew Allen** was one of those who attended the party at Tracey McAlpine’s house. Mr Underwood, QC referred him to his police interview⁴¹where he had been asked about the conversations going on there and he said “I heard that Hanvey had hit somebody with a bottle.....They were just talking about what happened, the usual old craic, and **I just went on home shortly after**”. Allen told Mr Underwood, QC that he couldn’t remember who was in the room when that discussion was going on.

³⁷ Page 81619

³⁸ March 12th page 96 line 1 - page 97 line 8

³⁹ Page 7305

⁴⁰ March 10th page 142 lines 15 - 24

⁴¹ Page 7355

In his police interview he said **“I sat there for twenty minutes or half an hour or so.”**⁴² Pauline Newell had said in her statement of 20th May 1997⁴³ that she **woke around 5.00 am** and got up to get a drink of water. She came downstairs and saw a number of people and she named them as **“Allister Hanvey, Stephen Sinnamon, Fonzy, Chris Henderson and Dean Forbes”**. Iain Carville gave evidence on 26th February 2009.⁴⁴ He had said in his statement of 19th May 1997⁴⁵ that he arrived at Tracey McAlpine’s house after 3.00 am and he recalled seeing a number of people there including Allister Hanvey, Dean Forbes, Marc Hobson and Andrew Allen - most were sleeping. Tracey McAlpine also named Allen as being there around 5.00 am.⁴⁶ By saying that he was only at the house for twenty minutes to half an hour which is contrary to the above evidence, we submit that Andrew Allen was trying to put distance between himself and the others who were involved in the incident.

18. Pauline Newell gave evidence on 17th February 2009. In her statement of 20th May 1997⁴⁷ she said that she came back in bus from Coach with her sister Tracey and Kelly Lavery. Stopped at Boss Hoggs and Tracey and Kelly walked on. Looked up street towards Church and saw **Rory Robinson, Davy Woods and Fonzy walking up towards Thomas Street**. They had been on the bus from the Coach. A document was put to Ms Newell by Mr Underwood, QC.⁴⁸ This contained information recorded by police on 10th May 1997 and stated:-

19. “Information reference murder of “Information reference murder of Hamill @ Portadown: - source obtained information from a female who was present during the fight. She is called Pauline & lives @ Brownstown & is currently wanted for questioning by Portadown CID. She says Hamill & 1 x male & 2 x female friends were walking from Thomas St to Woodhouse St. As they crossed Main St Hamill went over to a protestant crowd of approx 30 and called one a 'black bastard'. Then he hit this person * who retaliated. The others joined in and Hamill & his male friend were both beaten . * Named as Rory Robinson, 23-24 yrs, dark brown hair in curtain style , source thinks he is UVF. Many of the protestant crowd were in Boss Hoggs just prior to the incident. They should be on video according to source. Pauline works in fruit shop in Magowan Buildings”.

20. Pauline Newell confirmed that she had worked in a fruit shop in Magowan Buildings and she did live in Brownstown but she couldn’t remember telling anyone this.⁴⁹

⁴² Page 7357

⁴³ Pages 9128 - 9130

⁴⁴ February 26 page 54 lines 3 - 11

⁴⁵ Page 9185

⁴⁶ Inquiry statement Paragraph 13 page 80773

⁴⁷ Pages 9128 - 9130

⁴⁸ Page 50182

⁴⁹ February 17th page 17 line 20 - page 18 line 5

21. We note that in Pauline Newell's statement of 20th May 1997, she said "I have since heard in general rumour around the town that the fight was started by the ones coming down Thomas Street. They hit wee Davy Woods and then others joined in to come to his rescue."⁵⁰ This is inconsistent with the information recorded by police on 10th May 1997 that it was Rory Robinson who purportedly was hit.

22. **David Woods** gave evidence to the Inquiry on 27th February 2009.⁵¹ He said that **he was walking home on his own**. He didn't stop for food or to talk to anybody on the way. He assumed that there should have been people behind him - they had just got off a bus. He had no recollection of how close they were behind him. He told Mr Underwood, QC that when he got to the junction, he went to walk up Thomas Street home and there was a crowd of people coming down Thomas Street. They were making a bit of a racket so Mr Woods thought he would walk on. Then he stopped because they started getting a wee bit rowdy. He hoped they would go past. There were maybe five people - men and women. He was very drunk. **He was either outside Jamesons' or Number 7 Bakery then.** The people were shouting and kicking a door. He didn't know if it was a door of Jamesons'. Some fellow out of the crowd ran down and punched Mr Woods. He didn't even see him coming. He just remembered getting smacked in the mouth. After that Mr Woods moved back in case he was going to be attacked but nothing else happened. His sister lived above Jamesons' Bar and she came out and brought him in and that was the night over. Mr Underwood, QC drew Mr Woods' attention to Andrew Allen's police interview.⁵² **He asked Mr Woods why Mr Allen would have said that he was there with Mr Woods and Rory Robinson. Mr Woods maintained that he was on his own.**⁵³ We would submit that Woods was trying to distance himself from Allen and Robinson in order to portray that he was a victim as opposed to an instigator of the violence.

23. We would refer the Panel to the submissions made by us in relation to the cause of the incident where we addressed the evidence of P42, Colin Prunty, Maureen McCoy, E, F and D. We also addressed the evidence of Carol Ann Woods, William Jones and the staff of Jameson's Bar, namely Beverly Irwin, Stephen Thornbury, Julie Sherwood and Derek Lyttle.

⁵⁰ Page 9130

⁵¹ February 27th page 3 et seq

⁵² Page 7302

⁵³ February 27th page 16 line 8

The Land Rover Crew

1. At approximately 01.15 Thomas Mallon left St Patrick's Hall. He later said that he told the Land Rover crew that his friends were coming from St Patrick's Hall. He said there were people walking along the main street. There was a lot of noise. When he saw police and decided to walk on. As he reached the end of Thomas Street, the police Land Rover parked on the main street beside the Alliance and Leicester started to move off. Mr Mallon waved at them. A policewoman opened the front door and he told her that that people would be coming from St Patrick's Hall. He was approached by a youth who was in a group of four or five. The youth was carrying a glass bottle of Buckfast and confronted him. Mallon felt threatened so he left. As he walked away, he was aware that a policeman had got out of the Land Rover, which was parked across Woodhouse Street¹.
2. R/Con Atkinson said in his statement that when the Land Rover moved off, a male aged about 30 to 35 years passed in front of them and mouthed something. Then two youths approached that man and squared up to him. They were moved on but Con Alan Neill's door was pulled open and Con Neill was pulled out². He said that a stoutish sort of boy said something to Res Con Denise Cornett about people coming down and almost instantly the door was pulled open³.
3. Neill said they were moving off when he noticed a man mouthing something at them. He stopped and R/Con Cornett spoke to him. The man told her there were people coming down from St Pats. Neill couldn't see them at that stage but had already noticed a large crowd coming up from the bus stop⁴.
4. P40 was sitting in the back of the Land Rover but could hear a man shout in that his friends were coming down Thomas Street during the neglect investigation⁵. He told Irwin and McBurney Bridgett was at the Landrover at that stage.
5. Res Con Cornett recalled that a man walked across the street mouthing something at the police. She told Con Neill to pull over. This man said his friends were coming down Thomas Street. She understood he meant for the police to wait there in case something happened. They did not, however, see anybody coming at that stage⁶. She says that two other young men then shouted at Thomas Mallon and Res Con Cornett opened the door and asked them what was going on. One of the men was carrying a green cider bottle. The men were shouting abuse like "Fenian bastards" at Thomas Mallon⁷. She then talked to the two men at the door of the Land Rover. She says that they were standing chatting her up and a guy came over and opened door⁸.

¹ 9091, 8117 and 2161

² 6346 and 9840

³ 09476

⁴ 09390

⁵ 09362

⁶ 09450

⁷ 09945

⁸ 09454

6. In oral evidence to the Inquiry, Mallon said that as he went across the road the Land Rover moved forward⁹. He waved at the Land Rover¹⁰. It stopped between LR2 and LR3, he went to driver's side and asked the police "if they were moving away and that people were coming up behind him"¹¹. He walked around the back of the Land Rover. He then got caught in the middle of two groups of two youths (four youths in total). He was offered wine. There was no aggressiveness or altercation. The youth with the wine was holding the bottle by the body¹². He disputed that Bridgett and Forbes were at the Land Rover when he spoke to police. When he was walking up Woodhouse Street he looked back and a male officer had got out of the Land Rover and was talking to the youths that Mr Mallon had spoken to.
7. In his Inquiry statement Mallon said that when he got towards the end of Woodhouse Street he saw two men, one of whom he recognised as Colin Hull. He marked CH on 73910 where he met him.
8. Colin Hull asked him what was happening as he must have heard the noise from the town centre. They had a brief chat wherein Mr Mallon told Mr Hull to go home. The police were on the corner and there were a lot of people in town. Mr Mallon did not speak to the other man with Mr Hull. He did not remember what he looked like.
9. His account, which is independent, puts the conversation between Police and Forbes and Bridgett after Mallon spoke to police. This means that after police were warned about the people coming down from St Patrick's they commenced their chat with Forbes and Bridgett. It is noteworthy that by Mallon's warning the police in the Landover were alerted to the fact that there was a function on in St Patrick's Hall. Before this, it appears, the police who had been specifically briefed in relation to public order duties were not aware of this. This was confirmed by R/Con Cornett in her interview during the neglect investigation¹³. Police knew this area to be a flashpoint in particular when patrons of St Patrick's Hall and loyalists met at closing time (see further family's criticisms of P89).
10. In this context the warning given by Mallon was all the more exigent and should have had alarm bells ringing in the minds of the officers. This is particularly so if, as Neill says at of his Inquiry statement, they were aware of 50 or so people coming up High Street toward them¹⁴.
11. Con Neill, who was the driver and senior officer in the Land rover, gives an account in his oral evidence of what happened after the warning from Mallon. As they pulled away from the LR1 Thomas Mallon walked across the junction and mouthed something. Cornett opened the door and spoke to him". He could not hear what she said as it is not possible to hear inside the Land Rover. It is hard enough to hear the people in the back. R/Con Cornett related what was said: "Mallon said there were

⁹ 20th January 2009, p.81

¹⁰ *ibid* p.59

¹¹ *ibid* p. 83

¹² *ibid* p. 64-5

¹³ 02-10-97 09450

¹⁴ 81033 para 17

some of his friends coming down Thomas Street”¹⁵. Con Neill could see up Thomas St and there were no signs of anyone as far as the bend¹⁶. Colin Murray found that the position of the vehicle made it difficult to view Thomas Street.¹⁷

12. Con Neill intended then to go down to the bottom of town but “Bridgett and that were by Northern Bank and Mallon had just entered Woodhouse Street. They started shouting at him”. Two of the youths followed Mr Mallon down Woodhouse Street¹⁸. He turned the Land Rover into LR3 and watched the youths approach Mr Mallon. They could not hear what was said. R/Con Cornett shouted at them. That cut it dead. They kept a watching eye on the boys to see if they went after Mr Mallon, who had walked off¹⁹.
13. Mallon makes no mention of the two boys following him into Woodhouse Street or there being any aggression from them. He looked back and saw them chatting to police.
15. Neill said that after Mallon walked off Mr Bridgett and Mr Forbes came up from behind the Land Rover (where Mallon says he encountered them) and then went to one side²⁰. It was about a minute between them approaching Thomas Mallon and coming to the Land Rover. R/Con Cornett had the door open and the boys were talking to the crew. It was a brief conversation before he was pulled out²¹. Chatting to Mr Bridgett and Mr Forbes was a distraction he said in oral evidence²². He did not remember Mr Bridgett and Mr Forbes talking about Mr Bridgett joining the Services, or that he was working for Jameson’s as Forbes claimed²³. He remembers someone saying that they were a painter and that he was looking to paint the Seagoe Hotel. He did not recall R/Con Cornett talking about his clothes or her being engaged or married²⁴. He did not believe that they were talking for five minutes. All crew members in the Land Rover were involved in the conversation²⁵.
16. He suggested people had to have come down Thomas Street between the crew being warned by Mr Mallon and his being pulled out of the Land Rover²⁶. He claimed that with hindsight, it would have been sensible to wait for people to come down Thomas Street but there were often fights at the bottom of town as not only Loyalists used the takeaways. It wasn’t just one point in town that could cause trouble. It was more likely for trouble to start at the junction. He said there was no straightforward way of

¹⁵ 19-05-09 p. 6

¹⁶ *ibid* p. 7

¹⁷ Murray Report 1 para4.36

¹⁸ 19-05-09 p 7

¹⁹ *ibid* p. 8

²⁰ *ibid* p. 8

²¹ *ibid* p. 9

²² *ibid* p 39

²³ 10-05-97 07062

²⁴ 19-05-09 p. 42-43

²⁵ *ibid* p. 44-45

²⁶ *ibid* p 35

getting across from Woodhouse Street to Thomas Street, they had to go round the bottom of town as the kerb was quite high²⁷.

17. It is clear from Mallon's police statement that whilst he felt apprehensive about the situation the two youths he encountered were not aggressive²⁸. He re-iterated this in his Inquiry statement²⁹. Of course, the family submit, it serves the purposes of the Land Rover crew to assert that there was some overt threat to Mallon and to suggest that they were keeping an eye on the two youths until he was safely out of harms way. This serves to justify their failure to respond immediately to the warning given by Mallon.
18. As regards Neill's oral evidence, if as he suggests the conversation only lasted a minute, the panel should ask whether this would have been sufficient time for people to have emerged from around the bend in Thomas Street, which he said was clear when Mallon spoke to them, and walk the length of the street into the junction and be attacked. Colin Murray believes, at this point, the vehicle should have been moved, or an officer alight, to get a clear view of Thomas Street³⁰. Whilst Neill acknowledges that "with hindsight" it would have been better to wait for people coming down Thomas Street, he qualifies this with the proposition that there could have been fights down toward the bottom of the town. It is surely, from a public order perspective, much more likely that trouble will occur at closing time in Portadown Town Centre, in the run up to Drumcree, where Protestants and Catholics meet, than between a group of Protestants getting off a bus from a nightclub.
19. The suggestion that the Land rover would have been unable to mount the kerb of the traffic island running down the centre of Market Street is, the family say, a forlorn excuse for not heeding the warning immediately. The Panel have had the opportunity of visiting the scene and, as the photographs³¹ demonstrate, the kerb is not unusually high. The Land rover is an off-road vehicle and, the family submit, would have easily been capable of crossing over the central island.
20. The family believe that the officers in the Land Rover chose to ignore the warning from Mallon. It appears that they preferred instead to sit where they were and indulge in idle banter with a couple of the local lads who were known to at least two of the Land Rover crew.
21. The length of this particular conversation has been a source of some controversy, not least amongst the officers themselves. In his police interview P40 says³²:

P40 As we pulled in to see what the crack was with them because, not putting a blunt edge on it but Stacey is a bit of a troublemaker. Ehm and so we pulled in to see what the crack was and started chatting away so, we did, he knows me by name so he does.

²⁷ *ibid* p 36-37

²⁸ 12-05-97 09092

²⁹ 80755 para. 16-19

³⁰ Murray Report 1 4.36

³¹ 00221

³² 09361 8-09-97

Ehm.

P40 He popped his head in, said there's P40, how are you doing and just –started chatting away to him.

22. In his oral evidence however, P40 resiled from this position and sought to minimise the extent of the exchange between the police in the Land Rover and Bridgett and Forbes³³
23. He is in fact contradicted by the evidence of Dean Forbes who related to the panel that he and Mr Bridgett stood on the inner side of passenger side door talking to two police officers in front. There was a woman in the passenger seat³⁴, an officer driver and two in the back. He did not know any of them by name. He thought they knew Mr Bridgett because they had called out “Stacey” to him. It was a male voice that called him over. That was why they went over to the Land Rover. At this stage he was conscious of a row on the other side of the Land Rover but could not see anything³⁵. At no point did the police say that they “can’t talk we’re on duty” or something similar³⁶. They stood for five minutes then the driver’s door swung open and a man shouted “are you going to let those ‘uns get away with this?”. This man was wearing a blue shirt and tie and was about 5’10”. He was angry. He said that the driver had his door open. He said that officers usually sat with the door slightly ajar or with their foot against it. He knew this from seeing it often as he walked up town. He remembered it from that night as the man did not swing open the door from the handle³⁷. He was not sure if the man had to turn handle to open door³⁸.
24. In his Police interviews after his arrest he had this to say:

FORBES ...the doors opened and the police officer in the back noticed us and he called us over and he was saying to Stacey and all, I take it you didn't go, and join the Army and all, he says no just left school and went to work for Davy Jamesons he said

Right do you know that police officer?

FORBES I, I can't remember if it was [REDACTED] or something like that there.

Right. So the both of you were. ,

FORBES Talk, just talking away³⁹.

³³ 26-03-09 p. 48

³⁴ 10-03-09 p. 34

³⁵ *ibid* p. 35-36

³⁶ *ibid* p. 114

³⁷ *ibid* p. 36-39

³⁸ *ibid* p. 66

³⁹ 06-05-97 06953

and,

Were you talking to the police?

FORBES *Yes.*

What were you talking about?

FORBES *Well he, he was asking Stacey would he not join the Army or something like that there the RAF and Stacey just turned round and said that he had decided to leave school and he was working for Davey Jamiesons. And then he just says, he says are you working and I says yeah painter. He says I might get you out sometime he said to do a job for him.*

This is the policeman said that?

FORBES *Yes.*

Do you know who the policeman was?

FORBES *Yes (p40) 'it was or something like that there, (p40).*

So what happens then when you were at the landrover?

FORBES *We were standing talking away and then the woman police officer started talking to us and she was saying you know like, she said to Stacey about his shirt or something, you know, Ralph Lauren, that was a bit dear or something and we were just carrying on with her and then I saw her ring . Here's me, are you mad in the she just laughed.*

You see that lady police officer in fact told yous to move on, she did have a conversation with you but told yous to move on.

FORBES *Yes that was whenever the police officer that was driving the landrover was either struck or pushed (inaudible)⁴⁰ .*

25. R/Con Cornett describes her encounter with Bridgett and Forbes in her police interview describing on of them shouting sectarian abuse at the man who had just warned police about patrons coming down from St Patrick's Hall. She goes on to tell police they started chatting her up. It is during this chat that someone starts to pull Neill out of the Land Rover⁴¹. In her Inquiry statement while she describes this as a short conversation⁴² she does not recount the substance of it.

⁴⁰ 10-05-97 07062

⁴¹ 02-10-97 09452

⁴² 80209 para. 9

26. Atkinson, in his police interview confirms speaking to the two youths. They were quite friendly Cornett opened the door and they had a bit of a chat. He thought one of them was Stacey Bridgett. He told the interviewers that P40 leaned into the front and spoke to him about joining the army⁴³.
27. Both Bridgett and Forbes seem clear that it was a male officer who called them over (P40) because he knew Stacey. P40 confirms that he does know him. Mallon, although he did say he felt threatened (see para. 1 above) does not allege any aggressive behaviour on the part of the two youths. In fact, he says, one of them offered him a drink⁴⁴, he certainly makes no mention of any sectarian abuse as alleged by Cornett. Whilst Forbes in particular gives some detail of the conversation that passed between them and the police, the officers seem to be at pains to stress that the conversation was brief and the reason for any exchange was because the officers were looking out for the safety of Mr Mallon. In her initial police statement Cornett has the two approaching her and makes no mention of intervening in a potentially threatening situation⁴⁵. P40 makes no mention of Forbes and Bridgett at all in his initial statement. Neill does make mention of Cornett shouting out to the two after they “square up” to Mallon⁴⁶ and gives a little detail of the conversation. He also in oral evidence suggested the two youths said or shouted something to Mallon⁴⁷.
28. The family’s submission on this point is that the evidence of Mallon is to be preferred to that of the police officers. Mallon makes no mention of overt verbal abuse by the two youths whereas the police do. Mallon is an independent witness whose evidence on the issue of the warning is unchallenged. It is notable that both Atkinson and P40 both initially identified the male who warned them as being involved in an altercation after police have exited the Land Rover⁴⁸ but neither alleges that it is the same male in their Inquiry statements. That there was aggression or the beginnings of a potentially violent incident between Mallon and the two youths of course justifies the police stopping and talking to Forbes and Bridgett. This scenario is preferred by them as it gives the impression of officers properly carrying out their duties rather than engaging in social banter with local youths who later are charged in connection with the murder.
29. It is the family’s submission that the period spent talking to Forbes and Bridgett requires justification by police as it is during this time that Robert Hamill is attacked and is knocked unconscious. Neill himself, the senior officer in the Land rover, described this period as a distraction⁴⁹.
30. It is common case that the police are then jolted out of their chinwag by a male coming to the drivers door and pulling Con Neill from the drivers seat. This of itself is a highly unusual, if not bizarre act, by the member of the public to carry out toward any police officer. Seen in the context of Portadown in the late 1990’s, involving a

⁴³ 09-09-97 09488

⁴⁴ 80754 para. 17

⁴⁵ 10965 27-04-09

⁴⁶ 00681 27-04-09

⁴⁷ 19-05-09 p 6

⁴⁸ 27-04-97 00693&4; 27-04-09 00696

⁴⁹ 19-05-09 p. 39

member of the RUC which was armed force on a state of high alert for possible terrorist attack, it beggars belief. The panel must consider what could possibly have motivated this individual to do such a thing.

31. The answer to this, the family submit, is in the words accompanying this individual's actions. Neill attributes the phrase: "you sat there and watched that happen"⁵⁰. In her police interview Cornett recollects this man shouting: "what are you doing sitting there letting this all happen?"⁵¹ This male remains unidentified so the Inquiry has no direct evidence from him as to what he was referring to. The family submit that, in all the circumstances, the only inference that can be drawn on the evidence is that it was the attack and knocking unconscious of D and Robert Hamill by a large group of Protestants. It is further apparent that this male who does not understand how police could have permitted this to happen a matter of yards from the vehicle they occupied. There can be no other explanation for this behaviour the family say, and indeed none has been put forward to this Inquiry.
32. Any assertion by the police in the Land rover that there were no casualties on the ground when they exited the Land rover is, the family submit, not credible and contrary to the available evidence.
33. The family also submits that the attack on Robert Hamill was continuing at this time and did continue until police eventually reacted and pushed the crowd back from the casualties. It was a sustained attack. Support for this is to be found in R/Con Atkinson's statement who observes three youths jumping on the head of the male who was lying outside Eastwoods (Robert Hamill). This element of the assault takes place after R/Con Cornett has radioed for ambulances.
34. The actions of each individual officer on exiting the Land rover and dealing with the disorder also require examination. The family believe that their attempt to deal with the disorder was, on their own account, wholly uncoordinated and unfocused.
35. Robert Atkinson describes a commotion at the rear of the vehicle and then sees Neill pulled from the Land rover. He says that on exiting the rear he sees the male who gave the warning involved in an altercation with Neill⁵². Neill for his part says he watches Mallon walk down Woodhouse Street, describes talking to Forbes and Bridgett and then a male pulls at him. He does not say that this is Mallon⁵³.
36. Atkinson then hears a lot of shouting up toward the town church, sees about 50 loyalists and 10-12 Catholics cat-calling and suddenly scuffles break out. Neill describes something similar, he interestingly also using the term "cat-calling". He then breaks up a fight outside Eastwoods and removes a person to Woodhouse Street, this person was wearing a white top. He says this person was assaulted by another youth at Woodhouse Street whilst he was with him. He grabbed the assailant and took him to the Land rover where he tried to get his details. Another fight started near him and he broke that up. Atkinson says he followed Neill initially and saw him

⁵⁰ 27-04-09 00681

⁵¹ 02-20-97 09456

⁵² 27-04-97 00693

⁵³ 27-04-09 00681

break up the fight at Eastwoods and take a person to Woodhouse Street. He says that as he turned to regroup with his colleagues he saw the two casualties on the ground.

37. On breaking up the second fight, Neill sees P40 and Atkinson in Market Street then notices the casualties who had women tending them. Atkinson describes Neill going over to the casualties to check them while he kept the crowd back with his baton. He says that the loyalists trying to attack both them and the Nationalists and Neill pulled one from the crowd and they both returned to the Landrover. He describes a confrontation at the Land rover whilst Neill and he are there and at this stage observes three youths jumping on Robert Hamill's head. He left the Land rover and went back and remained with the casualty until assistance arrived. Neill does not describe removing a person in the crowd to the Land rover but rather an encounter with a person with a goatee beard⁵⁴.
38. From Atkinson and Neill's initial police statements, considered in terms of what they did as regards the casualties, neither saw any casualties on the ground when the fighting started. While Atkinson's account does not exclude the possibility that there were casualties at that time, Neill says that he observed Robert Hamill before he was rendered unconscious. Both however, give accounts which place them initially dealing with incidents in and around the Police Land rover. This, on their account allows for the situation to develop around the other side of the junction and provides an opportunity in terms of time for D and Robert Hamill to be knocked unconscious after police have emerged from the vehicle. It is disturbing that on Atkinson's account both he and Neill at one point return to the Land rover with a male that Neill has pulled from the crowd leaving the two unconscious men vulnerable to the loyalist crowd, members of which, as pointed out above, Atkinson then observes jumping on Robert Hamill's head. Atkinson, in his evidence at the trial of Marc Hobson attributes this decision to Con Neill⁵⁵. It is notable that at this juncture in the narrative Neill's account goes off on a tangent to deal with a "flashback" to an earlier incident when he observes a male attempting to lift broken glass.
40. Cornett's police statement⁵⁶, the family submit, is somewhat different in the description of what occurs when police alight from their vehicle. Cornett's statement has all of the officers getting out of the vehicle when Neill is pulled at. None of the others contradict this. She says she is warned not to get out by Bridgett and Forbes who then run off⁵⁷. She gets out, sees fighting and hears screaming and goes to the Land rover to call for back-up and then an ambulance 2 min 23sec later⁵⁸ as two people had been injured. She then exits the Land rover again and sees the two on the ground. This is confirmed by the note taken from her by the notes taken from her by D/Sgt Bradley⁵⁹. After checking these casualties she then sees Neill at the Land rover struggling with a male in his early twenties and another male in a white top trying to assault the first male. She then comforts a female who approaches her and other police arrive to assist.

⁵⁴ 27-04-09 00681-2;00693-4

⁵⁵ 23-02-99 08343

⁵⁶ 27-04-09

⁵⁷ 80210 para 12

⁵⁸ 1:45:37-1:48 06583 & 06590

⁵⁹ 27-04-97 09681

41. P40's evidence is unhelpful as to the sequence of events apart from him confirming that all exit the vehicle at the time Neill is pulled from it⁶⁰. He then concerns himself then with individuals attempting to come from Woodhouse Street to join the fighting. As indicated above whilst he identified Mallon as one of those attempting to exit Woodhouse Street in his initial statement he does not make this assertion in his Inquiry statement. During his oral evidence to the Inquiry he said he did not see anyone on the ground when he got out⁶¹. His account therefore, like Cornett's and Atkinson, does not exclude the possibility that there were casualties on the ground when police exited the Land rover. Out of the four officers Neill is the only one who makes this positive assertion.
42. From Cornett's statement it appears that she must have been told by someone else when she exits the vehicle that there are two casualties. She calls for assistance first and then an ambulance. It is after this that she observes the two on the ground⁶². It is only after checking, these casualties that she sees the incident between Neill and the two youths one of whom is wearing a white top, albeit she has the latter as an aggressor whereas Neill does not. Despite this, the family submit that the Panel can be satisfied that it is the same incident as the descriptions of the youth in the white top are very similar. Further it can be distinguished from the incident Atkinson describes when he and Neill take a person from the crowd to the Land rover and this incident involves only one male not two. Further Cornett does not identify Atkinson as being involved in the incident she saw.
43. That the attack was sustained and continued after Robert Hamill was knocked unconscious is also supported by the medical evidence. Professor Jack Crane in his oral evidence explained that the forces necessary to cause the brain injury (DAI) that Robert Hamill sustained were of a severity normally associated with a road traffic accident. The injury was sustained as a result of shearing forces within the brain caused by violent movement of the brain inside the skull. One reason, he said, that people assaulted on the ground sustained this type of injury was because they could be unconscious and unable to defend themselves. He agreed that jumping on a person's head in this situation would produce such injury. This could be contrasted with a boxer who, whilst subjected to severe force, was able to move with the blow and so the same movement of the brain inside the skull did not take place⁶³. The description of Robert Hamill as unconscious and having a crowd kick at him and jump on his head is entirely consistent with the mechanism producing DAI describe by Prof Crane. In Professor Crane's view there were no defence injuries in Robert Hamill's case⁶⁴. Dr Lawler's report confirmed that DAI is well recognised to occur in assaults, particularly when the head is subjected to repeated kicking, punching or stamping. Dr Herron in oral evidence agreed that, as a matter of simple physics, the accelerative force generated would be greater where the injured party was unconscious. It is the family's submission that the injuries sustained by Robert Hamill are not only consistent with, but point toward, his having been knocked to the ground unconscious

⁶⁰ 27-04-97 00695 & 08-09-97 09365

⁶¹ 26-03-97 para 11

⁶² 00690

⁶³ 15-01-09 p. 5-10

⁶⁴ 80221 para 25

and then a sustained attack being directed particularly toward his head. Not only is this scenario consistent with the injury sustained it is corroborated by the evidence of those who witnessed the assault.

44. It is only after the incident involving the two males that Neill says another fight started near him and it was then he became aware of the two males on the ground. There is a direct conflict between Neill's statement and that of Cornett's on this point as he says he saw Robert Hamill at some point during the *mêlée*. The family submit that Cornett's evidence is to be preferred on this point when the versions of events given by police are considered in the light of the remarks made by the individual who pulls Neill out of the Land rover. This comment is reinforced by the similar comment made to Neill by a female who is with D outside the Bakery⁶⁵. Moreover it is only Neill's account which positively suggests that Robert Hamill was not unconscious on the ground when police exited the vehicle.
45. The actions of the police on exiting the Land rover were the family submit, largely ineffective. Although it is our contention that Robert Hamill had already been rendered unconscious by the time of the exit from the vehicle, given the medical evidence it is possible that a more emphatic intervention may have shortened the period of the assault, and in turn reduced the severity of the brain injury. This might have involved, for instance, the harmless discharge of a weapon, or the use of the Land rover with lights and siren to intimidate the crowd.
46. It is however somewhat academic, the family submit, to consider what other action might have been taken after police got out. This only serves to distract attention from the fact that had the police in the Land rover heeded the warning of Thomas Mallon and taken action to prevent the attack this Inquiry and indeed any police investigation may well have been unnecessary.

⁶⁵ 81036 para 30

Reserve Constable Robert Atkinson and the “Tipping Off” Allegation

1. Robert Atkinson together with his wife Eleanor and Kenneth Hanvey were charged with conspiracy to pervert the course of justice. The charges were withdrawn as the DPP concluded that the witness, Andrea McKee’s general credibility was undermined due to the nature of her explanation for her failure to attend court on 22nd December 2003.¹ Atkinson and the others have maintained from the outset that they are not guilty of wrongdoing. We submit that the evidence to the contrary is overwhelming.
2. Tracey Clarke made a statement on 10th May 1997² in which she implicated Allister Hanvey and others in the murder of Robert Hamill. She also stated “I remember Robbie Atkinson’s name coming up and Alister said that Robbie Atkinson had been very good to him because on the Sunday morning after the incident in the town centre he rang him at about 8.00 am and told him to get rid of the clothes he was wearing the previous night. Since then Alister has contacted me on numerous occasions and he keeps asking me what I have said to the Police. He also told me that Robbie Atkinson was ringing him everyday to keep him up to date with the Police investigation.”³
3. Tracey Clarke attended a DPP consultation on 17th October 1997⁴ and said that she wouldn’t give evidence in Court. She subsequently denied the truth of the statement. It is our submission that the Inquiry should attach full weight to the statement for the reasons outlined by us in the case of Allister Hanvey.
4. Evidence in the form of telephone billing from BT showed that there was indeed a phone call from Atkinson’s home to the home of Allister Hanvey on 27th April 1997 at 08:37 which lasted for one minute and thirty five seconds and a further call at 16:24 on 2nd May 1997 which lasted for one minute and forty one seconds.⁵ On 9th September 1997, Atkinson was interviewed by police. It was put to him that there was an allegation that he made contact with Hanvey. He denied this. He was told that over and above that he may also have told Hanvey to dispose of clothing ‘or whatever’. His response to that was “Definitely not, I didn’t, no, that’s that last thing I would”. Atkinson was asked “What about the telephone?” He said “No. Well I didn’t definitely contact him by telephone...” He was then asked if he would mind if the police looked at his telephone account and he was asked to produce it for them. This is despite the fact that they already had evidence of the billing since May 1997.⁶ Mr Underwood, QC questioned Robert Atkinson. He said “And you didn’t make the call to warn Allister Hanvey?” Atkinson replied “I was in my bed sleeping.” Mr Underwood, QC

¹ Pages 33891 - 33892

² Page 262

³ Page 264

⁴ Page 17591

⁵ Page 9350

⁶ Pages 44916 & 44931 - 44946

continued “And when you then had this put to you in September 1997, you went off sick the next day, didn’t you? He said “Yes”. He denied that it was the allegation that made him go off sick. Mr Underwood, QC asked “Complete coincidence that it is the day after this allegation first emerges? Atkinson replied “Yes”.⁷ We submit that this was no coincidence and that Atkinson used the time between his interview in September and the next one in October 1997 in order to come up with a trumped up explanation for the call that he knew would appear on the billing.

5. Allister Hanvey made a statement on 7th May 1997 in which he said “I was then approached by a Policeman, I don’t know his name. He asked me to help move some of the people back up towards the Church out of the way. I pulled a few people back. This Policeman was mid 40s, 5’10”, stocky build, gingerish/greyish hair, moustache, I just knew from seeing him in the town.”⁸ On 10th May 1997 at his police interview, Allister Hanvey was asked about the policeman who he said asked for help. He was asked “Does he know you?” He said he didn’t know, and, “I know him to see, but I don’t know him by name. I have described him in my statement.”⁹
6. Mr McGrory, QC questioned Allister Hanvey. He suggested to him that he knew Atkinson pretty well. Hanvey said “No”. It was put to him that he had said he knew him to see at least and Hanvey said “Of course I knew him to see”. Mr McGrory, QC referred Hanvey to his statement of 7th May 1997 where he described being approached by a policeman and he said that he didn’t know his name. Mr McGrory, QC said “I’m asking you did that describe the man you knew to see as P61 [Atkinson]?” Hanvey said “no.....I can’t remember what P61 looked like 12 years ago” When Mr McGrory, QC said “You see, that was reserve constable P61, I’m suggesting to you?.....Because he described meeting you in the town?” Hanvey said “I have no idea”. Mr McGrory, QC asked “What you were doing in that passage in your statement was setting up an alibi. Do you understand me? Hanvey said “Oh, I understand what you are saying, but it is wrong.” Mr McGrory, QC continued “You were setting it up, Mr Hanvey, that if P61 was asked did he see you in the town, he would say something good about you? Hanvey said “But earlier on you said to me I was high on drink and drugs and couldn’t remember anything, so now you have me setting up an alibi whilst high on drink or drugs? Mr McGrory, QC said “You see, that’s what he told Mr Leatham?” Hanvey said “I have no idea”. He denied that he had been in pretty close contact with Atkinson at the time he made his statement on 7th May. Mr McGrory, QC said “He had already phoned you to tell you to burn your clothes.....which I suggest you had done by then.....And that you thought you would just squeeze a bit more out of it, Mr Hanvey?” Hanvey said “Totally untrue, false allegation.” Mr McGrory put to him “And that if he was going to go so far as to tell you how to burn your clothes, you’d a pretty safe bet in putting him in the frame as someone who would verify that you were there?” Hanvey’s response was “It is totally untrue”. Mr McGrory, QC said “And you did it again on 10 May, three days later, when you were arrested, didn’t you? You repeated it on 10 May?” Hanvey said “If it is in the statement, that’s --everything you are accusing me

⁷ May 11th page 87 line 18 - page 88 line 13

⁸ Page 561

⁹ Page 10112

of is totally untrue.”¹⁰ It is submitted that Hanvey definitely knew Atkinson by name and deliberately refrained from giving it at this point in order to make it appear that he had helped a policeman he didn’t know. It was also designed to make sure that the police would ask Atkinson who Hanvey expected would agree on the basis that he was already helping him out.

7. Tracey Clarke had stated that she spoke to Allister on the Tuesday and told him about what she had seen and that she had told the Police about everything and he was in deep trouble. She said that when she met him later that evening he wanted to know what she had told the Police and, as she hadn’t been seen by the Police, she made a few things up to annoy him.¹¹ The Tuesday would have been 29th April 1997. If Allister believed that Tracey Clarke had told the police about him, he knew that he would have to have a version of events ready to tell them if they came to speak to him. He would have been confident that Atkinson, having taken a risk by assisting an offender in making the warning telephone call, would not jeopardise his own position by giving incriminating information about him. Therefore when he made his statement on 7th May 1997 he fabricated the story about a policeman asking him to help and by giving a detailed description of Atkinson whilst not naming him, perhaps to ward off any suspicion of over-familiarity between the two of them. He knew that Atkinson would not contradict him. This would also explain why, when Kenneth and Elizabeth Hanvey were interviewed by police on 12th May 1997 some five days after Allister made his statement, it was recorded “Kenneth also told us that Allister had told him about a policeman asking him (Allister) to assist in keeping the crowd back. Mr Hanvey stated that this policeman may give evidence to this effect. Mr Hanvey refused to identify this policeman”.¹² It follows that if Mr Hanvey refused to identify the policeman then he must have known his identity.
8. It was put to Robert Atkinson by police on 9th September 1997 that Allister Hanvey alleged that he was asked by a policeman to help move the crowd back. They told Atkinson about the description that Hanvey gave and said “That would fit your description”. Atkinson said he wasn’t five foot ten and he wouldn’t have a clue if there was any other policeman there that would fit that description. He said that he didn’t recall speaking to Hanvey directly - he may have said move along or move back but he didn’t recall asking him to get people gathered up and take them home.¹³ It is submitted that Allister and his father had made sure they were singing from the same hymn sheet. They were not banking at that stage on the possibility that police would find out about the phone call and, of course, when police eventually confronted Atkinson, he had to distance himself from Allister Hanvey in order to try and protect himself.
9. **Sergeant P89** said that “There was one particular individual who was very hostile. He was very reluctant to move back and had to be physically forced by myself by

¹⁰ March 13th page 120 line 4 - page 123 line 20

¹¹ Page 264

¹² Page 7782

¹³ Pages 61270 - 61271

pushing him back. It was clear to me that this individual was close to assaulting me. I can recall Reserve Constable Atkinson say words to the effect do you know who he is watch him that fellow is an expert or black belt in martial arts. He mentioned the fellows name as Hanvey.....”¹⁴ P89 gave evidence on 24th March 2009. He said that he saw Robert Atkinson talking to Hanvey and saw him try to calm Hanvey down or get him to leave. P89 got the impression that Hanvey was intoxicated.¹⁵

10. **Trevor Leatham** gave evidence to the Inquiry on 30th January 2009. He confirmed that he had had a discussion with Robert Atkinson within about one week of the incident happening.¹⁶ In his Inquiry statement¹⁷ Trevor Leatham said at paragraph 8 that Atkinson told him “When they got to the scene of the fighting he saw Allister Hanvey standing back watching the fight. Robert told me that Allister was either drunk or high on drugs so he told him to “fuck off home out of the road”. Allister apparently stood and argued with Robert for a while”. Robert Atkinson said in evidence that he had read Mr Leatham’s statement and he didn’t recall the conversation. He said that Trevor had a drink problem.¹⁸ We submit that Mr Leatham had no reason to invent this conversation and that Atkinson’s denial of it is further evidence of his need to distance himself from Hanvey. It is likely, we submit that Atkinson did tell Hanvey to get off home in such terms. He had seen what Hanvey had done and was advising him to get off side. He was not however telling Mr Leatham the full story.

11. Atkinson told police that he knew Allister Hanvey to see and that he would have no direct dealings with him as such. Atkinson asked if he was involved in any club and said “Yes I, I know what you’re getting at, I’m involved in Tai Kwando Club yes.....Alistair Hanvey is not a member of the Tai Kwando Club, was put out of it a long time before this.....I think he was dabbling a bit in E tabs and things like that and the guy that run it didn’t want him about the place.”¹⁹ Atkinson proceeded to say that he wasn’t a member of the club but his little girl was in the junior section. He said he would just go to their competitions and things and they ran a fund for travelling expenses and things like that and he would look after the money but he wasn’t actually an organiser or a member of the club. He said he never really had much dealing with Hanvey.²⁰

12. A statement by Karen McIvor, First Trust Bank confirmed that an account was opened for the Tae Kwon Do Club on 3rd October 1996. The office bearers detailed on the account opening mandate were Michael McKee, Chairman, Robert Atkinson, Secretary and Trevor Leatham Treasurer. The correspondence address was nominated as Robert Atkinson c/o the Club.²¹ Andrea McKee said in her statement of 25th

¹⁴ Page 11084

¹⁵ March 24th page 13 lines 19 - 22

¹⁶ January 30th page 23 lines 10 - 12

¹⁷ Page 80643

¹⁸ May 11th page 77 lines 23 - 25

¹⁹ Page 9525

²⁰ Page 9526

²¹ Page 20344

October 2000 “I remember that Michael actually got the Unit in Brownstown Business Centre through Robert Atkinson who was driving for Bobby Jameson who owned the complex”²² Atkinson said that he knew Hanvey’s father to see because he played football against him years ago.²³ This is further evidence that Atkinson has lied about the close connection he had with the Tae Kwon Do Club and its members.

13. Robert Atkinson was interviewed by police again on 9th October 1997 and when he was asked for his comment in relation to the phone call from his home to the Hanvey house at 08:37 on 27th April 1997 he said “Well obviously someone in the house rang that number but it wasn’t me.” He proceeded to say that he had discussed it with his wife and she had given him an explanation. He said that he wasn’t there when the phone call was made - he thought he was in bed at the time. He said he had been recalled to duty at 6 o’clock that morning and went home at 8 o’clock. When he previously arrived home from work at 3 or 4 in the morning his wife had been sleeping. He just got into bed and went to sleep then the phone rang around 5.50 am. He answered it and it was the station. He got up and went to work. He said that he came back and his wife asked what that was all about and he said something like “there was a row down in the town, the ones coming from the Coach and we had to go back in and make statements”. Then he went to bed again. He confirmed that he, his wife and two children lived in the house. He was asked if it was normal for his wife to be up on a Sunday morning and he said **“There was people staying with us so I think she was up to make breakfast”**. He said that Michael McKee and his wife Andrea were staying. **He stated that he wasn’t aware when he came in from work that they were there. He just got into bed.** When the McKees stayed they would sleep in the back bedroom.²⁴ He was asked if the McKees would drive to his house and said “Sometimes they get a taxi”. He was then asked if he knew how they went that night and he said “Haven’t a clue I don’t recollect seeing the car so I’m not sure, I don’t know”. He was asked “Right. **And did your wife say then when she got up?”** and he replied **“She just said Michael and Andreas here or something like that I think. I went to bed.”** In his police interview on 10th April 2001 he was asked if he recalled seeing Michael or Andrea there when he came in from work or if he spoke to them. He said he couldn’t recall. He was asked if his wife made him aware that they were there and said he wasn’t sure when she told him or whether he knew from the night before they were there. It was then put to him **“But you were aware they were in the house” and he said “Aye”**.²⁵ The interviewer said “And yet in that space of time of you coming in and telling your wife...of what happened up the town and then getting breakfast, she gets breakfast and explains to Michael McKee what has happened up the town and he then is on the phone at 8.37 to ask about Tracey.....It’s a very compacted space of time for all these events to have happened and yet it would take somebody with fairly good eh management skills to get youse through each

²² Page 14909

²³ Page 9527

²⁴ Pages 61289 - 61291

²⁵ Page 21483

other, through the house, passed each other without seeing each other". Atkinson said "If I didn't see him, I didn't see him that's all I can tell you."²⁶ Atkinson told police "From what my wife tells me it was Michael McKee made the phone call.....on, the first phone call. And she says she made the second one."²⁷

14. Even without the subsequent withdrawal of her alibi statement this account has all the hallmarks of a hastily put together and manifestly false alibi. It is wondered what sort of alibi Atkinson would have invented, if any, if he had been confronted with the telephone billing on 9th September 1997 and had been asked on the spot for an explanation about the call. Unfortunately he was given a month in which to invent a story. It turned out to be even more unfortunate for the friends who, through misplaced loyalty or whatever reason, became players in the conspiracy and who ultimately paid the price for their bother.

15. Michael and Andrea McKee made statements on 9th and 29th October 1997²⁸ respectively to the effect that they had stayed overnight at the Atkinson's residence on 26th/27th April 1997 and, in fact Michael McKee, upon learning of the disturbance in the town centre had telephoned the Hanvey residence to enquire after the wellbeing of his niece Tracey Clarke. When Mr McGrory, QC questioned Eleanor Atkinson on 11th May 2009, he asked if the simplest thing would not have been to ask Robbie what happened. She said "Well, it was at that point Michael mentioned Tracey had gone to the Coach and maybe she has -- I don't know if she was engaged to Allister at that particular time, but he passed some remark and -- about Tracey being with him and he asked could he make the phone call to see if Tracey was at the Hanveys." Mr McGrory, QC then pointed out "You see, Tracey wasn't with Allister that night?" Mrs Atkinson said "I don't know". Mr McGrory, QC continued, "They were on a break, you see. They weren't going out at that time." The response was "I wouldn't have been sure. It was an on/off relationship". Mr McGrory then pointed out "You, see, Michael would have known that, Mrs Atkinson, that they weren't going out at that time." She said "I don't know. That's the remark he made. I didn't know if they were together or not".²⁹

16. On 20th June 2000 DCS McBurney interviewed Andrea McKee, who by that time had separated from her husband. She then admitted that she hadn't stayed at the Atkinson's home on the night in question and that the Reserve Constable had spoken to her husband and had asked him say that he had made the phone call to the Hanvey's home early on 27th April 1997 and that she was asked to support that story.³⁰ On 25th October 2000 Andrea McKee made a statement elaborating on what she had previously said.³¹ In a formal interview on 10th April 2001³² Mrs McKee

²⁶ Pages 21484 & 21485

²⁷ Page 61296

²⁸ Pages 34603 - 34604 & Pages 9200 - 9201

²⁹ May 11th Page 32 lines 2 - 22

³⁰ Statement of Andrea McKee dated 20.6.2000 pages 14956 - 14957

³¹ Statement of Andrea McKee dated 25.10.2000 pages 19974 - 19987

³² Page 21227

agreed under caution that her statement of 29th October 1997 was false. When visited by the police in June 2000, Michael McKee told them that what he said previously was fact and he had nothing further to add.³³

17. Michael McKee however was interviewed on 10th April 2001 in relation to providing false information and then admitted that he had made a false statement.³⁴ He had said that he had been asked by Atkinson to say that he had stayed over and that he had made the call and, because he was a friend, he said “Yes”. As a result of the foregoing admissions the McKee’s were prosecuted for conspiracy to pervert the course of justice and on 7th May 2002 Michael McKee was sentenced to six months’ imprisonment³⁵ and Andrea McKee was sentenced to six months’ imprisonment suspended for two years.³⁶ Andrea McKee agreed to give evidence at any subsequent criminal proceedings.³⁷ We submit that the fact of these convictions and sentences is very powerful evidence of the false nature of the alibi in respect of the phone calls. Why on earth would the McKees, now separated, both falsely admit this serious criminal offence and suffer the consequences?
18. Andrea McKee gave evidence to the Inquiry on 11th February 2009. Mr Underwood, QC referred her to June 2000 when she was seen by Detective Inspector Irwin and Detective Chief Superintendent McBurney. She was also referred to her Inquiry statement where she said “I went with them to Wrexham Police Station where they told me it would be in my interest to tell the truth and that they had already spoken to Michael.”³⁸ Mr Underwood, QC asked her if she realised she was in trouble. She said “What I recall is that I was aware that this was an opportunity for me to tell the truth, and I wasn’t going to get myself into any more trouble. I wondered, you know, what information did they have to come all the way to Wales to find me, and that -- on that occasion I just wasn’t going to tell any more lies.”³⁹
19. Eleanor Atkinson said in her Inquiry statement “I don’t recall my husband returning home at about 4.00 am but I do recall the phone ringing during the night which my husband answered. He told me that it was the station ringing and that he had to report back for work and, when he returned again, it was around 8.00 am. I recall him telling me, at that time, that there had been a disturbance in the town involving people who had come off the “Coach bus”. I recall that it was a very short conversation and he then went to sleep.” She continued “I then got up and I recollect waking both Michael and Andrea as they had to be at the club for 9.00 am. I recollect making them tea and toast before they left.” Then “When taking breakfast, I recall mentioning what my husband had told me about the row in the town centre involving people returning from the Coach Inn and Michael appeared to be concerned as he told me that his

³³ Page 22142

³⁴ Page 21002

³⁵ Page 16206

³⁶ Page 16207

³⁷ Page 19989

³⁸ Paragraph 30 page 81491

³⁹ February 11th page 68 line 16 - page 70 line 2

niece, Tracey Clarke, had gone to the Coach, probably with her boyfriend, Allister Hanvey, and that he was concerned about her welfare and he asked me if he could use the phone to check-up on her”.⁴⁰(40) In her Inquiry interview, Mrs Atkinson was asked where her husband was when the conversation where she mentioned the row in town took place. She said “In bed, probably snoring”.⁴¹(41)

20. Mr McGrory, QC asked Eleanor Atkinson how far the police station was from her home. She said it was about 1.4 miles. She confirmed that he took his car and it would take about five minutes for him to get back to the house from the station.⁴² She was asked what time she was up with the McKees and she said it might have been 8.25 because they left about 8.55. She agreed that they needed some time to get their tea or toast and have a chat and that it was 8.37 when she said they made the phone call to the Hanvey’s house.⁴³ Mr McGrory, QC referred her to Constable Neill’s statement.⁴⁴ Neill had been phoned from the station at 8.07 am according to telephone records. During that call he had a very clear recollection of speaking to Atkinson who was still in the station at that time. Mr McGrory, QC put to Mrs Atkinson “Say he had got out of there as quick after seven minutes past eight as physically possible, he has got to get into his car, he has got to drive home and he has got to come in. I’m suggesting to you he wouldn’t have been in the door until at least quarter past, 20 past probably?” Mrs Atkinson said “Well, I don’t know about that now but at eight, five past, he was at home”. It was suggested to her that she was telling ‘a complete cock and bull story’ but she maintained that she was telling the truth. Mr McGrory, QC said “You see, you have to have him asleep by eight o’clock, don’t you?.....Yes you do, because if he is not asleep by eight o’clock, then the easiest thing for Michael McKee or you to have done would have been to turn round and ask him when he came into the door, ‘What’s all this about?’ Mrs McKee maintained that he was home sleeping and Mr McKee made the phone call. Mr McGrory, QC said “Because unless these records are wrong, he would have been coming in the door about quarter past to 20 past eight, just in time, I suggest to you, Mrs Atkinson, to put on the kettle and ring Hanvey’s house?” She said “No. Mr McKee rang Hanvey’s house”.⁴⁵ When it was put to her by Mr McGrory, QC that Mr McKee had admitted that he didn’t and that he spent six months in prison for his trouble and she was asked if she could think of any reason why he would go to jail for six months, Mrs Atkinson gave the ridiculous answer “I don’t know. I don’t know what goes on in his head.”⁴⁶

21. Robert Atkinson was interviewed by police on 10th April 2001 in relation to Conspiracy to Pervert the Course of Justice. The interviewer referred him to Allister Hanvey’s statement which described the policeman who allegedly asked him for help and said “To me that is a very reasonable description of you and what the point I’m making is Alistair Hanvey does not name you either. He knows you, he knew you at

⁴⁰ Paragraphs 7, 8 & 9 page 81496

⁴¹ Page 42 Inquiry Interview

⁴² May 11th page 30 line 18 - page 31 line 8

⁴³ May 11th page 31 lines 9 - 18

⁴⁴ Page 4149

⁴⁵ May 11th page 33 line 23 - page 34 line 24

⁴⁶ May 11th page 34 line 25 0 page 35 line 9

that time.....So Alistair Hanvey did not say at that time eh R/Con Atkinson told me.....to move the crowd back out of the road. He distanced himself from you.” Atkinson said that he couldn’t answer for Allister Hanvey.⁴⁷ Andrea McKee’s statement of 25th October 2000 was put to Atkinson. She said “I remember many occasions when Robert Atkinson, Alistair Hanvey, Eleanor Atkinson, Michael and myself were together in the same company. This occurred at various tournaments and competitions when we went to. I remember us altogether at a barbecue at Robert Atkinson’s house..”⁴⁸ It was put to Atkinson that Andrea McKee said “I do know that Robert Atkinson and Kenneth Hanvey have been friends for a long time and that Kenneth Hanvey works with the Northern Ireland Electricity Service which is where Eleanor Atkinson also works and that they would be friend[s]”. He said they would have been friends years ago.⁴⁹ In Eleanor Atkinson’s Inquiry statement she said that she was acquainted with members of the Hanvey family. She knew Allister Hanvey from his time in the Taw Kwon Do club, both as an exponent of the art and as an instructor. Over the years her daughter would have received some instruction from Allister Hanvey.⁵⁰ She said that she also knew Hanvey’s father Kenneth as a work colleague of many years and she knew his wife.⁵¹ It is clear that Atkinson knew Allister Hanvey very well.

22. On 10th April 2001 in his interview Atkinson was taken by police to Andrea McKee’s statement of 20th June 2000 where she said she wasn’t at his home on the night in question but was at home. He was told that police had checked the McKee’s phone billing for the night of 27th April 1997 and this showed a call from their address to Call-a-Cab at 1.30 am.⁵² The taxi log showed that someone by the name of Smith was collected and taken to town. Rodney Smith’s statement was put to him. Mr Smith had confirmed that he couldn’t specifically remember what he was doing that weekend, he was off work and on the occasions he was at Michael and Andrea’s, if he had been drinking he would get taxi.⁵³ When it was put to Atkinson “We have a phone call at 1.30 am to a taxi company from Michael and Andrea McKee’s house. The statements have all your folk in your house are saying they called for the evening sometime around Midnight they go to bed”. Atkinson said he couldn’t comment on that - “I can only tell you what I did”.⁵⁴ Mr Underwood, QC when questioning Eleanor Atkinson told her there was reason to believe that on the night of 26/27th April, Rodney Smyth and Joy Kitchen were at the McKees’ house and that they told the Inquiry that they never went round to the McKees’ house unless the McKees were there. Mrs Atkinson said “I don’t know when they went to the McKees’ house.....I can only tell you that Andrea and Michael stayed at my house and I don’t know why she would tell lies. I think she is the liar.”⁵⁵

⁴⁷ Page 21647

⁴⁸ Page 21525

⁴⁹ Pages 21547 & 21548

⁵⁰ Paragraph 11 page 81496

⁵¹ Paragraph 12 page 81497

⁵² Pages 21498 & 21499

⁵³ Page 21501

⁵⁴ Page 21502

⁵⁵ May 11th page 6 line 12 - page 7 line 11

23. Eleanor Atkinson said in her Inquiry statement “In relation to the telephone call made from my home to the Hanvey home on 2nd May 1997, I confirm that I made the call enquiring about the availability of equipment and literature for my daughter.....was about to take an important exam and it was essential that she had access to a pattern book which I believed may have been in the Hanvey house as he Hanvey children had been active in the club, though Allister, I think at that time, had ceased his involvement.”⁵⁶ Mr McGrory, QC said to her “It is awful bad luck, isn’t it, that there should be two completely unrelated and innocent phone calls to the Hanvey household just at this time when there is an allegation that your husband is tipping off Allister Hanvey?” Mrs Atkinson asked “Well, is there any phone records to suggest that?” She was told “We have got two, don’t we?” She then said “Well, the second call was my daughter asked me to get a pattern book. She was doing her exam. I don’t know if it was the exam or the world championships, and you know what teenagers are like. She asked me and I asked -- I rang, asked for whatever the pattern book and gloves or whatever they had, and that we left in the Tae Kwon Do club for my daughter.” It was put to her “And you are utterly unaware at this time that the police have information that your husband is tipping off Allister Hanvey?” She answered “I’m unaware”.⁵⁷

24. Mr Underwood, QC brought the statement of Irene Clarke, Tracey’s mother to Robert Atkinson’s attention. He said “So what we have got here is in 2000, Tracey Clarke’s mother telling the police that in 1997 Tracey was going on about this coat and being upset that the result of the alleged tip-off by you was that he had burned the coat that she had bought him for Christmas.” Mr Underwood, QC asked Atkinson if he could help with why Tracey Clarke’s mother would be bringing that up. Atkinson said “No, I have no reason to help you at all in that regard because I don’t know why that allegation has been made.”⁵⁸ Jim Murray’s statement was put to him. Amongst other things he had said “I also remember, although I don’t know exactly when, Tracey said Allister had go rid of the clothes and burnt them. Tracey had bought him a silver jacket from Paranoid for that Christmas, that’s 1996, and I never saw it after that Hamill incident. The jacket was silver, like anorak material without the lining in it. I remember the jacket had an orange stripe on the sleeves. The jacket only came to his waist and looked too small for him.” Mr Atkinson said “You would need to ask Mr Murray about the silver jacket, I know nothing about a silver jacket at all.”⁵⁹ refer the Panel to our comments in that regard. We submitted that Allister Hanvey who said that he was wearing his ‘black CAT zipped up jacket’ had lied about what he was wearing and that Thomas and Kenneth Hanvey also told lies in order to cover for him. We submitted that this would strengthen the evidence that Hanvey was guilty of wrongdoing. We submit in relation to Robert Atkinson that Hanvey’s lies about his clothing also strengthens the evidence that Atkinson had actually warned him to dispose of the clothing he wore on the night of the incident.

⁵⁶ Paragraph 13 page 81497

⁵⁷ May 11th page 42 lines 7 - 24

⁵⁸ May 11th page 91 lines 9 - 19

⁵⁹ May 11th page 93 line 23 - page 94 line 23

25. Mr McGrory, QC in questioning Robert Atkinson asked him about the consequences of the Anglo-Irish Agreement, one of them being a change in attitude about parades in Portadown. Atkinson agreed that the police had to stop certain Loyalist parades from going through the Tunnel in Portadown and that he was one of those officers who was detailed there. Mr McGrory, QC asked "But can I suggest that maybe for the first time now you are being pitted against those whom you might have known?" Atkinson replied "It would be fair to say, yes". He was further asked "Indeed, they would have been people from within your community, neighbours, people with whom you associated socially and so forth, who were amongst those who were wanting to march through the tunnel?" Atkinson said that was correct and he agreed that he arrested some of those people. He said this didn't cause him any personal grief - he just did his job. Asked "But did the fact that you did your job not make you particularly unpopular within your community?" Atkinson said "I wasn't there to be popular, I was just there to do my job".⁶⁰ Mr McGrory, QC pointed out "And nowhere, Mr Atkinson, nowhere in any statement you have made or in any interview you have had do you say that you saw Allister Hanvey involved in this?" Atkinson said "I did not see him involved in it." Mr McGrory suggested to him that it was inconceivable that he didn't see him. Atkinson responded "You can suggest what you like, I didn't see him. I didn't see the other ones that are named there as well, except when I dealt with them when they were straight in front of me". Mr McGrory, QC said "You see, he is well known to you?" Atkinson said that was correct. Mr McGrory, QC suggested to Atkinson that he certainly would have instantly recognised Hanvey. Atkinson said that was correct and stated "If I had have saw him I would have named him as a perpetrator. I didn't see him". He said that was the truth. Mr McGrory, QC asked "Would that not have brought a whole heap of trouble on your head?" Atkinson replied "I really wasn't concerned about trouble on my head. That doesn't concern me in the least. I was in to do my job." Mr McGrory, QC pointed out "You see, you have gotten over the Tunnel and now you have Drumcree?" He replied "That really didn't matter to me". Atkinson confirmed that his house had been attacked in 1997 and Mr McGrory, QC put it to him that the last thing he wanted to be doing was naming, identifying people, becoming a witness against people for attacking a Catholic. Atkinson's response was that he did name people and did become a witness. Mr McGrory, QC said "I suggest to you not in respect of what you really saw and really knew?" Mr Atkinson replied "Your suggestion is completely wrong sir."⁶¹

26. Mr McGrory, QC asked Atkinson about the Hanvey family. He said he knew Allister from the Tae Kwon Do and he had played football years before with his father. Mr McGrory, QC said that Kenneth Hanvey had told the Inquiry that he had played football with him and he didn't have much to do with him after that. Atkinson said that was correct. It was put to him "But he has also told us that he was one of those people who was unhappy about you policing the Tunnel, the marches through the Tunnel in the 1980s.....And of course you would have been aware that your wife and he worked together for Northern Ireland Electricity in Portadown.....And she has told us she had contact with him several times a week"? He was further asked "Is that not one of those situations, Mr Atkinson, where someone within your community, who is connected to you in some way or another,

⁶⁰ May 11th page 132 line 13 - page 133 line 23

⁶¹ May 11th page 149 line 8 - page 150 line 21

was unhappy about your activities as a policeman?” Atkinson said “Well, he was entitled to his own opinion”.⁶² Mr McGrory, QC suggested to Atkinson “Not only did you not give evidence against Mr Hanvey, but you actually went one step further.....and you rehabilitated yourself, or sought to do so in your community.....by tipping Allister Hanvey off to get rid of his clothing.” Atkinson denied this.⁶³ We ask the Panel to take note of the historical context of these events, which are aptly described in the report of Professor McEvoy.⁶⁴ We submit that there was considerable pressure on local reservists at this time and that Atkinson has sought to rehabilitate himself by assisting young Hanvey.

It is for the Panel to decide whether or not Robert Atkinson was telling the truth when he denied the tipping off allegation. It is however our respectful submission that the evidence against him is such that it is inconceivable that he was doing anything apart from lying. It seems incredible that Robert Atkinson and his wife could take the oath in the witness box and listen to the large body of evidence against them and yet with blinkered determination maintained their fabricated story. The irony is that the very people who were asked by Atkinson to lie on his behalf are the only ones who have acquired criminal records for their part and, Atkinson who brought about the situation for them could sit, unabashed in the witness box and continue lying. It is difficult to imagine a more serious wrong that a police officer could commit than to assist a suspect in any sort of crime let alone the crime that was committed against Robert Hamill. It is our submission that the facts speak for themselves.

⁶² May 11th page 134 line 19 - page 136 line 19

⁶³ May 11th page 159 line 22 - page 160 line 5

⁶⁴ Report of Professor Kieran McEvoy PhD, paragraphs 2.5.2 and 2.5.3 - pages 20 & 21 respectively

Sergeant P89 & Inspector McCrum

1. At 00.10 on 27th April P89 paraded and briefed the night division of C Section for public order duty. This included the Land Rover crew (JD81) who were to give particular attention to the area of Magowan Buildings and Woodhouse Street. R/Con James Murphy was detailed as an extra observer in the district mobile patrol support vehicle call sign Juliet Delta 80.
2. At 01.50 Constable Simon Godly told Sergeant P89 that there was disorder in the town centre and the Sergeant and Inspector McCrum left the station for the scene¹. *“At 1 50 am I’ was made aware by the Communications Officer, Constable Godly, that disorder was taking place in the Market Street area of the town and that Police in attendance were in immediate need of assistance.”*

While P89 says that he was told by Con Godley that there was disorder in the town centre this is not supported by Con Godley’s statements at the time or to the Inquiry. In his initial police statement he says that he told Inspector McCrum².

3. According to his police statements P89 left the station with Insp McCrum. Upon leaving they were met by Cons Warnock & Adams who came driving up at speed and requested the issue of a riot gun. They both informed him that a number of civilians had been attacked and assaulted by a large mob that had turned on police. He says he issued a gun to Warnock and took a second for issue to another officer should the need arise. He says this gun was not issued to any other officer and remained with him. He saw 30 – 40 youths congregating in the town centre area. They were being spoken to by police officers. He further saw a group of 3 - 4 youths in the vicinity of Woodhouse Street/Market Street junction. Sergeant P89 assisted police at the scene to move the larger group into West Street. Resources were then deployed in West Street and the junction of Market Street/Woodhouse Street to keep the two opposing groups apart³.
4. P89’s notebook records that: at approximately 0200 as a result of public disorder in the town centre he, accompanied by Inspector McCrum went to the town centre where they assisted other police in dispersing a hostile crowd of approximately 50 into West Street. The crowd separated and the town centre was relatively quiet by 0300 hours – later mobile patrol – supervision with Reserve Constable Silcock⁴.
5. Some 3 years later the Sgt made a further statement in which he revealed for the first time details of an encounter with Allister Hanvey on the night. The Sergeant recalled that when he was assisting police to remove the large group of people into West Street on 27th April 1997, Reserve Constable Atkinson was on his left side within speaking distance. There were about 40 loyalists at that stage. There was one particular

¹ 07-05-97 09213

² 29-04-97 09218

³ 07&15-05-97 09213&09215

⁴ 09962

individual who was very hostile. He was very reluctant to move back and had to be physically forced by the Sergeant pushing him back. It was clear to the Sergeant that this individual was close to assaulting him. The Sergeant recalled Atkinson saying words to the effect “Do you know who he is? Watch him that fellow is an expert or black belt in martial arts”. Atkinson mentioned the fellow’s name as Hanvey but Sergeant P89 didn’t know him. He was unable to remember what clothing the man was wearing. The Sergeant couldn’t recall any other conversations with Atkinson about the incident or anybody involved in it. He said that he didn’t know Tracey Clarke and only knew Hanvey when he was identified to him by Atkinson. He didn’t see Atkinson having any in depth conversations with anybody other than speaking to people in the crowd when they were moving them back. There were females in this crowd. The Sergeant had a vague recollection of Atkinson speaking to one of them who was quite aggressive towards the Sergeant. She was a young woman in her late teens or early twenties. He was unable to describe her⁵.

6. His Inquiry Statement (80843) says that he served with PSNI for 27 years and retired on medical grounds in 2001. Had been stationed at Portadown for around a year in April 1997. Had been based in Portadown for six years previously before being transferred to Lurgan so it was his second tour of duty in Portadown. On the night of 26th/27th April 1997 P89 was on duty to supervise his section – “C Section”. Inspector McCrum was the duty Inspector and his superior. It was P89’s responsibility to give the briefing to C section (Landrover crew) that night and he did that at 23.45. P89 also briefed the mobile support unit at 00.10. The Landrover crew were due to finish duty at 00.00 but were retained that night to provide a patrol of the town centre⁶.
7. Prior to the briefings, P89 reviewed the occurrence book for any occurrences for the evening. His briefing also included any intelligence that the mobile patrol unit needed to be aware of.
8. P89 also briefed Reserve Constable Murphy that night. He was detailed to be an extra observer in the district Mobile Support vehicle “Juliet Delta 80”. That crew were to provide extra support in the event of any incidents. There would normally be a crew of two, usually three officers in this vehicle.
9. He then recounts his movements as per his earlier police statements. In addition to the large crowd of Protestants they had people coming up from Woodhouse Street and their concern was to move the crowd away from the town centre and from the people in Woodhouse Street. This group consisted of about 3 – 4 youths.
10. P89 had a vague recollection that when they arrived at the scene they tried to get a section of the MSU to Portadown as it was clear that they needed more support. He believed that the MSU were at Banbridge at the time. There was some form of communication between Inspector McCrum and P89 but P89 couldn’t remember who made the request for the MSU.

⁵ 28-12-00 11084

⁶ 80843

11. To the best of P89's recollection, there was one Land Rover at the scene but he couldn't recall where it was parked. He assumed it was in the vicinity of Thomas and Woodhouse Streets. He thought there was also a police car there which Reserve Constable Warnock and Constable Adams had been driving when they met them earlier on Edward Street.
12. P89 didn't see any casualties at the scene. There was an ambulance there that may have just taken casualties on board and was about to move off. He believed that it was stationary when he arrived and there were officers and a crowd of people nearby. He didn't see any of the crowd obstructing the ambulance but they were definitely hostile.
13. P89 couldn't remember how many officers were at the scene when he arrived but he thought there were no more than 8 including the Land Rover crew, Insp McCrum and himself. He was fairly certain there was no-one there from the MSU at that stage because the first thing that entered his head when he arrived on the scene was that they needed help there. He knew from experience that they would have great difficulty controlling the situation and knew it was important that they move the crowd away from the town centre as he could see more people coming up Woodhouse Street and it was the time of night when the pubs would be turning people out. There were more Nationalist people coming up towards the town centre and it would have been a very dangerous situation.
14. P89 recalled seeing Reserve Constable Atkinson at the scene and had a clear recollection of talking to him as he was on his left-hand side as they pushed the crowd up the street. There was an individual who was very hostile towards P89 and he wouldn't move back. P89 had to physically push him in the chest area and it got to a stage where P89 thought this person would assault him because of his attitude. He was shouting in P89's face and Atkinson told P89 to be careful and saying words to the effect "Do you know who he is watch him that fellows an expert or black belt in martial arts". P89 stated that Atkinson was advising him strongly that if he was to push this guy too much, he would level him and put him on his back. P89's only recollection of this person's appearance was that he was in his early 20's with a slim build and about 5'10". Reserve Constable Atkinson referred to him by the name "Hanvey" which meant nothing to P89 at the time.
15. P89 recalled that Hanvey was accompanied by a young woman who was also very aggressive towards him in particular – perhaps because he had the baton gun. He couldn't describe her other than that she was in her late teens and quite small. At the time he assumed she was with Hanvey, possibly a girlfriend of his. There was a lot of conversation between them which led him to believe they were boyfriend and girlfriend. P89 couldn't hear what was being said apart from the abuse that he was getting from them and from her in particular.
16. P89 thought that Atkinson talked to the young woman about her behaviour trying to quieten her down as they were moving the crowd up the street. He didn't recall Hanvey or the young woman being hostile towards Atkinson. P89 didn't recognise anyone else in the crowd.

17. He couldn't recall seeing Cornett or Con A at the scene but thought that P40 was there though nowhere near him. He couldn't recall speaking to Neill at the scene. He probably did but couldn't recall doing so. He recalled seeing Reserve Constable Silcock as he was quite close to him and Atkinson when they were driving people out of the town centre towards West Street.
18. P89 had a vague recollection of the MSU arriving in the town centre some time later – he thought after they had already moved the crowd into West Street.
19. It took about 50 minutes to an hour for the situation to calm down from when P89 arrived at the scene. He left the scene at about 2.45/2.50 am. There were several officers still present including McCrum. P89 couldn't recall giving any specific instructions before leaving to attend to another matter. He was aware that Insp McCrum was the most senior person at the scene. He didn't recall having a conversation with him about visiting the hospital and establishing the condition of the injured persons. He couldn't recall whether they discussed scene preservation but knew the scene hadn't been cordoned off before he left.
20. Scene preservation usually only takes place in circumstances involving a serious assault, murder or attempted murder and once there is knowledge of the individual's injuries. None of the officers at the scene informed P89 that anyone had been seriously beaten and he hadn't seen anyone on the ground.
21. When P89 left the scene he knew that there was at least one casualty but nothing more. He left with Silcock and they drove to Craigavon Area Hospital which was only 5 – 6 minutes away. On their way there they discussed the incident. P89 was feeling quite proud of the men for being able to resolve the situation. He didn't think any names were mentioned.
22. They arrived at the hospital at approximately 2.50 – 2.55 am and went straight to Casualty. They were confronted by relatives or friends of Mr Hamill who were verbally abusive towards them. One of them kept saying "you let them beat my brother" or "my brother-in-law". There was some suggestion that the police had stood by and obviously, because P89 was in police uniform, they felt he was part and parcel of the whole thing. He didn't feel they were angry at him as an individual and they obviously knew things that he didn't know in relation to what had happened. There was somewhere between 4 – 7 people who confronted them – men and women. There were two who were particularly aggressive, one a woman referred to her "brother" or "brother-in-law".
23. P89 remembered speaking to a nurse briefly and she told him that the injured party was receiving treatment for his injuries and she couldn't tell him at that stage how serious they were. He didn't recall asking her if he was conscious or unconscious and couldn't remember if the nurse mentioned another casualty or the name "D". He only recalled inquiring about one person.
24. P89 didn't speak to any doctors as he was told they were attending to patients at the

time. He didn't make a note of what he was told in his notebook. He wouldn't normally make a note where he could report back the information verbally. He had no reason to make a note of the actual words said. The situation was quite difficult anyway. He was only there for a few minutes. At the time there was no standard procedure in respect of recording information from the hospital about injured parties. Having left the hospital he still didn't know it was as serious an incident as it turned out to be. He couldn't remember if there was some form of communication between himself and Portadown police station about attending the hospital.

25. P89 recalled then attending a road accident in Bridge Street at 03.00am. He wasn't at that scene very long. Constable A requested that convey the driver who had been arrested back to the station. It appeared that this was at about 03.05 am. He couldn't recall whether he advised the officers in the Control Room of the outcome of his earlier hospital visit. The individual was released from police custody at 04.15 am. He was from up north so P89 may have helped him find accommodation or arrange a lift home which could have taken another hour to organise. P89 couldn't recall exactly what he did after dealing with the road traffic matter but didn't think he went back to the scene of the public disorder that morning. He recalled seeing the Land Rover crew in the Communications Room with McCrum and Detective Constable Keys. He didn't talk to them. He didn't recall that he had any further involvement in the matter.
26. In his oral evidence P89 stated that most of the reservists would have known what public order duties entailed. Patrol car and support car would have covered an area of 7-8 miles around Portadown. When reached centre of town that night didn't recall any particular sectarian chanting or recognise anyone in the crowd. Could only recall one police car there but there must have been more due to number of police personnel present. Atkinson was with him a few moments after he arrived. Said crowd were hostile to police, shouting, some were drunk. He organised police into a line. Ten times more protestants than Catholics. 4-5 Catholics in Woodhouse Street giving verbal abuse to protestant crowd. Said there were regular fights between Protestants and Catholics in town centre but he had no experience of police simply watching. Did not see anyone kick anyone on the ground. Confirms what is in Inquiry statement re Hanvey and Atkinson and that he got the impression that Atkinson knew the young woman with Hanvey. Saw Atkinson speak to Hanvey to calm him down and got the impression Hanvey was intoxicated.
27. Says it didn't occur to him at the time to have officers compile lists of suspects as he was busy immediately afterwards. Said he didn't get around to making a statement until 7th May and that he described the situation as he did because he was used to riot situations. Said he didn't realise how serious it was. Said Silcock did not mention the seriousness of the assault on the way to the hospital. The reason he did not ascertain Robert Hamill's condition was not because of hostility of relatives but because Nurse couldn't give him any information. He did not know Robert Hamill had been taken from the scene unconscious.
28. Whilst notebooks should be written up contemporaneously that didn't always happen. When there were more serious incidents officers might be formally debriefed. Recalls that there was some sort of debrief going on the communications room after he ha d

dealt with the DIC but he wasn't debriefed. Wasn't his practice to inspect or sign off section notebooks at the termination of duty.

29. Agrees that at a trouble spot Police on duty needed to be constantly vigilant to prevent trouble starting.
30. Accepts that it may not have been a brother-in-law of Robert Hamill who was aggressive at the hospital but rather someone he perceived as a relative. Agrees that not all at the hospital were aggressive only one or two.
31. Denies he was briefed at the scene or told in car by Silcock that the casualties were unconscious. Claims he did make a serious effort to find out the extent of the injuries when at hospital.
32. He would have expected that the scene be cordoned off once serious nature of injuries became apparent and that those at scene would have been debriefed re identification of suspects. This would have been the Inspectors responsibility.
33. Lack of detail and confused chronology of notebook accepted.
34. Says he can't now remember Atkinson referring to Hanvey by name. Claims that in 2000 he could have been prompted by the detective recording his statement to say that. Says he was unaware of later developments in case as he had been posted elsewhere and was off sick for some time. Agrees that if he had been debriefed at the time he might have given more detail than appears in his statement.

Criticisms

1. Inadequate briefing and poor allocation of resources

35. The officers in the Landrover were briefed along with those in the support cars. At 00.10 on 27th April P89 paraded and briefed the night division of C Section for public order duty. The Land Rover crew was detailed to remain in the town centre and to give particular attention to the area of Magowan Buildings and Woodhouse Street. In his oral evidence P89 said that most of the reservists would have known what public order duties entailed. Patrol car and support car would have covered an area of 7-8 miles around Portadown.
36. He was therefore responsible for deciding the allocation of the available manpower in the sub-division. A number of witnesses to the Inquiry have given evidence that the area of Woodhouse Street/ Market Street was a notorious flashpoint. The evidence for this is referred to in part 2 of the Inquiry's written submissions. It is clear that the preponderance of the evidence is that the area was a flashpoint.
37. It is clear also that there were functions in St Patricks Hall on a regular basis and that

these would have been attended by the Catholic community. P40 has told the Inquiry that Catholics attending St Patrick's Hall would have usually taken taxis home⁷. This was so even though it is a relatively short distance from St Patricks across Market St to Woodhouse Street and from there into the Obin Street area where a large number of Catholic residents of Portadown lived. P40 in his Inquiry transcript at p15 confirms there was nothing in the briefing regarding St Patrick's Hall. This is so even though Gerry Hamill, who was a doorman at the Hall in 1997 said at page 5 of his Inquiry transcript that there would be functions there most weekends. An internal DPP report in 2000 on the incident had this to say⁸ :

The police patrol led by Constable Neill was tasked to keep public order in the centre of Portadown, with particular reference to an area around Magowan Buildings and Woodhouse Street, which is a short distance from the murder site at the junction of Thomas Street and Market Street . The latter was a well-known flashpoint for sectarian trouble at the weekends because the Catholics returning from St Patrick's Hall in Thomas Street crossed the path of Protestant coach parties returning down Market Street from their own drinking expeditions"

38. It can be inferred that if the DPP were made aware of the potential difficulties arising out of a function in St Patrick's Hall that police at the time were similarly aware. R/Con Cornett in her interview for the neglect investigation told Irwin and McBurney she did not know there was a function in St Patrick's Hall that night.
39. It is further notable that the MSU was positioned initially in Banbridge. Insp McCrum said in evidence to the Inquiry at p. 2:

11 *Q. An odd question perhaps, but let me try this one on you.*

12 *We have some reason to believe that the MSU that*

13 *eventually was called into the centre of Portadown that*

14 *night was stationed outside the Coach Inn on a Saturday*

15 *night. How does that chime with you?*

16 *A. Yes, that would have been the case. It would have been*

17 *fairly normal then, in the late 1990s, for an MSU to*

18 *have responsibility for the Coach Inn nightclub and the*

19 *hundreds of people that would have been coming onto the*

20 *streets at the end of the nightclub.*

⁷ p40 interview 09351

⁸ 38485

21 *Q. So the concern, if concern is the fair word then, is*

22 *that there might actually have been some disorder*

23 *outside the Coach. Would that be fair?*

24 *A. Yes, that's reasonable, yes.*

40. If this is true, and there has been no evidence to the contrary, then police must have been aware at a fairly senior level that the crowd from the Coach Inn had the potential to cause trouble elsewhere if they were to travel together in large enough numbers. This, presumably, was one of the reasons that the Landrover crew were briefed to watch the area from Boss Hogs up through the centre of the town etc as this is where passengers on the bus returning from Banbridge would alight. Many of them clearly would have been under the influence of alcohol. Police also would have been aware of the approximate time that the bus would arrive in Portadown town centre.
41. Knowing this and the potential for trouble at the junction it is the families submission that P89 being the officer briefing those responsible for public order duty should have established there was a function in St Patrick's Hall that night and specifically briefed his section that there was the potential for those returning from Banbridge and those leaving St Patrick's Hall to meet. If P89 had established the position he also could and should have briefed the patrol car and support vehicle to be in the vicinity of the town centre at the time the bus was due to arrive. This would have enabled them to be on the scene immediately to provide assistance in the event of public disorder.

2. Failure to establish at the scene the condition of the two casualties.

42. There are a number of police personnel at the scene who were able to give evidence of the serious nature of the injuries to Robert Hamill. Some of this evidence has been outlined in the context of the issue of cause of death specifically the possibility of hypoxia and relates to Robert Hamill's laboured breathing. The following officers recognised the casualties at the scene to be unconscious: Gordon Cooke, statement (09225) and notebook entry (09970), Cornett statement (09680), Neill statement (09673), Silcock (09222). Further as P89 accepted in oral evidence to the Inquiry at p 31:

6 *A. I cannot -- I can vaguely remember arriving on the scene*

7 *and an ambulance parked up and vaguely recall the*

8 *ambulance driver or the paramedic assisting someone on*

9 *the ground. It is a very vague recollection, but that's*

10 *very vague.*

11 *Q. You see, we know from other evidence that at least one*

12 *of these men was stone cold unconscious at the time and*
 13 *would have to have been lifted on a stretcher into the*
 14 *ambulance. So what you are saying to us is that that*
 15 *must have happened in your presence?*
 16 A. *I didn't see that taking place. I have no recollection*
 17 *of seeing Mr Hamill or the other individual being put*
 18 *into the ambulance.*
 19 Q. *Would you not have approached the ambulance people, the*
 20 *paramedics to see what they thought of the condition of*
 21 *the person? Would that not have been --*
 22 A. *Well, I didn't do that on the night. My concern was*
 23 *the -- getting the street clear. That was my concern.*
 24 *The injured were being attended to by the ambulance*
 25 *crew. My priority was to get that street cleared before*

32

1 *there was -- before it escalated.*

43. It is for the panel to decide whether, in relation to the police officers at the scene, there is a criticism to be made of their failure to brief P89 and Insp McCrum of the condition of the casualties, if the evidence of these supervising officers is accepted on this point. In any event, if the subordinate officers did not volunteer this information it is surely negligent of a supervising officer not to enquire as to the condition of the injured.
44. The evidence is that much would have turned on the knowledge of the seriousness of the casualties. P89 for his part said in evidence at p. 35:

24 Q. *We have your evidence of that assumption, so we will*
 25 *move on. But in your experience as a sergeant at the*

36

1 *time, once you become aware in this situation that an*
2 *assault is a serious assault, with someone who is*
3 *seriously injured, which I accept you were not aware of*
4 *in your evidence at this time, can you tell us what sort*
5 *of things would have been put in motion had that*
6 *information been relayed to a superior? What would you*
7 *have expected to have happened back at the scene?*
8 A. *Back at the scene?*
9 Q. *Yes. For a start.*
10 A. *The scene cordoned.*
11 Q. *That would have been practice at the time?*
12 A. *If someone was in intensive care as a result of an*
13 *assault, yes, that probably would have been the case,*
14 *yes.*
15 Q. *In terms of identifying those who were involved in the*
16 *incident, can you help us with what steps you would have*
17 *expected to have been taken?*
18 A. *Well, I would have thought that a debrief towards the*
19 *end of the evening -- that the information would have*
20 *come to light.*
21 Q. *Would that debrief have included questions being asked*
22 *of those who were present amongst the police as to what*
23 *they had seen?*
24 A. *Yes.*

25 *Q. And perhaps whether or not they could have identified*

37

1 *anybody?*

2 *A. Absolutely, yes.*

3 *Q. And would you agree that the identification process*

4 *might have taken a number of forms, beginning first of*

5 *all with whether or not any of them recognised anybody?*

6 *A. Yes.*

7 *Q. And then secondly, whether or not any of them could give*

8 *detailed descriptions of those they had observed?*

9 *A. Yes.*

10 *Q. Including descriptions of their clothing?*

11 *A. Yes.*

12 *Q. And whose responsibility would it have been in the*

13 *circumstances of this incident to have commenced all of*

14 *those things? Would the inspector you were with at the*

15 *scene have been someone who would have done something*

16 *like that?*

17 *A. It would probably either have been him or the CID*

18 *detective investigating the matter.*

19 *Q. Yes. But, of course, CID don't get involved unless they*

20 *are notified; isn't that correct?*

21 *A. That's right.*

22 *Q. Do you agree that uniformed police of some rank, like*

- 23 *yourself or the inspector, would still have been*
- 24 *expected to have commenced those procedures?*
- 25 A. *Yes.*
45. He further admits in evidence at p. 32 that the reason he went to the hospital to establish the extent of the casualties' injuries was because he had not established this at the scene:
- 2 Q. *Is that not in fact why you went to the hospital with Reserve*
- 3 *Constable Silcock, because you hadn't made a full enquiry*
- 4 *as to how badly these people were injured at the time?*
- 5 A. *Yes, I would accept that, yes.*
46. Since this was the case it is the family's submission that his initial failing is compounded by his failure to establish the condition of the casualties when he went to the hospital. He says he spoke to a nurse but that she was unable to give him any information at p. 17:
- 8 Q. *And although you went to the hospital to ascertain the*
- 9 *state of the injured, you came away without*
- 10 *ascertaining. Is that right?*
- 11 A. *That's correct, yes.*
- 12 Q. *Is that because of the hostility of the one person in*
- 13 *particular, a family member, or was there some other*
- 14 *reason?*
- 15 A. *No, it was down to whenever I made enquiries about him,*
- 16 *the nurse couldn't give me any information. That was*
- 17 *the main reason why I had no knowledge of the extent of*
- 18 *the injuries.*
47. It is unclear how long P89 and Con Silcock spent at the hospital. Further at para 17 of

his Inquiry statement⁹ Con Silcock indicates that they left without either of them speaking to any nurses or doctors. Whilst Con Silcock believes that P89 told the investigating team of the result of the Inquiry the evidence from Insp McCrum at para 20 of his Inquiry statement is that he was told at 0400 by P89 of the result of the enquiry at the hospital¹⁰.

48. There is no evidence that P89 made any arrangement for the hospital to update police regarding Robert Hamill's condition if in fact no-one was able to give him the necessary information at the time.
49. A further issue for the Inquiry apart from the failure of P89 to obtain the information is whether there is any systemic problem regarding the providing of information by hospital staff to police regarding the victims of assaults. There is evidence from the nursing staff that they could not provide information¹¹ and from P89 in oral evidence at p. 69 that doctors could not easily be spoken to:

11 Q. From your experience as a police officer, when attending

12 accidents and emergency how have you found the ready

13 availability of doctors to talk to policemen?

14 A. Nearly impossible.

15 Q. And is the conduit the nurse?

16 A. Yes, absolutely.

17 Q. And that you as a police officer are dependent on the

18 nurse?

19 A. Absolutely.

50. It is the family's submission that the failing, whether by P89, or his immediate superior Insp McCrum had a profound bearing on the early stages of the subsequent GBH/Attempted murder investigation.

3. Failure to debrief

51. There does not appear to have been any attempt by P89 to debrief his section after the initial disturbance had been dealt with. There was therefore no immediate list of suspects drawn up by the police who had been at the scene and this, the family say, had the effect of preventing any possibility of an immediate arrest strategy. If a list of

⁹ 81159

¹⁰ 80878

¹¹ Maureen Millar per para 17 Inquiry statement 80966

suspects could have been drawn up immediately after the trouble in the town centre had been dealt with there was the opportunity and the resources to attempt to find some suspects and seize clothing and in particular footwear which may well have been of significant evidential value. The potential that there may have been suspects still on the streets of other parts of Portadown immediately after the town centre had been cleared was overlooked and may have resulted in the loss of evidence. The desirability of early arrests is pointed out by Colin Murray at para 15.26

“The early arrest of suspects was essential particularly considering the inherent difficulty in securing witness evidence. The earlier the arrest takes place the greater the chance of recovery of forensic evidence.”

52. P89 does say that he would have expected there to have been a debrief along these lines but that at the time the seriousness of the situation had not been ascertained. (see p. 35 of his oral evidence above)
53. It is the family’s submission that the identification by recognition of any suspects by police at the scene could have been done as soon as order had been restored and without necessarily returning to the station for a more formal debrief. It is accepted that P89 was engaged in other duties later that night but it remains the case that this exercise could have been carried out or at least initiated by him at the scene. Of course the necessity for him to leave the scene could have been obviated by establishing the extent of injury on arrival further, this duty could have been delegated to a junior officer if he went of his own initiative as he claims at p. 87 of his evidence:

9 Q. *Could I just clarify, it was Inspector McCrum that asked*

10 *you to do that or do you remember who asked you to do that?*

11 A. *No, when you say --*

12 Q. *-- have you a memory?*

13 A. *I believe it was done on my own initiative. I don't*

14 *think that the inspector suggested that I go. In fact,*

15 *I would probably have suggested to him that I'm off to*

16 *the hospital to see how this guy is.*

4. Poor recording

54. P89 provided 3 Police statements, 07-05-97, 15-05-97, 28-12-00¹², and a notebook entry. P89’s first statement is bland, lacking in detail and does nothing to convey the circumstances which other witnesses have described. It was not made until over a

¹² 09213, 09215, 11084,

week after the incident. The second statement in effect deals with his duties on the night in a perfunctory and procedural manner dealing with the briefing (absent any detail of its substance) and the regulatory requirements of the issue of the riot gun. Sgt P89 must have known that CID had become involved and that this was an incident that had attracted considerable attention, not least in the media. It is inconceivable that he did not appreciate, as a police officer, that any detail however insignificant it may have appeared to him, may have been of some benefit to those who were trying to piece together the sequence of events and identify suspects. The fact that he did not record anywhere the detail of his encounter with Allister Hanvey and R/Con Atkinson until 2000 is highly disturbing for the family given what later transpired regarding that officer. What he said in oral evidence about the omission of this detail from any earlier statement is found at p. 59:

13 *Q. Leave aside the name for a moment, Sergeant P89.*

14 *But you harboured at the very minimum information that*

15 *you had been warned by Reserve Constable Atkinson about*

16 *an individual who was a martial arts expert on the night?*

17 *A. Yes.*

18 *Q. Is that not information that would have been relevant to*

19 *put in your notebook?*

20 *A. No, not at the time, not during the course of a riot,*

21 *not during the course of hostilities.*

22 *Q. Do you not think it would have been of assistance to*

23 *those who were investigating the riot?*

24 *A. Not really because I didn't know he was a suspect.*

25 *Q. Well, if you were warned about him by Reserve Constable*

60

1 *Atkinson and he had to be pushed back up the road*

2 *-- isn't that correct, this individual?*

3 *A. This individual had to be forcibly pushed up the road,*

4 *yes, along with others, of course.*

5 *Q. Yes. But that was relevant. It was information that*

6 *might have helped those investigating the murder.*

7 *A. Well, at the time it was no more relevant than the other*

8 *40 or 50 people that was present during the course of*

9 *that disturbance, to me.*

10 *Q. Well, at least by 15 May, by which time a number of*

11 *people, including Mr Hanvey, had been charged with the*

12 *murder, it was relevant then, was it not?*

13 *A. I never thought of it -- I never thought of it.*

55. Again, as a trained police officer who had passed his Sergeant's exams, the family submit that it is inconceivable that he simply never thought of divulging this information until directly asked. The panel are entitled to take the view that he deliberately withheld this detail as he was aware of some connection between Atkinson and Hanvey and did not wish to compromise Atkinson. The alternative is an astounding lack of understanding of basic policing.

56. The lack of detail in P89's early statements is mirrored by his notebook entry in relation to the incident in the town centre particularly when juxtaposed with his meticulous recording of the DIC procedure. This is so even allowing for the mandatory nature of the regulations in relation to drink driving procedures. His excuse is that he didn't know that Hanvey was a suspect and therefore did not record this detail in his notebook. The logic of this is questionable as it implies that an individual must be a suspect before his actions become noteworthy, rather than noting his actions to assist in establishing whether he is a suspect or not.

McCrum

Relevant portions of journal

57. Reported for duty. At 1.51 am was informed by Constable Godly that opposing factions were fighting in Market Street and police in attendance were in immediate need of assistance. Ensured all sub divisional resources were deployed to Market Street area. Went directly to scene with Sergeant P89. On arrival at scene was briefed by Constable Cooke. It would appear that two males had been assaulted by a group of Protestant youths and had as a result been taken by ambulance to Craigavon Area

Hospital. Approximately 30/40 Protestant youths in town centre. Spoke to same and moved the crowd into West Street. Briefed Sergeant Shaw and Sergeant Lutton J2 MSU reference town centre disorder and directed that their resources be divided between West Street and the town centre to ensure no repetition of street disorder. Supervision patrol with Constable Adams including inspection of Banbridge and Lurgan sub divisions. On return to Portadown made enquiries with CAH reference the extent of injuries to the 2 males who had previously been assaulted. Informed by Doctor in the ICU that one of the two, Hamill, had sustained serious head injury which may be life threatening and he was to be transferred to the Neurological Department at the RVH. Contacted call out CID officer Detective Constable Keys. Instructed Constable Cooke in consultation with other section officers who had been at the scene to draw up a list of those persons who had been positively identified at the scene. Directed Constable Cooke and Constable Orr's mobiles to go to CAH and obtain the clothing of the two injured parties. Requested that all the late duty personnel who had been at the scene of the incident (JD81) should return back to Portadown station for the purpose of making immediate statement for CID. Briefed Chief Inspector McMullan, Chief Superintendent McCreesh and Superintendent Bailie. Terminated duty at 0815 hrs.

Statement 07-05-97¹³

58. On 27th April 1997 he was in uniform and on supervision duty at Portadown. At 1.50 am he was made aware by the Communications Officer, Constable Godly, that disorder was taking place in the Market Street area of the town and that police in attendance were in immediate need of assistance. As a result, accompanied by Sergeant P89, made his way to Market Street. Upon arrival into Market Street, he spoke with Constable Cooke who related to him his understanding of the circumstances relating to the assaults and disorder that had taken place. McCrum observed 30- 40 youths congregating in the town centre area. They were being spoken to by police officers. He further observed a crowd of 3 or 4 youths in the vicinity of the Woodhouse Street/Market Street junction. On his direction police at the scene moved the larger group into West Street. Resources were then deployed in West Street and the junction of Market Street/Woodhouse Street to keep the two opposing groups apart. The town centre remained quiet for the remainder of the night.

26-10-99¹⁴

59. On the night of 27th April 1997 he was performing duty as Duty Inspector in Portadown sub division with divisional responsibility. Stated that he had already made a written statement in relation to his involvement in a serious sectarian incident in Portadown on that evening following which Mr Hamill died of injuries received. Stated that he had been shown the text of a MHS message which was prepared as the initial report to RUC Headquarters for the information of the Duty Officer and the Press Office. This message had been prepared by Constable Godly who was the Communications Officer in Portadown and who had spoken to the officers directly

¹³ 00728

¹⁴ 60827

involved. McCrum said that he was then shown this message text by Constable Godly before it was sent to approve the contents which he did. He hadn't had an opportunity to debrief the officer spoken to by Constable Godly but based on his own experiences on the ground that evening he was satisfied that it was as accurate as possible. Although the two previous assaults including that of Mr Hamill had taken place prior to his arrival on the scene, public disorder still continued. Confrontation between a small number of nationalists and a much larger crowd of loyalists was taking place necessitating McCrum's requesting reinforcements from outside his area. This was two-fold, to deal with the situation at the time and to ensure that there was no repetition. While this was going on McCrum observed a number of police officers being assaulted. They managed to push the loyalist crowd up towards West Street and the nationalists into Woodhouse Street. These two crowds hung around for some time before dispersing. The time of 3 am given in the MHS was the time when the crowds had all dispersed and the town centre was empty. McCrum stated that he would clarify that the much smaller groups of nationalists who were removed on to Woodhouse Street dispersed much more quickly than the loyalists who stood around for some time before dispersing.

13-11-00¹⁵

60. Mr McCrum was the Night Duty Inspector on 27th April 1997. After he arrived at the scene of the incident at Market Street and after having taken steps to initially deal with the incident, he had occasion to speak with Reserve Constable Atkinson in Market Street convenient to the police Landrover that Atkinson had been in. An officer proffered to McCrum his police issue baton which upon examination McCrum observed that the strap had broken. Due to the passage of time Mr McCrum couldn't recall previously what explanation he gave him around why the baton strap had been broken.

DCI K re Interview of McCrum 16-11-00¹⁶

- 61 As further information unfolded from Craigavon Hospital, Inspector McCrum rang the call-out CID officer DC Keys and requested him to come in to duty to initiate further investigations as it was clear that this was a serious assault. McCrum stated that he then made the decision to recall the Landrover crew which included Atkinson for the purposes of them making statements about the incident and who they had observed at the incident and identifying persons actually involved in the assaults. McCrum stated that he recalled ringing a couple of officers and Constable Godly may have rung a couple of them. He couldn't recall which officers he rang and couldn't recall ringing Atkinson. He stated that he recalled these officers being called in shortly before 6 am. He recalled the officers coming in at different times so it wasn't possible to hold a collective de-brief with them. He recalled that Constable Alan Neill didn't come in at that time and he discussed that with DCI P39. He recalled a second call being made to Constable Neill to request him to come in to make a statement before he went off duty. McCrum left Portadown Station off duty at 8.15 am. He did

¹⁵11301

¹⁶ 53563

speak to the other officers as they came in and he did have a general discussion about the seriousness of the incident and the requirement for each of them to make statements about what they each had witnessed at that scene. He stated that there was no detailed discussion with any of the officers, including Atkinson, about who they had witnessed or identified at the scene or involved in it. None of the officers who attended the scene supplied any names to him. He stated that around the time when he called out DC Keys, he instructed Constable Cooke to draw up a list of names of persons who had been positively identified at the scene. McCrum referred to his [journal] entry about this point. Stated that he didn't receive this list but his instructions were that it should be drawn up for DC Keys. McCrum stated that Atkinson never approached him at any time following the incident to supply him with any names of persons identified at the scene of the serious assault

Form 17/3¹⁷

62. In this document it was alleged that on 27th April 1997 at Market Street, Portadown, following a serious assault on Robert Hamill, which resulted in his death, Mr McCrum neglected his duty as a police officer by failing to properly secure the scene at an early stage and preserve it for expert examination. It was further alleged that he failed to effect the early arrest of an identified suspect or suspects with regard to this incident or consider the seizure of clothing belonging to the suspect or suspects for the purpose of forensic examination. This may have resulted in the loss of valuable forensic and identification evidence. It was also alleged that he failed to conduct a proper de-brief of officers following the incident.
63. The Complaint and Discipline report by Supt. Kennedy¹⁸ found that a criticism could be directed at Inspector McCrum that instead of leaving the scene area, he should have concentrated on actively debriefing his party, appointing an officer to deal with the assault and considered making arrests. On hindsight, this should have been the action taken, however Inspector McCrum had stated that he had insufficient resources to make arrests. Kennedy said that McCrum was open to criticism for not taking a more active leadership role by supervising and assisting those uniform members under his command. The report said "As outlined in these papers, Inspector McCrum and Constable A have been identified as being somewhat remiss in their professionalism". Kennedy recommended informal discipline in relation to both officers. Inspector McCrum initially refused to accept any form of admonishment in connection with the Kennedy recommendations.
64. Both Supt Kennedy's and Colin Murray's reports have identified failures on McCrum's part and the family endorse these views. The matters which the family say bear consideration in detail are as follows:

Failure to ascertain condition of casualties

¹⁷ 10704

¹⁸ pp 10120 – 10169

65. Similar observations can be made of McCrum as have been made for P89 around this issue regarding the observations of the injured parties by the officers at the scene, in particular Con Cooke. In his 7th May statement McCrum says that he was briefed on arrival at the scene by Cooke who in his 7th May statement noted:

“The two males lying on the road seemed to be unconscious and both had blood around their faces.”¹⁹

66. While he makes no mention in this, or subsequent police statements, of speaking to McCrum on his arrival at the scene he does say in his Inquiry statement at para. 23 that when P89 and McCrum arrived he briefed them on the basic facts.²⁰ He also says that the ambulances were at the scene when McCrum arrived. In his Inquiry interview he was pressed on what he had told P89 and McCrum and had the following to say:

“JOY HOPKINSON: What did you say to them? Can you recall what you said to them?”

GORDON COOKE: I wasn’t able to describe what happened initially because we had arrived after the initial incident had finished. But I think I described what I found on arrival, two injured people being attended, a crowd and obviously doing our best to keep the crowd back until the ambulance arrived.”

67. Cooke recalls speaking to them both at the same time and, if believed on this issue, then McCrum was at least aware of there being two casualties and that two ambulances had been called to the scene. At p. 22 of his oral evidence he confirms this but denies that Con Cooke told him that one of the casualties at least was unconscious:

8 A. At no stage did any officer raise with me that anyone

9 was seriously injured. It simply wasn't brought to my

10 attention, either proactively by the officers or as

11 a consequence of me seeking to try to understand exactly

12 what had happened.

68. McCrum claims he asked P89 to go to the hospital to check the condition of the casualties whereas the latter’s position is that he did it of his own initiative. If McCrum did instruct P89 to do this one might ask why he did not make any attempt to contact P89 to establish the position prior to his return to Portadown. By his own admission much of what has been identified by e.g Kennedy & Jackson and Colin Murray, as actions that should have been taken, would have followed as a consequence of knowledge of the seriousness of Robert Hamill’s injuries.

¹⁹ 00708

²⁰ 80194

The consequences of this failure can be summarized as follows:

1. Failure to secure scene.

69. Because McCrum had failed to establish the nature of the incident he was dealing with there was no attempt made to secure the scene. This was not done until the arrival on duty of P39. Supt. Kennedy and Colin Murray's report deal with this in some detail and the family endorse their conclusions. According to Keys () when he arrived at the scene to discover it had not been taped he did not tape it off then as he could not be sure that it had not already been contaminated in the preceding 4 hours²¹. Whilst Con Cooke was there to brief him he could not say where the incident started, only where he had seen the casualties when he arrived. Keys point was that only the officers in the Landrover were able to provide this information. As they had been let go off duty without a proper debriefing (see further below) the information Keys required was unavailable. Keys reinforced this point at para. 13 of his Inquiry statement recounting that he had to ask the Insp to recall the Landrover crew as there were no statements from them and no detail which he would have expected to enable him to commence the investigation. McCrum claimed, in his interview with Jackson that he made the decision to recall them from duty. The family say, as a result of this failing it is probable that some forensic evidence was lost as a result.

2. No debriefing of officers at scene.

70. According to inspector McCrum, he gave an instruction to have a list of identified suspects drawn up but this is not accepted by any of the police officers²². What has been established is that suspects were identified in individual statements of evidence. As a result of this there was no immediate arrest strategy or consideration given to the seizure of suspects clothing for the purposes of forensic examination. Kennedy's report points out (10120) that the Police manual in force at the time says:
*"As soon as circumstances permit all members involved in the operation should return to the base station to undergo a thorough debrief.
"Plans should be formulated to identify, arrest and prosecute those persons who were involved in any criminal activities."*

The initial officers at the scene who were retained on duty for Public Order duties were stood down and allowed to go. This was another consequence of the failure to establish the condition of the injured parties. This is recognised by McCrum himself who in oral evidence at p. 45 said:

"...the officers obviously were

15 let go at 3 o'clock, because I didn't know at that stage

16 what I knew at 4 o'clock, which was actually this was

²¹ Jackson 10209

²² Kennedy 10120

17 *quite a serious matter -- in fact, a very serious*

18 *matter. So on that basis, they were let go."*

71. On discovering the seriousness of Robert Hamill's condition, they were recalled to make statements of evidence. Regardless of the assault, as this was a public order incident, the officers should not have been stood down without being debriefed by a supervisor and should have been detailed to prepare statements prior to terminating duty. The Inspector on duty would then have been fully apprised of the situation and been in a position to brief CID and his authorities when required. It would appear that Inspector McCrum played no active role in debriefing members under his control at the scene after the incident, he indicated that he felt this was the responsibility of CID, however, as the Duty Inspector it could reasonably be suggested that he should have exercised more direction and control over those officers under his command.
72. McCrum, as the senior officer, should have ensured there was sufficient detail available for D/C Keys in order that he could begin his investigation. This involved, amongst other things, the direction of SOCO. If he had been provided with a list of potential suspects he could have given thought to immediate searches and arrests for the purpose of obtaining footwear and clothing. As it was CID had to wait for the officers to return to duty and write their statements. These statements were then left for CID, not all were received together and there was no collation of the material in them. McCrum as the senior officer on duty should have ensured this was done but rather undertook no investigative steps himself and left all of this to Keys on his arrival.
73. McCrum asserted during his discipline interview that the fact that certain individuals had been identified as having been present during the disorder was not communicated to him at that time. This is despite the fact that he claims he directed that a list of identifiable suspects be drawn up. One would have thought that had he given this direction the officers would have told him whether or not they could provide any names. It is questionable whether his claim that he gave such an order is consistent with his not having been told there were indeed suspects who could be named. He maintained that such information would have been forthcoming during the CID debrief and that CID were taking over the investigation.
74. Had this list of names been drawn up consideration could then have been given to an immediate arrest strategy. In his disciplinary interview, McCrum stated that immediate arrests were not practicable due to the limitation of resources and that his main concern at the time was public order. In fact he did have further resources available to him as the MSU was by then in the centre of Poratadown. According to Sgt Shaw of the MSU no disorder was taking place in the town centre when he arrived²³. These officers would therefore have been available to at least do a sweep of the town with police who had been at the scene to see whether any suspects were still on the streets and effect their arrest.

²³ Kennedy report 10120

75. A further criticism around the lack of debriefings is that in his interview by Jackson, McCrum says he spent most of his time collecting information on the incident for release to the press office and left the debrief and collation of the available information to D/Constable Keys. Where then did he obtain the information for the press release? He admitted in oral evidence to the Inquiry at p. 55:

1 *Q. I want to suggest to you, Mr McCrum, that that press*

2 *release is potentially misleading?*

3 *A. With the benefit of hindsight and with the knowledge*

4 *that I now have, it is misleading.*

5 *Having said that, at the time, that was the message*

6 *that was being conveyed to me.*

76. In fact in his statement of 26-10-99 he says that the press release was prepared by the communications officer Godley who he said had spoken to the police who were at the scene and he had therefore no reason to doubt its accuracy²⁴. Godley, for his part, in his Inquiry statement makes no mention of talking to the officers for the purposes of a press statement nor being asked to prepare one by McCrum. The point to be made is that had McCrum been involved in a proper debrief of his officers the initial press release might have had at least the prospect of being accurate.
77. The family submit that Insp. McCrum believed that once CID had arrived his role in relation to the incident was effectively over and completely abdicated his responsibilities. Throughout his oral evidence he was content to lay responsibility for any errors or oversight at the door of his subordinates. Wherever possible he has claimed that actions which were taken, albeit belatedly, were as the result of decisions by him when the evidence of other officers is that they were taken by them on their own initiative. Where there has been a failure to obtain information, or errors were made, he is quick to blame those over whom he had control and direction.
78. It is a reflection of his character, the family say, that he refused to accept the admonishment recommended by Supt Kennedy until he had been promoted. He knew that once he accepted it, its appearance on his service record could only have had a negative impact on his career prospects.
79. It is a source of much concern to the family and, they believe, will be to the public, that the senior officer on duty that night, who's failings did much to impede the early stages of the investigation of the assault on Robert Hamill, was able to rise through the ranks of the RUC & PSNI to the rank of Chief Superintendent and Commander of H region as he is today.

²⁴60827

Detective Chief Superintendent Maynard McBurney

1. “Whether dost thou profess thyself, a knave or a fool?” Count Lafew asked the Clown in All’s Well That Ends Well. The Clown professed to be either, depending on the master he was serving. So it was with Detective Chief Superintendent McBurney who has sought to present to this Inquiry the countenance of a fool in his explanation for his conduct of that part of the investigation concerning the allegations against Reserve Constable Atkinson.
2. The role of the fool of course is perhaps in life as well as in literature a most convenient and effective disguise for those whose conduct is motivated by bad faith rather than well intentioned incompetence.
3. The family of Robert Hamill submits that the investigation of the murder of Robert was fatally compromised by a series of actions or omissions, which can be directly attributed to this police officer in his conduct of the investigation of the allegation made by Tracy Clarke, that Reserve Constable Atkinson had been assisting Alastair Hanvey escape the consequences of his part in the murder of Robert Hamill. The family contends that Detective Superintendent McBurney deliberately and knowingly managed and directed the investigation in 1997 in such a way that Atkinson would be shielded from prosecution for his overtly criminal conduct.
4. The Inquiry has commissioned and received a report from Colin Murray, an independent expert, in relation to all aspects of the RUC handling of the investigation of this murder. That report has now been placed in evidence before the Inquiry by Mr Murray who appeared before it on 21st and 22nd of September 2009. Sections 20 through to 25 inclusive are as comprehensive and detailed an analysis of the papers contained within the core bundle as one could expect so we do not intend to repeat the exercise. Mr Murray was severely critical of the conduct of the murder investigation led by Detective Chief Superintendent McBurney in a number of respects and concluded that the only rational explanation for the manner in which the investigation was conducted was that Mr McBurney had deliberately protected Reserve Constable Atkinson from prosecution for his criminal behaviour. The most likely explanation for this was a misguided belief that it would preserve the good name of the RUC. We seek to adopt the thrust of this analysis and the conclusions as stated in his report.
5. Mr Murray however, in a written note to the solicitor to the Inquiry made available shortly before he gave evidence, has revised the conclusion expressed in his report that DCS McBurney was guilty of “criminal negligence”. He explained, when being questioned by Mr Adair QC that he meant that term to convey a deliberate intention to mislead. In view of the high esteem in which the late Mr McBurney was clearly held he felt he ought to alter his conclusion to one of simple negligence. He said in evidence that he was influenced in particular in this regard by the evidence of Sir Ronnie Flanagan who was effusive in his praise of the honesty, integrity and commitment of DCS McBurney who, he said, was tenacious, hardworking and had not a trace of sectarianism in his body.¹ Mr Murray has also said that he was

¹ September 10th page 261

influenced to revise his view by the evidence of Inspector Irwin, “who reflected on the strategy that Mr McBurney was playing”² Mr Murray clarified that the references in his note to Ms Kemish concerning the consideration by the RUC of the safety of Tracy Clarke³ and the apparent reluctance of telephone companies to allow their disclosures to be used in interrogation⁴, did not in fact affect his view as to the reasons for Mr McBurney’s conduct.

6. We do not seek to challenge the fact of the formidable reputation enjoyed by DCS McBurney about which evidence has been given by the former Chief Constable, Sir Ronnie Flanagan and other witnesses, usually following a well placed question from Mr O’ Hare or Mr Adair QC. The Inquiry may of course take his reputation amongst his peers into account but it should do so with caution. We say, with respect, that it must be upon the actions taken DCS M Burney in this case and this case alone that such judgements should be made.
7. Looking at the evidence of Inspector Irwin, he has expressed his belief that DCS McBurney was following a “wait and see” strategy right up to the time that the Coroner made the decision not to hold an inquest in June 2000. We have no doubt that is what he was told but it must have been obvious to this officer that the actual conduct of DCS McBurney was inconsistent with a desire to bring Reserve Constable Atkinson to justice. We further submit that Inspector Irwin has a vested interest in expressing such a belief for he, by his own conduct, is directly associated with this so called strategy. While he expressed his misgivings to DCS McBurney about the taking of the Andrea McKee alibi statement on 27th October 1997 he still took the statement, albeit following a specific direction from his superior officer. Moreover, although it was McBurney who authored the section of the neglect file submitted to the DPP that dealt with Atkinson, Irwin assisted him prepare it and was very much associated with it. In fact he accepted to Mr Adair QC that he was “substantially involved” with the report.⁵
8. It is clear from the evidence of Inspector Irwin that the entire strategy concerning the investigation of the allegation against Atkinson and of the telephone alibi put forward by him was attributable to DCS McBurney.⁶ He has pointed to the expression of scepticism in the report on the part of the police as to the truth of the alibi as evidence that the matter was still under investigation. He refused to accept however that the language of the report suggested to the reader that the police were of the view that the matter could be taken no further. It is a matter for the Panel whether or not the language of the report was misleading. We strongly submit that it was. The relevant

² September 22nd page 6, line 23

³ September 22nd pages 7 and 8

⁴ September 22nd pages 11 and 12

⁵ September 9th page 102

⁶ September 9th page 62 lines 13 to 16. It was Mc Burney’s decision not to arrest Atkinson along with other suspects named by Tracy Clarke. When it came to the taking of the alibi statement he told Mr Adair QC (page 97) that he was acting on the direction of McBurney. September 9th page 76 line 13, he went back to Mc Burney after taking the alibi statement and suggested getting a team together to break the alibi. Page 77, he said that Mc Burney came back to him to say that the time wasn’t right, that he might get Andrea McKee but not the Reserve Constable.

part of the report is to be found between paragraphs 125 through to 135.⁷ The final paragraph is particularly misleading and, we submit, was intended to be so. If the Panel has any doubt about that then it only has to consider the actions of the police thereafter. There was nothing to be lost by simply confronting Andrea McKee there and then. She has said in evidence that she would have buckled had this been done.⁸

9. Inspector Irwin, when questioned on behalf of the family by Mr McGrory QC on September 9th and 10th could only point to the information he passed to Mr McBurney in October 1999 that the McKees had split up as evidence that the investigation was still alive.⁹ This was new information however, which Inspector Irwin was bound to pass on. He is simply unable to answer how the investigation would have been progressed had the McKees not split up. Indeed, had they not, then it would have become increasingly difficult for the police to justify a challenge to an alibi that she gave years earlier. In any event, at its height, the recording and passing on of this information is only evidence that he felt it was proper to inform McBurney of any developments. Whether or not McBurney actually intended to do anything about it is another matter. Inspector Irwin told Mr McGrory QC on September 9th that the October note of the separation of the McKees indicated Mr McBurney's intention to interview them again.¹⁰ The document¹¹ reveals that McBurney told Irwin that they should both be spoken to "at an opportune time regarding the Coroner's inquest". The Panel will have to decide if this is an appropriate response by DCS McBurney to the news that the McKees had now separated and that one was in Cork and the other in Wales.
10. In the absence of any written record or indeed any indication of a "wait and see" strategy involving the possible separation of the McKees, this document simply cannot be treated as evidence supportive of that contention. In fact, we submit it does the opposite. If DCS McBurney had a genuine strategy to wait for the McKees to separate, now was his chance to act. For him to tell Inspector Irwin that they would be spoken to in the context of the forthcoming inquest reveals the truth of the matter, that the last thing DCS McBurney wanted to be told was that he could now implement this strategy.
11. DCS McBurney did not in fact do anything about it. The document disclosed that Michael McKee had gone off with another woman and was living in Cork. When asked on September 9th why they hadn't taken steps to find him, Inspector Irwin stated that they had no idea where he was.¹² When he was asked why they couldn't have spoken to Andrea on her own he said it was preferable to have a more complete investigation.¹³ The following day¹⁴, faced with the document he accepted that he knew he was in Cork and that the Garda in the Republic could have been asked to locate him and even interview him on their behalf.

⁷ 09079-09082

⁸ February 11th page 67 line 22 - page 68 line 11

⁹ 02395

¹⁰ September 9th page 133 line 18-19

¹¹ 02395

¹² September 9th page 137 line 17

¹³ Ibid page 139 lines 1-4

¹⁴ September 10th pages 1ff

12. Inspector Irwin has stated that the matter was kept under review throughout the trial process and later, pending the inquest. He has offered no valid reason however why Andrea McKee could not have been approached at any time either before or after the separation. Even if we accept, which we do not, that the influence of her husband would prevent her from being forthcoming there was no excuse for not immediately speaking to her after the separation. Inspector Irwin was quick to throw up the fact that the family had asked the Coroner not to hold an inquest almost as if to suggest that this foiled an otherwise great plan to obtain evidence from Andrea McKee. The fact that an inquest was yet to be held was neither here nor there. We submit that this witness knows perfectly well the discourse between the Coroner and the family concerning the holding of an inquest has absolutely no bearing on the inexcusable failure on the part of the RUC to follow through on their belief that the alibi put forward by Reserve Constable Atkinson was a complete fabrication from start to finish. Yet again, when challenged as to this evidence he relied on the answer that it was really all to do with DCS McBurney¹⁵.
13. The Panel is entitled to consider when evaluating this witness that he would be acutely aware that any admission of doubt about the existence of a strategy on his part would reveal him to have been complicit in the “cover up” by virtue of his silence. Even if, in his heart, he doubts that DCS McBurney ever really intended to pursue Atkinson, it would be difficult for him now to admit it for to do so would be tantamount to accepting that he was taken for a fool by his superior officer.
14. Mr Murray has also, significantly in our submission, questioned whether or not he was the appropriate person to be expressing a view on whether or not the “McBurney strategy” was negligent or, to use his term “criminally negligent”.¹⁶ We agree with Mr Murray entirely on this. It is perfectly appropriate for him to express a view on the effectiveness and wisdom of any strategy or methodology employed by the RUC in the conduct of any part of this investigation. It is also proper that he should express a view that any aspect of the investigation was conducted negligently, in particular if he feels that it impacted negatively on the outcome of the investigation. The question of the existence of dishonest or improper motive for any such conduct must remain for the Panel. It should not be lost on the Panel however that Mr Murray was steadfast in his evidence that the strategy employed by DCS McBurney was both incomprehensible and negligent.
15. It is our submission that no such strategy existed and that DCS McBurney personally crafted a report for the DPP that was designed to deceive and mislead those in the office of the Director of Public Prosecutions responsible for determining whether there was a case made out to prosecute Reserve Constable Atkinson for the offence of assisting offenders. Below is a sequenced timeline of the key events relevant to this analysis.

¹⁵ September 9th page 140

¹⁶ September 21st page 59

8 th May 1997	DCS McBurney was appointed Senior Investigating Officer retaining overall responsibility for the investigation into the murder of Robert Hamill; The investigation into the public complaint made by Rosemary Nelson against the Land Rover crew; the allegations made against Reserve Constable Atkinson.
8 th May 1997	DCS McBurney received information about Tracey Clarke, via Andrea McKee
8 th May 1997	DCS McBurney received information from Reserve Constables McCaw and G regarding Timothy Jameson admitting that he had 'put the boot in'
9 th May 1997	Timothy Jameson interviewed by DC Honeyford on DCS McBurney's orders
10 th May 1997	Tracey Clarke made a statement. Telephone records sought. (This process may have even begun the previous day on the strength of the information from Andrea McKee)
12 th May 1997	DCS McBurney met with Superintendent Hooke and the Deputy DPP to brief the Deputy in relation to the six persons charged with Robert Hamill's murder
12 th May 1997	Meeting with ICPC when DCS McBurney briefed the ICPC of the incident and the investigation and Mr Murnaghan outlined his role in supervising the complaint made by Diane Hamill
13 th May 1997	DCS McBurney met with the DPP. Mr Junkin, Mr Kitson, DS Harvey from the Crime Branch and DCI P39 were present. Medical evidence was discussed as were Tracey Clarke, Timothy Jameson and Reserve Constable Atkinson
15 th May 1997	DCS McBurney and DI Irwin attended Mr Kitson's office to give Information regarding their meeting with Professor Crane
19 th May 1997	By this date DCS McBurney knew the result of the request for Reserve Constable Robert Atkinson's phone billings
9 th September 1997	DCS McBurney interviewed R/Con Robert Atkinson in the presence of DI Irwin and Kevin Murnaghan ICPC
19 th September 1997	Decision of ICPC that it was outside its remit to continue supervising ¹⁷
9 th October 1997	Second interview of R/Con Atkinson by DCS McBurney and DI Irwin
9 th October 1997	Michael McKee gave a witness statement to DCS McBurney

¹⁷ Material bundle 27209

29 th October 1997	DI Irwin took witness statement from Andrea McKee and he was ordered by DCS McBurney not to put issues to her regarding her alibi evidence
22 nd December 1997	DCS McBurney submitted his report (a.k.a. the “neglect file) to DPP
22 nd February 1999	Trial of Marc Hobson in which R/Con Atkinson is a Crown witness
19 th October 1999	Inspector Irwin reports separation of McKees to McBurney and is told that they can be spoken to at an appropriate time in the context of the Coroner’s inquest.
11 th January 2000	Coroner informs family through Mr Mc Grory of the contents of the statements of Tracy Clarke and Timothy Jameson
1st June 2000	Coroner announces decision not to hold an inquest
9 th June 2000	Sir [REDACTED], Permanent Under Secretary to the Northern Ireland Office has a meeting with Sir Ronnie Flanagan ¹⁸
20 th June 2000	DCS McBurney travelled to Wrexham and spoke to Andrea McKee without having spoken of his intentions to the Chief Constable. He spoke to the Chief Constable upon his return and he in turn briefed the DPP
26 th June 2000	DCS McBurney met with Mr Kitson, DPP

16. The family of Robert Hamill submit that Atkinson should have been immediately confronted with the telephone billing evidence and treated as a co suspect along with the principles. We will never know just what Reserve Constable Atkinson would have said about those calls to the Hanvey household had he not the opportunity between his September and October interviews to approach the McKees for help with an obviously lying explanation. It is our submission that a prudent and diligent investigator would and should have taken that course. The benefits of having someone suspected of acting as an accessory after the fact of a crime prosecuted alongside the principals have been acknowledged by a number of witnesses to this Inquiry including Mr Murray¹⁹.

17. Although we do not accept it, it may just be arguable that any failure in this regard on the part of DCS McBurney may have been attributable to a misjudgement on his part. It will be said on his behalf that his early conduct was not that of a man who was about the business of protecting a fellow officer. He informed the DPP and the ICPC within days of the allegation as told to the police by Tracy Clarke. He immediately sought the relevant telephone billing records and he informed his superiors who brought the matter to the attention of the Chief Constable on Monday 13th May. He even spoke to the Chief Constable twice on the day Tracy Clarke made her statement; although Sir Ronnie denies that he was told then of the “tipping off” allegation.

¹⁸ 39623

¹⁹ September 22nd page 2 lines 19 - 22

Although there was a delay of some four months, he did arrest and caution, in September 1997, Reserve Constable Atkinson for the offence of assisting offenders as well as for other matters. He did put to Atkinson the suggestion that he had been in contact with Hanvey specifically. It may also be reasonably argued that his failure to confront Atkinson there and then in September with the telephone billing evidence paid dividends in the subsequent ill thought out and clumsy presentation by Atkinson of Michael and Andrea McKee as alibi witnesses to the phone calls, thereby opening up investigative opportunities.

18. However, it is the handling by DCS McBurney of the presentation of an alibi which McBurney himself has accepted he never believed²⁰ that betrays his true intentions. We will never know why Kevin Murnaghan of the ICPC took the view that he needn't supervise the remainder of the investigation but his decision not to do so afforded Mr McBurney the opportunity to write a report that skilfully but deliberately and dishonestly hid from view the true situation concerning the evidence against the Reserve Constable.
19. DCS McBurney regrettably died before he had the opportunity to give evidence to this Inquiry. He was however interviewed at length and the Panel has listened to the recordings of those interviews. It is our submission that he bluffed and blustered his way through the presentation of a carefully prepared but fanciful explanation for his conduct of this investigation. The Panel will have noted that many of his lengthy answers to questions were actually read from a pre prepared script he brought with him to interview. We submit that the account given was an elaborate fiction, carefully constructed from previous explanations and interviews given by him to the office of the Ombudsman when eventually asked to account for himself upon the creation of that office in November 2000.
20. That explanation stretches the credulity of even the most generous of listeners. We have heard much of the dedication and skills of this larger than life police man and we doubt none of it. When it came to the ultimate test of bringing home the prosecution of a corrupt and bigoted member of his own Force however he stumbled. If he was the man of such experience and skill attributed to him he must have cringed to hear himself spin his story to the Inquiry interviewers. The question may well be asked, why would he do it? The answer, we submit, may well lie in the unfolding of events in early 2000 beginning with the revelation by the Coroner to the family of Robert Hamill of the contents of the statement of Tracy Clarke.
21. An important pillar on which the case for arguing the existence of a long term plan to re interview Andrea McKee rests is the suggestion that the decision to visit her in Wales on 20th June 2000 was an independent one prompted only by the fact that the Inquest was not now going to occur. DCS McBurney very clearly informed the Inquiry that he had spoken to no one in advance of that visit to Wales. This is to be found at pages 181 and 182 of his Inquiry interview on 4th May 2006. We now know of course that Sir Ronnie Flanagan received a briefing from DCS McBurney sometime before he met Sir [REDACTED], the Permanent Under Secretary on the 9th June

²⁰ Pages 159 - 162 Maynard McBurney's first Inquiry Interview

and that Sir Ronnie claimed he had personally “pushed and pushed” for progress in the case.²¹

22. We address the significance of the material emanating from the Northern Ireland Office in much more detail in a later submission. Insofar as it relates to the discrete issue of the timing of the DCS McBurney briefing to his Chief Constable on the Atkinson issue is concerned however, we submit that the material and Sir Ronnie’s comments on it²² amount to incontrovertible evidence that DCS McBurney misinformed the Inquiry that he had gone to Wales on his own initiative. We respectfully submit that this could not have been a mistake but was a deception designed to support the case he was making that he was always intending to re-interview her at some point. It is of course possible that DCS McBurney had simply forgotten that he had briefed his Chief Constable prior to the latter’s June 9th meeting with the Permanent Under Secretary. We submit that this is unlikely.

23. It is our very firm submission that the most likely explanation for the sudden revival of this investigation was the realisation that the cancellation of the inquest had served only to increase the interest in this case at the highest of political levels and that the deliberate attempt to protect Atkinson was about to be revealed unless urgent action was taken. That was the moment when the interests of the RUC required the exposure of Atkinson’s behaviour rather than its concealment.

²¹ 39693

²² September 10th page 200 line 6 - page 201 line 14

THE SENIOR OFFICERS

The Chief Constable, Sir Ronnie Flanagan

1. The Royal Ulster Constabulary was, by any definition, a major organisation, the effective performance of which required the efforts and dedication of many thousands of individuals. Many such organisations have one individual who may be regarded as the most senior person on whose shoulders the responsibility for the running of the organisation ultimately rests. We do of course accept that, in practical terms, the responsibility for the overseeing and management of such a large body cannot be expected to rest entirely with one man. As the Chairman pointed out to another witness, in the context of a different organisation, that responsibility is often exercised vicariously through others. That indeed may be so but when a situation arises where there are multiple failures to such an extent that the organisation has singularly failed to perform in an area central to its very purpose then questions must be asked about the conduct of those whose responsibility it is to direct the organisation.
2. In the case of Robert Hamill, a man was attacked and beaten with such severity that he sustained Axonal brain injury. There is an abundance of evidence that the attack was sustained and severe¹ and was accompanied by sectarian abuse so venomous that in one case a policeman was moved to remark “He was in that crowd that was shouting “I hope they die!”He was just part of that crowd that were pretty aggressive. I remember looking at him and seeing blood coming from his nose. He was rather excitable. His eye were - I’ve never seen such a.....look of excitement in his face”.² Sadly, that in itself was and is not a unique occurrence in this jurisdiction. What made this incident remarkable however is the fact that it occurred within yards of a police vehicle manned by officers posted to the centre of Portadown for the very purpose of preventing an outbreak of disorder. It occurred in circumstances where a warning was issued to those police by one of the patrons of St Patrick’s Hall that others were on their way. Two of those alleged to have been involved; Bridgett and Forbes, in the murder were in casual conversation with the police only a moment or two before they became involved. Another, Lunt, was initially arrested only to be let go again and vital evidential opportunities were lost as result. Another, Hanvey, was a friend of one of the Land Rover crew who assisted him escape detection for the murder he committed at least by giving

¹ Statement of Reserve Constable Atkinson, page 10972 “Whilst I was struggling with this person I could see out of the corner of my eye that 3 youths were jumping on the head of the male who was lying on the ground outside Eastwood.”; Statement of PC Neill, page 10945 “During this a male, late 20s, round face.....was near me and I saw him kick at the injured man I now know as Robert Hamill”

² Page 30 of the Inquiry Interview transcript of Dean Silcock,

him advice and very probably by failing to reveal what he saw him do. There are criticisms of the failure of duty officers to ascertain the severity of the situation and take immediate steps to have those involved arrested at the optimum time for evidence gathering. There are criticisms of the thoroughness of the searches and of general investigative strategy.

3. The family of Robert Hamill however does not seek to lay the blame for every mistake and every omission by police officers on the shoulders of Sir Ronnie Flanagan. What this family deserved however and did not get from the Chief Constable of the RUC was the moral leadership necessary to confront and address the manifestation of naked sectarian bigotry within his own force in the conduct and form of Reserve Constable Robbie Atkinson.
4. The Inquiry has issued a list of witnesses to this Inquiry in respect of whom some criticism may be made. Of Sir Ronnie Flanagan it says only that he might stand to be criticised for failing to ensure ICPC supervision of the complaint into the tipping off allegation against Reserve Constable Atkinson. That is indeed a criticism we seek to make of him and if it is to be made it must be on the basis that he was charged with knowledge of the allegation at a time when it fell to him to take steps to ensure supervision. If the Panel finds that he had that knowledge then, we respectfully submit he had an even greater moral and personal responsibility as Chief Constable to ensure that the investigation into Reserve Constable Atkinson was conducted to the highest of standards. This he failed to do.
5. It is important to bear in mind that the conduct alleged of Reserve Constable Atkinson is that of a most serious criminal offence. Criminal conduct of police officers is of course covered by the disciplinary code for the very purpose of assessing whether or not the nature of that conduct is such that the officer in question should be allowed to continue to serve the community as a member of the police force. The investigation of that conduct as a crime however is a different matter. No policeman suspected of the commission of a crime should be treated any differently than any other citizen in terms of the investigation of that offence. While it is accepted that there may be some overlap in the conduct of the two investigations, the investigative priority must be centred on the crime.³ Disciplinary proceedings will follow whether there is a conviction or not. The primary purpose of the ICPC was to ensure that there was proper investigation of police officers for wrongdoing whether the conduct was criminal or disciplinary or both. We will return to the role of the ICPC later in these submissions but its presence cannot replace or relieve those in charge of the RUC of

³ Mr Murray's supplementary report of November 2008 deals comprehensively with these procedures, in particular at section 6. It is clear that one interview may cover both criminal and disciplinary issues but that the criminal aspect will have priority. (74534)

their investigative obligations when it comes to allegations of criminal conduct on the part of police officers.

6. The nature of the criminal conduct alleged of Reserve Constable Atkinson is crucial in assessing the degree to which there was an obligation on the Chief Constable, his ACC of Crime, Mr White, and regional commander at ACC level, Mr Hall to involve themselves in the detail of the investigation. We are not talking about the criminal conduct of a police officer in his personal time that might either impact on his ability to perform as a police officer or bring the force into disrepute. We are talking about the criminal conduct of a police officer in the conduct of his duty that concerns him joining as an accessory, albeit after the fact, in the very crime he should have been seeking to prevent; and that crime was one of murder. Short of committing murder itself, one cannot imagine a more serious allegation against a police officer. It goes to the very essence of policing.
7. Both the former Chief Constable and ACC White have made the case that, as far as they were concerned, all the proper investigative procedures were in place to deal with the allegation against Reserve Constable Atkinson. A senior and experienced Detective Chief Superintendent was in charge and the ICPC was, as far as they knew, supervising every aspect of the investigation. The Chief Constable points to the fact that he made an independent referral to the ICPC even before a formal complaint was made. When he was asked by the Secretary of State in December 1997 for a progress report he took steps to ensure a comprehensive reply that included confirmation that the issue of police contacts with the alleged perpetrators was actively under investigation. Beyond that, he clearly believes, no more should have been expected of him.⁴
8. The family of the murder victim in this case, Robert Hamill expected and deserved a great deal more from the Chief Constable in these circumstances. One of the reasons advanced by the former Chief Constable for not involving himself too closely with the detail of this investigation is the fact that the Chief Constable is the ultimate court of appeal in disciplinary proceedings and should, accordingly, leave himself free from intimate knowledge of disciplinary investigations. This was the answer he gave Mr Underwood QC when asked why he did not personally consider suspending Reserve Constable Atkinson when the allegation was made.⁵ The Guidance to the Chief Constable on Police Complaints and Discipline Procedures, which has a statutory basis, provides, at paragraph 11.7⁶ for the transfer of this role to another Chief

⁴ Statements of Sir Ronnie Flanagan dated 31st July 2006 and 28th April 2009 can be found on the system at pages xxxxx and 81831 respectively.

⁵ September 10th page 195

⁶ Page 73378

Constable when necessary. The preceding paragraph 11.6 in fact envisages that there are circumstances where the Chief Constable, “**will of necessity have some knowledge of a case while it is still under consideration**”. One example given is where the matters raised are “**..prima facie serious and would amount to a substantial criticism of the force..**”

9. We submit therefore that this Chief Constable was duty bound to ensure that he was kept informed and have a direct knowledge of the conduct of the investigation into the allegation from the moment it came to his attention, so serious were the consequences of it for the reputation of the police force he led. Indeed Sir Ronnie professed to the Panel to have been particularly concerned about the damage caused to the image of his police force within the minority community following the reversal of the decision to stop the Drumcree march in 1996. This was something he claimed to have made a priority to reverse when he became Chief Constable later that year.⁷
10. This provision came as no surprise to Sir Ronnie when it was brought to his attention during his evidence when questioned about the issue of suspension of Reserve Constable Atkinson by Mr Mc Grory QC.⁸ Interestingly, he said then that he did acquire a degree of knowledge about the case that would have required him to bring in another Chief Constable to exercise those disciplinary functions but no such proceedings ever occurred as the officer took off sick after his October 1997 interview and never returned. It is perhaps with regret that he wasn't pressed on the precise time at which he reached this degree of knowledge but it is probable that he meant later in 2000, once he had been fully briefed by DCS Mc Burney. It is his evidence of course that, up until then, he knew little of the detail of this allegation.
11. The matter of suspension of Reserve Constable Atkinson is something we say should have been considered at least after the telephone billing records confirmed that there was telephone contact between his home and the Hanvey home on the very day of the attack on Robert Hamill. Whether it was the responsibility of the Chief Constable or a designated deputy is neither here nor there. It is true that the departure from active duty of Reserve Constable Atkinson who went off on the sick immediately after the October 1997 interview reduced any immediate threat of interference in the investigation or of any repetition of criminal conduct while on duty. That does not mean to say he could not have been suspended even at that stage, lest he should seek to return. Moreover, as far as the general public and colleagues were concerned he remained a serving police officer. We submit that at least part of the purpose of suspending an officer from duty once serious allegation is made is to make it known to the public and other members of the force that any suggestion of such conduct will be dealt with most severely.

⁷ Ibid pages 202 and 203

⁸ Ibid pages 240 to 241

12. The question still remains why he was not considered for suspension between May and October. When questioned about this by Mr Mc Grory QC, the former Chief Constable speculated that it may have had something to do with the investigative strategy but as he was not involved with that strategy he could not comment. We submit that this is not an acceptable response.
13. Sir Ronnie Flanagan cited the “appellate court” defence referred to above on the issue of suspension with the Permanent Under Secretary, Sir [REDACTED] when they met to discuss this case on 9th June 2000. Paragraphs 8 and 9 of that document reveal an understandable unease on the part of the Permanent Under Secretary that Portadown may have been policed by somebody who may have conspired to pervert the course of justice in a murder case.⁹ The fact that a police officer who was suspected of the offence of assisting offenders was not immediately considered for suspension is astonishing and raises serious questions about the appetite within the upper ranks of the RUC for addressing something that should have been an investigative and a policing priority. Indeed that is a concern shared by the family of Robert Hamill and was given eloquent expression by sir [REDACTED] in the following sentence of his memorandum, **“I feel (but did not say) that the failure to suspend may be indicative of a failure to strike the right balance between fairness to the officer and taking seriously a very serious allegation.”**
14. We have asked the question elsewhere why DCS Mc Burney may have considered it the right thing to do to effectively cover up the conduct of the reservist. This question is particularly poignant when he clearly informed all those whom he ought to have informed of the seriousness and nature of the allegation. We submit that the answer lies in the attitude and approach to this allegation displayed by the former Chief Constable and his colleagues at Deputy and Assistant Chief Constable level. All of them were informed of the allegation on the morning of Monday 12th May 1997. While investigative responsibility was given over to Detective Chief Superintendent Mc Burney, some degree of supervision of the investigation of this most serious matter must attach to the Chief Constable, his ACC of crime, ACC White or the regional commander ACC Hall. We have prepared a separate short submission addressing the responsibilities of the Assistant Chief Constables. That they should all claim to have little or no knowledge of the progress of the enquiry into Reserve Constable Atkinson is nothing short of a disgrace.
15. As we have discussed above, the administrative role of appellate authority was not, by Sir Ronnie’s own admission, a bar to his personal supervision of the investigation into the allegation that one of his officers had been tipping off a suspect in the sectarian

⁹ 39625-39626

murder of a Catholic. His failure to at least inform himself of the progress of this investigation does not sit well with his self professed concern for the good reputation of the force within the minority community. This failure, we submit, had serious consequences for it provided the opportunity for DCS Mc Burney, now free from supervision from either the ICPC or his superiors to skilfully orchestrate a “cover up”, of the criminal conduct of Reserve Constable Atkinson.

16. This is a submission we have made elsewhere and we do not resile from it. It is not necessary however that the Panel should agree with us, for our argument that the failures of the Chief Constable contributed to the escape of Reserve Constable Atkinson to succeed. This is a submission that can stand on the basis of lack of direction and supervision even if the Panel finds that DCS Mc Burney’s failures, if indeed such findings are made, were due to neglect rather than the result of a deliberate plan to protect Atkinson.
17. If the Panel is persuaded that DCS McBurney was guilty of the deliberate protection of Reserve Constable Atkinson then it must consider three possibilities that directly concern the Chief Constable; either he (i) acted alone in defiance of his superiors; (ii) felt encouraged by their apparent disinterest to behave in the way he did or (iii) was acting on direct instructions.
18. We submit that the very credibility of Sir Ronnie Flanagan as a witness is now in issue following the disclosure of two important documents from the Northern Ireland Office and his reaction when confronted with them in evidence.
19. Mr Underwood QC drew Sir Ronnie’s attention to several parts of the document attributed to Sir [REDACTED] and in particular, paragraph’s 8 and 9 referred to above. When asked about the remark attributed to him by Sir [REDACTED] that he would sack Reserve Constable Atkinson, regardless of the cost, if asked by Sir [REDACTED] to do so, he denied that he would take such action on the request of a Permanent Secretary and replied that this was “an inaccurate reflection of any conversation we would have had..”¹⁰ The Panel has not heard from Sir [REDACTED] on this but it will have to consider the unlikelihood of a Permanent Secretary taking an inaccurate note of a conversation he clearly considered to be of some importance. It must therefore consider whether Sir Ronnie has given a truthful answer here. In considering this it must also take into account the answer given by Sir Ronnie in relation to the next document put to him.
20. That document is a note made by Anthony Langdon of separate meetings he held with the former Chief Constable and members of the ICPC on 21st July 2000. Mr Langdon

¹⁰ September 10th page 194 line 12

was then a recently retired Home Office civil servant, commissioned at the suggestion of Sir [REDACTED] to write a report to assist the Government in its response to the increasing public clamour for a public inquiry into the death of Robert Hamill. The document notes at paragraph 3 that Mr Langdon found the Chief Constable in a pretty defensive and critical mood.¹¹ According to Mr Langdon the then Chief Constable, “**.. commented that Robert Hamill’s death could well have been caused by his own family cradling his head in a way that led to oxygen starvation.....he thought that it was noteworthy that it was Hamill’s sister rather than his partner who was making the running, and that his sister had her own agenda to discredit the RUC..**”

21. The response of the Chief Constable to this document is to be found a pages 256 line 11 of his evidence through to the beginning of page 258 and is perhaps worth repeating in full:-

Q. Would you go on and look at that paragraph:

“He commented that Hamill’s death could well have been caused by his own family cradling his head in a way that led to oxygen starvation.”

Where do you get that?

A. I think that’s a quite disgraceful record of the conversation That we had. What was suggested to me -- I remember being absolutely shocked when Robert Hamill died, because my belief was that he was progressing well and that he was not at risk of dying. In asking people -- and I think it may well have been in a conversation with Maynard McBurney -- there would have been a general discussion that sometimes people, not specifically the family, but even police at the scene who would cradle a person, but to suggest that Robert Hamill’s death was due to anything other than the beating he received a the hand of his assailants is absolutely disgraceful.

Q. So do you dispute the manner in which this has been recorded?

A. Absolutely.

¹¹ Page 39692

Q. As for the next bit:

“He thought it was noteworthy that it was Hamill’s sister rather than his partner who was making the running and that the sister (Diane) had her own agenda to discredit the RUC.

Did you make that remark?

A. Certainly I did not make that remark. I would not ascribe that to Robert Hamill’s sister.

Q. Had you made the remark, do you agree that it would be a reprehensible attitude to be displaying?

A. It would be an improper attitude.

Q. Do you accept now that Diane Hamill has done nothing since the death of her brother but to properly campaign to get to the bottom of the murder?

A. I accept that absolutely completely. Indeed when you and I had a meeting where I passed through you information to the family, but asked them to respect it by not making it public, they respected that absolutely and completely.

Q. Do you accept that she has never had an agenda to discredit the RUC?

A. I do. I think she has an agenda to find out exactly what happened to her brother.

Q. Do you say that no-one in the RUC, either in the upper ranks or the lower ranks, had a view that the Hamills were just about discrediting the RUC?

A. I can’t speak for everyone in the organisation, Chairman, but certainly it would not be a view that would be properly ascribed to the organisation. I can’t speak for every individual in that organisation.

22. Sir Ronnie has categorically denied that he made this remark and has gone on to say

that it would have been a disgraceful thing to have said. This must be contrasted with the evidence of Mr Langdon who came to the Inquiry and stated in the clearest possible terms that the Chief Constable did indeed make such a remark and that he remembered him doing so because as he said it he made a cradling motion with his arms to illustrate how it might have happened.¹² One of these men is lying about this and we submit that it is Sir Ronnie Flanagan. The Panel has observed both witnesses give their evidence and will be in a position to make a judgement on this. Mr Langdon was very clear however that his note was made very quickly after the meeting and has a firm recollection of Sir Ronnie making the remark about the cradling of the head. It would follow then that the rest of the note is likely to be accurate. We further submit that Mr Langdon had absolutely no reason to falsely attribute the comments or indeed the sentiments to the former Chief Constable. Sir Ronnie on the other hand has every reason to deny that he said such things.

23. If the Panel does find that Sir Ronnie did make these comments then this has serious implications for his credit worthiness as a witness and all of his evidence should be viewed with great caution. His credibility aside however these remarks reveal a great deal, we submit, about this Chief Constable and his true attitude about this case that might assist the Panel in considering some of the submissions we have made above. Firstly, this is a man so defensive about any possible criticism of his force that he will say whatever it takes to defend it. The suggestion that Robert might have died of oxygen starvation is quite plainly ludicrous but clearly designed to make Mr Langdon think this attack was not as serious as people were making out. The comments about Diane Hamill's motives however are particularly insidious. Their purpose was to blacken the good name of this family and to seek to taint them as anti police propagandists. This of course was not just directed to Mr Langdon but to those to whom he would eventually report. The Panel must therefore evaluate everything this witness has said with great caution.

24. We have already raised the possibility that DCS McBurney behaved the way he did on express instructions or that he took his cue from the apparent disinterest of the Chief Constable in the investigation of the allegations made about Reserve Constable Atkinson. This witness first told the Inquiry that he knew nothing of these allegations until DCS Mc Burney came to him about his "new opportunity" in respect of the McKee's separation.¹³ In his second Inquiry statement of 28th April 2009, he accepts that he spoke to DCS Mc Burney twice on May 10th following the making of the Tracy Clarke interview, although he still claims to have no recollection if he was informed of the Atkinson allegation.¹⁴ There is no doubt that he informed Mr Raymond Kitson of the office of the DPP about it when he spoke to him on 13th May

¹² September 21st page line 20ff and later page 21 lines 1 to 7

¹³ Statement of 31st July 2006 paragraph 10 pagexxxx

¹⁴ Statement of 28th April 2009 paragraph 10 page 81833

1997¹⁵ and the ICPC.¹⁶ We submit that it is inconceivable that Detective Superintendent McBurney did not inform his Chief Constable of this aspect of the statement of Tracy Clarke when they spoke on twice on the phone on May 10th 1997. The Panel must consider the likelihood that Sir Ronnie Flanagan is lying about this. He also now accepts the irrefutable evidence of ACC Hall that he was told of the allegations at the regular Monday morning meeting on 13th May but he says he simply doesn't recollect that.¹⁷ The Panel is entitled to consider that he is not telling the truth about that either.

25. The Inquiry has commissioned a report from Professor Kieran Mc Evoy of the School of Law at Queen's University Belfast. He made the following observation about Sir Ronnie Flanagan at paragraph 5.12 of his report; **"In tracing the evolution of the former chief constable's attitude towards change over that period, one sees a highly skilled police leader in action. Sir Ronnie demonstrated finely judged antennae to the changing political climate and appeared to make carefully calibrated political judgements and public pronouncements accordingly as the process developed. He also demonstrated a high degree of sensitivity to the prevailing mood of his officers at different junctures in the process and certainly took great pains not to outstrip his constituency in leading the organisation towards inevitable change. He was knighted in 1999 and in 2002 became the first person in Northern Ireland to receive a Knight Grand Cross of the Order of the British Empire (GBE) in recognition of his skills in managing the changeover from the RUC to PSNI."**¹⁸
26. We submit that it is inconceivable that his highly skilled and highly political of Chief Constables failed to pick up on the potential consequences for the RUC of the inevitable disclosure of the allegation against Reserve Constable Atkinson if he were to be arrested along with the perpetrators of the murder of Robert Hamill as one guilty of the offence of assisting offenders. This is the man who independently referred the case to the ICPC before there was even a complaint received from the office of Rosemary Nelson, so sharply tuned were his antennae in terms of criticism of his force, particularly in the area of collusion between police and Loyalists. We further submit that it is inconceivable that the Chief constable of the RUC did not keep himself well informed of the progress of an investigation into allegations of serious criminal conduct of one of a member of his full time Reserve.
27. There are further passages of the report of Professor Mc Evoy to which we might refer in oral submissions, particularly in relation to the precarious situation in terms of

¹⁵ Note for file by Mr Kitson dated 13th May 1997 - pages 31603 - 31612

¹⁶ File note - Greg Mullan to Kevin Murnaghan re meeting on 12.5.97 - pages 14822 - 14823

¹⁷ September 10th pages 189 to 190

¹⁸ See BBC Profile available <http://news.bbc.co.uk/1/hi/uk/6990858.stm>

the very future of this police force at precisely the time of these events. It is abundantly clear however that the last thing this Chief Constable needed in May 1997 was the revelation that a Portadown Reservist colluded with the killers of Robert Hamill. We respectfully submit that, whatever the benefits of being seen to pursue such a policeman in terms of gaining some credibility within the Catholic community, there will have been some within the RUC, this Chief Constable perhaps included, who took the view that the cost of impartiality in terms of damage to police morale and his own reputation within his own force, might have been too high a price to pay.

28. The Panel will recall that Mr Mc Grory QC raised with quite a number of witnesses some correspondence between the Chief Constable and the then Secretary of State, Dr Mo Mowlam. When it was first raised, with ACC White we believe, the Chairman made the observation that, in today's society the police could not be expected to give an account of the detail of an investigation to a government figure. This was a valid observation from the Chair that modern society expects the police to have absolute investigative independence. With this we absolutely agree but we would ask the Panel to bear with us while we revisit this correspondence for we believe that the totality of the evidence on this point will show that Dr Mowlam could and should have been given more information that she was.
29. We would ask the Panel to examine the following documents in sequence; (i) A letter from Dr Mowlam to Sir Ronnie Flanagan dated November 28th 1997¹⁹ following a meeting she had with the family of Robert Hamill on November 24th 1997; (ii) A memorandum from Detective Inspector Irwin to ACC White through Superintendent Hooke addressing the issues raised in Dr Mowlam's letter;²⁰ (iii) Mr White's recommendations on an appropriate response to the Secretary of State dated 18th December 1997²¹; and (iv) the reply from Sir Ronnie to the Secretary of State dated December 23rd 1997.²²
30. The letter from Dr Mowlam attached an earlier letter she had received from Diane Hamill raising a number of issues of concern to the family including the fact at point 5 that there were press reports of "links between some officers and some of the defendants". In the final paragraph of the second page of her letter, Dr Mowlam asked the Chief Constable to supply her with "as much detail as possible" on the points in the attached letter".²³
31. Document (ii) is a report by DI Irwin dated 1st December to Superintendent Hook of the Crime unit in Knocknagoney and stated at **POINT 5** " A DPP file is being

¹⁹ 60487

²⁰ 16500 to 16502

²¹ 15385 to 15389

²² 15375 to 15377

²³ 60487/8

submitted which relates to an allegation of a link between *one* of the accused and *one* police officer” (Emphasis ours)

32. Document (iii) is from ACC White to the Chief Constable and seems to have two purposes. It firstly imparts to the Chief Constable all of the background information relevant to the questions raised by the Secretary of State and it secondly advises the Chief Constable on the level of detail he in turn should impart to the Secretary of State. In 5.3 he informs the Chief Constable that the investigation DCS Mc Burney is conducting into the Land Rover crew is almost concluded and is likely to report that they did their best in very difficult circumstances. He advises the Chief Constable not to impart this information to the Secretary of State lest it should pre-empt any decision of the DPP.
33. At 7.1 under the heading **“Relationship between Accused and Police Officer”** ACC White tells the Chief Constable that this matter is the subject of a criminal investigation and that a file will be forwarded to the DPP in due course. He advises the chief Constable that it would “not be prudent to make any comment about this at this stage nor to pre-empt the decision of the DPP”
34. Document (iv) is the reply from Sir Ronnie to the Secretary of State. Under the heading **“relationship between some officers and some of the defendants”** he tells the Secretary of State the following “This allegation has been included in the criminal investigation and will be considered by the Director of Public Prosecutions”
35. Mr Simon Rodgers made a statement dated September 21st ²⁴ and gave evidence the same day. At the time of these events he worked in the Police Division of the Northern Ireland Office, which dealt with the issue of police complaints. He recounts how the Secretary of State received a letter from the Family in advance of a meeting that took place on November 24th and in that letter the family had raised the issue of press reports of links between some officers and some of the defendants.²⁵ He has said in his evidence that the Secretary of State had sympathy with the family and wanted to do as much for them as she could. At paragraph 15 of his statement he sets out the steps that he took to obtain information from the Chief Constable. He anticipated, correctly as it turned out, that the Chief Constable would want very little information released. It is clear that Mr Rodgers means released publicly as that indeed is what the Chief Constable asked of the Secretary of State in the penultimate paragraph of his letter in reply.²⁶ Mr Rodgers however was very clear that the Secretary of State was quite entitled to seek a “report” from the chief Constable “on any matter she wished to receive a report on” in accordance with section 15(2) of the Police Northern Ireland

²⁴ 82068 to 82077

²⁵ Point 5 of the family letter page 60819

²⁶ 15377

Act 1970. He did not feel it necessary to cite the legislation as the Chief Constable would have been well aware of his obligations in this regard.

36. The letter from the Secretary of State of course asked the Chief Constable “ for as much detail as possible” on the points raised in Diane Hamill’s letter , which she attached.²⁷ It is our respectful submission that the reply on the question of “links between some officers and some defendants” was brief to the extreme and arguably misleading. If it satisfies the Chief Constables statutory obligation at all it does so barely. We submit that to have suggested that it had been included in the criminal investigation leads the reader to believe that the writer is talking about the murder inquiry when it clearly was not. It is of course true that the neglect file, which did address the “tipping off” allegation, was a criminal file and did go to the DPP. Had that been made clear to the Secretary of State however, she may well have raised some questions, which she was clearly entitled to do under the statute. It is accepted by the family however that Mr Rodgers did make it clear that he was unaware of the detail of the various investigations and the important point for him was that the DPP would be made aware of the allegation, which they were by way of the neglect file. We have submitted elsewhere that the separation of the Atkinson “tipping off” allegation from the murder file significantly compromised the investigation, not least because it was submitted at a different time and to a different officer. That may not have been something Mr Rodgers or the Secretary of State would have been alert to, but the Chief Constable didn’t necessarily know that.
37. The evidence of Mr Rodgers is that he would have expected the Chief Constable to have brought the information about the specific allegation against the Reserve Constable Atkinson to the Secretary of State, had he known about it. At first, he appeared to agree with the statement of his former colleague, Mr Steele, that the Chief Constable’s answer was appropriate when asked to comment on it by Mr Underwood QC²⁸ at the outset of his evidence. However, he later gave a very different answer to Mr Mc Grory QC as follows²⁹

Question: “Yes. Insofar as the details of the allegation are concerned, what we now know, Mr Rogers is that there was a specific allegation against a specific officer that had been made by a witness, Tracey Clarke, that there had been telephone calls made and advice given to

²⁷ Secretary of State Letter 60488, Diane Hamill letter 60818

²⁸ Page 108

²⁹ Page 126 line 5 - page 127 line 2

destroy clothing to one of the murderers by a policeman. We also know that telephone records obtained very quickly after that allegation had been made at least supported the allegation to the extent that there was telephone contact between the policeman's household. Now, I want to suggest to you that this is information which could have been given to the Secretary of State without it necessarily in any way interfering with the operational independence of the chief constable. She could have been told that as a point of information?"

Answer: "I do try to address that in my statement in paragraph 27, where you say that if the chief constable, for Example, in advising the Secretary of State was Aware of this allegation at this particular time, then I would have expected him perhaps to have informed the Secretary of State."

38. In the interests of clarity, Paragraph 27 of his statement reads **"If the Chief Constable was aware of the allegation about the Reserve Constable at this time then I think one could have reasonably expected him to inform the SoS, regardless of the correspondence"**.
39. We of course know that the Chief Constable did know about it, at least from the meeting on May 13th. ACC White, as we have seen above, referred to "*a* criminal investigation" and "*a* file" going to the DPP under the heading "*Relationship between Accused and Police Officer*". We suggest ACC White assumed his Chief Constable knew exactly who and what he was talking about. In fact the Chief Constable had to go to some lengths to change the wording of the information he received to avoid letting the Secretary of State know that there was in fact a specific allegation, which would have given some substance to the press reports Diane Hamill had raised with the Secretary of State.
40. The Chairman has questioned whether or not it would have been appropriate for the Secretary of State to be getting involved in making decisions as to what information the family should have been given. The family accepts that there would be a range of reasons why that would not normally be in the public interest. There could be risks to independence, operational reasons and the obvious consideration that the Secretary of State has many other responsibilities. However, there had to be exceptions to this. Why else would the Secretary of State have been given the statutory power to seek

reports from the Chief Constable? We respectfully ask that he Panel consider the following submission:

41. **The Secretary of State, as part of the Executive had a constitutional responsibility for the policing of Northern Ireland. While the police force of course should be free to exercise its policing functions free from political interference it was nevertheless very much in the public interest that it should be accountable in some way to the Executive. That is why section 15 (2) the Police NI Act obliged the Chief Constable to report to the Secretary of State on “any matter she wished to receive a report on”³⁰. The Secretary of State also had a direct responsibility for the supervision of police complaints, which was entirely consistent with her constitutional responsibility for policing. It was purely a matter for the Secretary of State what she chose to do with information. A responsible Secretary of State would of course be expected to be mindful of the independence of the police force but there is no evidence that Dr Mowlam was anything but responsible. In fact, Blair Wallace who was Deputy Chief Constable at that time and who steadfastly defended the Chief Constable’s reply accepted that he had worked with almost every Secretary of State in Northern Ireland and never had a problem over confidentiality with a Secretary of State on a one to one basis.³¹ This Secretary of State clearly felt she had an obligation to the family of Robert Hamill to find out as much as she could about this case and in particular if there was any truth in the allegation that the police colluded with those responsible for this sectarian murder. In such circumstances, we submit, the Secretary of State should have been at least informed of the existence of a specific allegation of collusion against a specific policeman in order that she could determine, in consultation with the police, how she could best fulfil her obligations to the Hamill family and to the public interest.**
42. We wish to stress that we are not submitting that the Secretary of State should be receiving representations from unhappy victims and seeking explanations from the police in any way as an everyday part of her function. This was not a normal case however and the fact is she decided she did require information and it was the statutory duty of the chief Constable to give it to her.
43. Mr Rogers was perfectly comfortable with the suggestion that the Secretary of State could have been given more information without the independence of the police being in any way compromised.³² He also said in evidence that, had he known the investigation of the “tipping off “ allegation was not being supervised he would have brought it to the attention of the Secretary of State who had the power to refer it to the

³⁰ Simon Rogers paragraph 15 page 82073³⁰ Simon Rogers paragraph 15 page 82073

³¹ May 21st page 68

³² Page 116 line 20

ICPC herself.³³ If it was considered to be inappropriate for operational reasons to give the family this information, there is no reason why the Secretary of State could not have been told that. These are not inconsistent propositions. Informing the family was only one of a number of options open to her. She could have exercised her statutory powers to ensure supervision and indeed to make her own enquiries as to the status of the investigation without telling the family any of the detail. As was evident from the note of Sir [REDACTED], the Executive was entitled to feel uncomfortable that someone against whom an allegation like this was made should be policing the streets of Portadown.³⁴

44. Even if there were operational reasons for not informing the family of the deceased in the early stages of this investigation, we can think of no reason why they were not informed at some later stage. By the time the Secretary of State was making her enquiries of the Chief Constable both Tracy Clarke and Timothy Jameson had indicated their unwillingness to give evidence and charges against all but one of the original accused had been withdrawn. If there was a view that there was a risk of interference while the DPP was deliberating, then why could the family not have been told after the decision had been taken? One has to wonder that if the Coroner had not informed the family of this allegation in 2000 might they ever have found out. Had they never found out they would not have been able to bring such pressure to bear on the Executive as they did and this Inquiry would not be taking place. It is interesting to note from the statement of Mr Rogers that, even then, the Secretary of State was keeping under review the possibility of a Public Inquiry in this case.³⁵
45. Whether the wording of the Chief Constable's reply to the Secretary of State on this point was a deliberate subterfuge or not may be a difficult question for the Panel to determine. He may have met, just, his statutory obligation but he was certainly not giving the Secretary of State "as much detail as possible". We submit however that the question of whether he ought to have given her more information must be considered in light of our earlier submission as to the credit worthiness of Sir Ronnie Flanagan as a witness.
46. It should further be considered that in the course of preparing his reply to the Secretary of State he clearly had to make a conscious decision **not** to tell her of the existence of a specific allegation. This does not sit well with his evidence that he had no knowledge of this aspect of the inquiry. Neither he nor ACC White, we submit, could possibly have been telling the truth to this Inquiry when they made their 2006 statements that they had never heard of this allegation until 2000. This was a highly charged and highly political case. The circumstances of the allegation against the policeman had to be very unusual. We submit that when the news of the abandoned

³³ Page 125 line 4

³⁴ 39625

³⁵ Paragraph 24 82076

inquest came in June 2000 they knew exactly what was involved in terms of the extent of the alleged collusion of Reserve Constable Atkinson.

THE ASSISTANT CHIEF CONSTABLES

ACC Raymond White

1. Mr Raymond white was Assistant Chief Constable of Crime in 1997. He made a statement to the Inquiry on 25th July 2006 and a supplementary statement dated 24th January 2009.² He gave evidence on May 20th.
2. At the bottom of page 4 of his first statement Mr White said that he was not aware that allegations had been made against Reserve Constable Atkinson from the outset or that they were supported by telephone billing.
3. In his subsequent statement at paragraph 17 he states that it would have been impossible for him to have had a supervisory role in a major investigation and that this would have been the function of the SIO. He explained that there were maybe 5 or 6 murder enquiries ongoing at any one time and it would have been impossible for the senior officer to be popping in and out all the time. He says later in paragraph 24 that he did not recall having regular briefings about the Hamill investigation but that this was not unusual as he did not have briefings on the many murders that had taken place. He does recall however in paragraph 26 that DCS McBurney consulted him before going to Wrexham, partly to obtain approval to make enquiries outside the jurisdiction and partly to satisfy himself that his line of investigation was sound.
4. In his evidence, when questioned by Mr Underwood QC, Mr White explained the supervisory functions of the ACC of Crime. He explained that there were 5 or 6 officers of Chief Superintendent of Superintendent rank who read files before they went to the DPP. These were not cursory glances at the file; they were thoroughly read and may have involved telephone calls to the investigating officer to discuss pros and cons of matters relating to the investigation.³ Mr Underwood subsequently put to Mr White some of the glaring omissions and weaknesses in the crime file, not least the reliance by Mr McBurney on the Mc Kee alibi for the phone call. These questions were understandably put on the basis that the supervising reader of the file simply would not have been able to spot some of these issues. Mr White could only really confirm that view and appears to accept that the supervisory system at the time had its limitations. We submit that this is something the Panel may wish to consider further.⁴

¹ 81253

² 81659

³ May 20th Page 57 line 6ff

⁴ Ibid page 62

5. We wish to make some further observations however about the evidence of this witness in the context of the submission above concerning the apparent lack of interest at this level in the conduct of the investigation against Reserve Constable Atkinson. It has turned out that this witness, like his Chief Constable, had a good deal more knowledge of the allegation against Reserve Constable Atkinson than he at first admitted. He too was at the meeting on the morning of Monday 13th May when the matter was raised by ACC Hall. Not only that but he authorised the request to obtain the telephone billing records and accepted to Mr Underwood QC that he would have been given some detail about the allegation in a synopsis in the course of that process.⁵ His evidence is that he now has had the benefit of reading these documents but had no recollection of this when making his statement.
6. Later in his evidence Mr Mc Grory QC questioned Mr White about the contents of his briefing note to the Chief Constable prior to the latter's reply to the Secretary of State's request for information following her meeting with the Hamill family on 24th November 1997. The note is dated 18th December and is signed by this witness.⁶ The note, under the heading "Relationship between Accused and Police Officer"⁷ refers to the fact that there was a criminal investigation and that a file would be submitted to the DPP. This is a document that will be all too familiar to the Panel as Mr Mc Grory QC raised this and other correspondence with quite a number of witnesses and it forms part of a more lengthy submission elsewhere.
7. Although the former Assistant Chief Constable denied this implied he had any knowledge of the file or its contents⁸ we submit that it is further evidence that he had at least some reason to be reminded that there was an ongoing investigation into an allegation of serious corrupt behaviour by a policeman.
8. We are not in a position to make a firmly grounded submission that this witness was lying to the Inquiry about his state of knowledge of this investigation when he made his first statement. The Panel may think it odd however that both the Chief Constable and the Assistant Chief Constable of Crime initially told the Inquiry that they had no knowledge of the Atkinson allegation until 2000 only to have to accept that they were indeed seized of such information when confronted with documentary evidence. Neither man appeared to have any difficulty remembering discussions with DCS Mc Burney about the allegation when he came to them in 2000.
9. As in the case of the Chief Constable the remarkable feature of this witness's evidence is that the investigation of an allegation of the commission of a most serious crime by a police officer in the course of his duty appears to have gone virtually

⁵ Ibid page pages 58 - 59

⁶ 15385 to 15389

⁷ 15388 at 7.1

⁸ May 20th page 96 line 8

unnoticed and unsupervised by the senior command of the RUC. It is open to the Panel to consider, we submit, that the Assistant Chief Constable of Crime must have had a good idea what was going on in the investigation of Reserve Constable Atkinson's conduct and could and should have had some responsibility for the strategic direction of the investigation. In the alternative, he was informed of the existence of the allegation and then promptly forgot all about it. That is still a most serious indictment of the leadership of this police force, if it was in fact the case.

ACC Frederick Hall

10. This witness gave evidence on September 2nd. He was Assistant Chief Constable for South region, which meant that he was in effect the regional commander of those charged with the conduct of the investigation into the murder of Robert Hamill and indeed of the criminal investigation into the conduct of Reserve Constable Atkinson.
11. His evidence is that he was very aware of the Hamill murder and was responsible for the press strategy around the time of the murder. Indeed he gave television interviews sympathising with the family and appealing for witnesses and so forth. He arranged to meet Detective Chief Superintendent Mc Burney and P39 on Sunday 11th May so that he would be well briefed on the case for the Monday morning meeting with the Chief Constable, Deputy Chief Constable and other ACC's. It was at this Sunday briefing that he learned of the evidence from Tracy Clarke about Reserve Constable Atkinson.⁹ He brought this information directly to the meeting the next morning and made it clear that anything touching on the integrity of a police officer was a very serious matter in his eyes.¹⁰
12. This witness has said that had personally spoken to the Chief Constable about the case two or three times around the time of the death and that those at the meeting were well aware of the case when he raised the matter of Reserve Constable Atkinson with them.¹¹ He recounted how he himself phoned Mr Murnaghan to make sure he was aware of this aspect of the case. He was very clear in his evidence that the purpose of that call was to ensure ICPC supervision of the extra dimension in respect of Reserve Constable Atkinson that had now come to light through Tracy Clarke. He informed the Inquiry that he was extremely surprised therefore to learn in 2007 that this aspect was not actually supervised.¹²
13. Mr Underwood QC, on behalf of the Inquiry, raised the issue of consideration of suspension of Reserve Constable Atkinson at this or any other stage.¹³ This witness

⁹ September 2nd page 31

¹⁰ Ibid page 32 line 15

¹¹ Ibid page 52 line 10

¹² Ibid page 36 line 23

¹³ Ibid pages 40-42

could only say that as far as his role was concerned, suspension was not a matter for him. It was really a matter for G Department that governed Complaints and Discipline. He simply could not assist with the question of consideration of this issue at any time. The witness pointed out that there might be all sorts of reasons why immediate suspension might not have taken place and that by the time Atkinson was confronted with the phone calls he took off on the sick.

14. It is our submission however that it is not just the failure of the RUC to suspend Atkinson that should be criticised but the failure to even consider it. Not a single senior policeman in this force can point us to any evidence that it was even considered. Insofar as this witness is personally concerned we accept his complete honesty in his recollections and dealings with this Tribunal. However, we must raise our concern that no one at this level appears to have known the first thing about the investigation of Reserve Constable Atkinson after it was discussed at their meeting on Monday 12th May 1997; not the Chief Constable, not the ACC of Crime and not the ACC of South region. This, we submit, is a shameful indication of the lack of interest of senior police in relation to this most serious matter and if nothing else they must be held collectively accountable for any failings in the conduct of the investigation.

THE INDEPENDENT COMMISSION FOR POLICE COMPLAINTS

1. The Independent Commission for Police Complaints was a statutory body set up under the Police Northern Ireland Order 1987. (hereinafter referred to as the Order) The purpose of the body was to ensure some degree of independent supervision of complaints against police. The investigation of complaints was to remain with the existing Complaints and Discipline branch of the RUC.
2. The construction of the legislation envisages complaints first being communicated to the Chief Constable whose first duty it was to take desirable steps to obtain or preserve evidence. The next step was the determination of “the appropriate authority”. In this case that authority was the Chief Constable himself as the complaint did not concern the conduct of a senior officer.
3. Once it is determined that the Chief Constable is the appropriate authority he is obliged by the terms of Article 5 to consider whether the matter can be resolved informally. If that cannot be done then he must appoint a member of the police force or some other force to investigate the complaint.
4. Under Article 7 all complaints being formally investigated must be referred to the Commission. The Chief Constable may also refer other matters not already the subject of a complaint to the Commission under Article 8 by reason of their gravity or exceptional circumstances. Article 8(2) grants the power to the Secretary of State to make referrals to the Commission, “in the public interest” and if he does Art 9(1)(b) makes supervision by the Commission mandatory. Article 9(1)(a) makes it mandatory for the Commission to supervise if the alleged conduct resulted in the death or serious injury to another person. Otherwise, under Article 9(3) the Commission may chose to supervise if the Commission considers it “desirable in the public interest” to do so.
5. The evidence in the case of Robert Hamill has revealed that there was both a referral from the Chief Constable and a complaint made on behalf of the family through a solicitor. In the latter case, the Chief Constable made a referral under Article 8(1) but there does not appear to be any formal referral actually received.¹ Rosemary Nelson did write a formal letter of complaint saying that there was a serious assault on her client’s bother and that, **“certain police officers witnessed this assault and did not intervene as promptly as possible”** This letter is dated 6th May and is date stamped by RUC Complaints and Discipline on May 7th².
6. There is further confusion as to the precise basis on which the Commission came to supervise the investigation of this complaint. On the one hand, a letter from Mr Murnaghan, who was appointed as the Commission member to DCS Mc Burney, dated 13th May suggests the Commission exercised its discretion to supervise but it

¹ See page 44407, which is a memo from the ACC of complaints to Command Secretariat complaining about this oversight once it was revealed following an enquiry by and NGO

² 15272

does not spell out the precise Article of the Order. A discretionary supervision would have been under Article 9(3) whereas a mandatory supervision on the basis that the complaint concerned death or serious injury as a result of the conduct would have been under Article 9(1). Mr Greg Mullan, an official in the ICPC gave evidence on May 15th and was asked about this by Mr Underwood QC who was understandably puzzled by the use of the term “must supervise” in Mr Mullan’s signed statement, which appeared to conflict with language of the letter implying a discretionary supervision. Mr Mullan explained the letter was a standard letter that he accepted could be improved. It is perhaps worth noting that the purpose of this letter was to inform DCS Mc Burney that he was under an obligation to submit his report to the supervisor and not to establish the basis of the Commission’s engagement. We submit that it was certainly open to the Commission to take the view that this was a mandatory supervision under Article 9(1)(a) on the basis that the alleged failure to intervene caused Mr Hamill to become seriously injured. In saying that the wording of 9(1)(a) may only envisage a situation where police officers were accused of causing the death or serious injury by, for example, the reckless discharge of a firearm or by reckless driving.

7. In view of the fact that the Commission did supervise this complaint it is unlikely that anything turns on this. A more important question, we submit is whether the Commission should have involved itself in the supervision of the specific allegation brought to the attention of the police by Tracy Clarke that Reserve Constable Atkinson had been colluding with Alastair Hanvey. In order to address this question we need to consider whether or not the information provided by Tracy Clarke should have been considered a complaint in itself or if it was simply evidence that was relevant to the existing complaint.
8. The Interpretation clause in the Order is to be found at Article 2. It defines “complaint” as **“a complaint about the conduct of a member of the police force, which is submitted by, or on behalf of, a member of the public”**. As the ordinary meaning of the word “complaint” is an expression of dissatisfaction, we do not feel we can submit that the information coming from Tracy Clarke, as a matter of fact, could have been considered as a standalone complaint. Viewed entirely separately from the existing complaint then as a matter of law it did not fall to be supervised by the Commission.
9. However, the question of whether or not it should have been supervised as part of the complaint submitted by Rosemary Nelson is another matter altogether. It is our submission that this information was powerful and cogent evidence going to the very heart of the existing complaint. Mr McBurney clearly thought so when he spoke to Mr Murnaghan and Mr Mullan of the ICPC at Portadown police station at 8.30 pm on the evening of Monday 12th May 1997. The two page file note of this meeting prepared by Mr Mullan shows that Mr McBurney introduced this information in the context of the investigation of the complaint into the alleged inactivity of the police in the land Rover.³ For some reason or other however, he does not appear to have furnished the ICPC with the statement of Tracy Clarke but he certainly did bring it to their

³ Bottom of 27269 into top of 27270

attention.⁴ ACC Hall clearly thought so for we heard evidence from him that he specifically phoned Mr Murnaghan following the Monday meeting of senior police to make sure that this information was being factored into the investigation of the complaint.⁵

10. Of very great significance, we submit, is the supplementary statement of Mr Paul Donnelly, former Chairman of the ICPC following his evidence on the last day of the evidential hearings. So important is this statement to this part of our argument that we would ask the Inquiry to read it in its entirety.⁶ In particular, we highlight the following paragraphs.
11. 3. *When a referral of a complaint is made even through a solicitor, the complaint is from a citizen saying "something bad has happened and I want you to look at it". Not many people would know the difference between, for example, incivility and abuse of authority or the difference between the disciplinary concept of neglect and the criminal concept of neglect of duty in public office. So my sense is that as soon as this tip-off was identified it should have automatically come under the ambit of the complaint investigation. I can understand why senior police officers were of the view that the Atkinson allegation was linked to the original complaint referred to the Commission and that they thought it was being supervised. It was reasonable on the senior police officers behalf to have expected the linking of the Atkinson allegation because the practice was quite normal.*
12. 7. *What I am able to say from my knowledge of the referral process is that there was flexibility in the way cases were treated, sometimes the threshold for supervision was low and not consistent with the prima facie evidence presented in the complaint. Certainly the trigger always had to be a referral from the police. There was also flexibility in merging investigations where two closely linked concerns were dealt with as two parts of the one piece.*
13. 8. *I recall the case of Rosemary Nelson allegations as being a prime example but there were others. When the Metropolitan Police took over the Rosemary Nelson Inquiry we did agree to add associate complaints to that investigation. Sometimes a referral makes one allegation against a police officer or police officers, you carry out the investigation and you discover that there are other infringements of discipline or criminality that have been unearthed in the course of the inquiry on matters which the citizen has not complained. Therefore informal additions to an initial public complaint were not rare and as I have explained would be taken into the initial investigation as a matter of practice.*
14. This evidence of Mr Donnelly clearly shows that there was plenty of scope within the practices of the ICPC to regard the information of Tracy Clarke as being germane to the existing complaint. We believe that a close examination of the early approach to this case by Mr Murnaghan would suggest that he too initially took this view.

⁴ Questions of Mr Underwood QC of Greg Mullan, May 15th

⁵ September 2nd pages 37 and 37

⁶ 82230 - 82235

15. The Land Rover police were not interviewed until the following autumn. Mr Murnaghan supervised all of those interviews and attended the first of two interviews of Reserve Constable Atkinson on 9th September 1997.⁷ It is worth noting that Reserve Constable Atkinson was the only one of the four to be cautioned for the offences of “assisting offenders and withholding information”. Mr Murnaghan therefore must have considered himself to be supervising this aspect of the alleged criminal conduct of RC Atkinson. The transcript of the interview runs to some 63 pages, the last 15 pages of which is taken up with questions about the relationship between this policeman and Hanvey. Indeed, it was Inspector Irwin’s understanding that the “tipping off” aspect was to be very much part of that interview.⁸ We are of course very critical elsewhere of the failure of DCS McBurney to take this opportunity to confront Atkinson with the actual evidence of the phone calls and believe that his failure to do so was either a critical strategic mistake or evidence of an attempt to give Atkinson a chance to produce an explanation. What is not in doubt, we submit, is that this interview was part of the investigation into the collusion of this policeman with one of the murderers of Robert Hamill.
16. What followed next was the effective removal by the ICPC of itself from its supervision of the investigation of this aspect of the complaint. The next interview of the Reserve Constable was scheduled to take place in October but in an ICPC file note Mr Mullan confirmed the following to Mr Murnaghan, “*On your behalf, I advised that this aspect was outside the Commission’s remit*”⁹. Mr Murnaghan then did not attend the October interview of Atkinson and did not continue to supervise Mr McBurney in the conduct of this aspect of the investigation.
17. What Mr Mullan said in evidence was that they just didn’t see the relevance of this to the investigation in which they were involved.¹⁰ He said that the supervisor did not raise any concern about it with him and the police did not ask them to supervise it. What Mr Mullan did do however was make an observation on the Mc Burney neglect report that he had his suspicions about the purpose of the phone calls from the Atkinson home to the Hanvey home but that Atkinson had supplied witnesses to explain them, therefore there was little prospect of proving any allegation. Mr Underwood QC established that the ICPC were unaware of the results of the request for phone records, of the fact that Inspector Irwin had received the intelligence of the phone calls from Andrea McKee or even that a silver jacket belonging to Hanvey appeared to be missing. Mr Underwood QC put to Mr Mullan that the effect of his comment gave the false impression that the ICPC had indeed supervised this. We whole heartedly agree with Counsel to the Inquiry in this. Indeed Mr Mullan accepted to the Chairman that he had made a comment on a file that had gone to an issue over which he had no concern.
18. This rather astonishing evidence must be seen in the context of the later evidence of Mr Donnelly to the Inquiry on September 22nd that the ICPC simply was not an organisation that was fit for purpose. He had made it clear in his statement that the attitude of some of the supervisors was almost sycophantic towards the police.

⁷ The transcript is to be found at 61223 to 61286

⁸ September 9th page 128 line 15 - page 129 line 13

⁹ 27209

¹⁰ May 15 the pages 8 and 9

Although he did not say this of Mr Murnaghan, he did reveal that he was undergoing treatment for terminal cancer at the time and that this investigation came not long before he ceased had to stop work as a result of his illness.

19. We are a loss to understand why Mr Murnaghan chose to remove himself from this part of the investigation. He can only have taken this decision between the September and October interviews of Atkinson. Had he formed a view earlier that he should not supervise this aspect of the complaint then he would not have allowed police to caution Atkinson in his presence and question him about offences, which would then have been well outside his remit. Perhaps some representation was made to him from somebody involved that he should not continue with his supervision and perhaps his judgement was clouded because of his illness. Only he and Mr McBurney could have shed some light on this but regrettably that will not now be possible.
20. As for Mr Mullan, his conduct of this complaint simply beggars belief. It is a great pity that we had not the material from Mr Donnelly before Mr Mullan gave his evidence for he could then have been better challenged on his evidence that this allegation was plainly outside the scope of the existing complaint and that was the end of the matter. As it is, we submit that the ICPC was in clear breach of its statutory duty to supervise the investigation of this aspect of the death of Robert Hamill. The failure to do so had profound consequences adverse to the future conduct of the murder investigation. A diligent and thorough supervisor should have been in a position to challenge, first the investigative strategy and second the recommendations of Detective Chief Superintendent McBurney in the submission of the neglect file. If DCS McBurney was on the lookout for an opportunity to protect Reserve Constable Atkinson he was handed it on a plate by those within the Independent Commission for Police Complaints who had responsibility for the supervision of this case.

The DPP

Failure to consider use of Art 3 re Tracey Clarke

1. Tracey Clarke was a key prosecution witness in the case against the six charged with the murder of Robert Hamill. As was the practice of the Prosecution at that time senior prosecuting Counsel consulted with the witness at an early stage. In the case of Tracey Clarke this was done on the 17th October 1997 with Gordon Kerr QC. In attendance was Roger Davison of the DPP, D'Supt Cooke, D/Sgt Bradley and D/Con McAteer. During the consultation Mr Kerr took Tracey Clarke through her evidence and having done so was satisfied that she was a credible witness. He was prepared to put her forward as a witness of truth and was convinced she was giving as detailed a recollection as she could¹. Roger Davison of the DPP, although his recollection was not good, said in evidence that had he felt she was not giving truthful evidence he would have made a note to that effect but had not done so². Indeed in his note of the consultation he took the view that Tracey Clarke appeared to be telling the truth and that if she gave evidence would come across as very truthful³.
2. Roger Davison noted that the witness looked worried and as soon as Gordon Kerr began speaking to her she began to cry. At the end of the consultation she was asked about giving evidence but said that she could not because she loved Allister Hanvey and knew the others. Davison also noted, in the context of her giving the reasons for not wishing to give evidence, that she and her family were all very worried about the possibility of loyalist attack⁴. In oral evidence he said that although his note might read like that, he had got the idea she was afraid from her family⁵.
3. Gordon Kerr, in his note of the consultation, records the reason from her for not giving evidence, to be that she loved Allister Hanvey and the others were friends of hers. He records that it was only her parents who had said anything which would have laid a ground for an application under Art 3. of the Criminal Justice (Evidence etc.) (NI) Order 1988. Her own declared reason did not provide such a basis. He also records that he asked Roger Davison to take instructions from Police about this matter and was simply advised that she would not be a witness and should be ignored for the

¹ 10-02-09 p.2

² *ibid* p. 8

³ 17591

⁴ *ibid*

⁵ 16-09-09 p.11

purposes of his opinion⁶. Roger Davison makes no such note in his record of the consultation.

4. D/Supt Cooke was in attendance on behalf of the chief Constable who would be represented at consultations with witnesses where issues may arise between police and the DPP in regard to how a case would be approached⁷. In his statement Mr Cooke said that he, like Kerr and Davison, believed she was telling the truth about what she saw. He also recalled she had said she was too frightened to give evidence and had a real fear about retribution by loyalist paramilitaries⁸. In oral evidence he said his impression was that while she may have also given other reasons for not wanting to give evidence, she had a fear about what might happen if she did give evidence.
5. D/Sgt Bradley in oral evidence recalled that he also thought she was telling the truth and would have made a good witness⁹. D/Con McAteer did not give any account of the consultation but, having been involved in recording the statement from Tracey Clarke said in evidence that, at the time, given the details she was able to relate he had no doubt that she was telling the truth¹⁰.
6. At no stage during the prosecution of the six defendants did Tracey Clarke tell the DPP or police that what she had said in her statement was untrue. Indeed all police and legal personnel who were in a position to evaluate her evidence were firmly of the view that she was telling the truth about what she had seen on the night.
7. Whilst Gordon Kerr asserts that he asked Roger Davison to take instructions from the police regarding a possible Art 3. application, the available documentary evidence seems to suggest that in fact what was given consideration was compelling her to give evidence.
8. Raymond Kitson took over conduct of the file on the 24th October 1997. He had telephoned Gordon Kerr QC the previous day who communicated his belief that Tracey Clarke could give credible evidence. He agreed with Roger Davison's view

⁶ 17634

⁷ per Robert Cooke 15-09-09 p. 18

⁸ 80204 para. 7

⁹ 14-05-09 p. 63

¹⁰ 29-04-09 p. 100

that without Tracey Clarke and Timothy Jameson there was no case against Forbes, Hanvey or Robinson. Mr Kitson discussed the compellability of Tracey Clarke with Mr Kerr QC who agreed it was a possibility but was a matter for the DPP. According to the note Mr Kerr QC told Mr Kitson that he had mentioned compellability to Mr Davison¹¹.

9. Mr Kitson then contacted D/I Irwin to obtain the police view on compellability. Mr Irwin's view was that if compelled there was no reasonable prospect of Tracey Clarke giving evidence. He did not consider that, no matter what happened, Tracey Clarke would give evidence against any of the accused¹². Mr Kitson, notwithstanding this, asked him to speak to his superiors and reflect on the position overnight.
10. On the 28th October Mr Kerr again spoke to Mr Irwin who communicated the view of P39 that no matter what sanction was applied to Tracey Clarke she would not give evidence. Mr Kitson also notes that he spoke to D/Supt Cooke whose view also was that she would not give evidence¹³.
11. Mr Kitson, on the basis of this, and that there was no other evidence likely to be forthcoming, records a decision to withdraw the charges against Forbes, Hanvey and Robinson¹⁴. There is no record of an application by way of Art 3. having been considered at all.
12. In oral evidence Mr Kitson agreed that evidence of the fear of a witness could be inferred rather than expressed openly by them. He also agreed that were there were mixed motives for not wishing to give evidence, one of which was fear, then consideration should be given to putting the matter before the Court¹⁵. This would depend on how persuasive the evidence was of fear and it would need to be weighed against the evidence of the emotional attachment to Hanvey and his friends.

¹¹ 18342 para. 7-9

¹² *ibid* para. 10

¹³ 18345 para. 2-3

¹⁴ *ibid* para. 4

¹⁵ 15-09-09 p. 67

13. Mr Kitson's recollection, in oral evidence, was that Tracey Clarke's evinced reason for not giving evidence was that she was in love with Allister Hanvey. His recollection was that the parents were concerned or worried about loyalist paramilitaries but not terrified. His view was that during the consultation she was not expressing any fear at all¹⁶. This is inconsistent, the family submit, with both Roger Davison's note and the recollection of D/Supt Cooke. The evidence shows that fear of retribution by loyalist paramilitaries was expressed and the only contemporaneous record of consideration being given to this issue is that of Gordon Kerr QC¹⁷. The DPP records do not disclose that this matter was considered by them or the view of police sought in respect of the matter. The focus of the office of the DPP seems to have been the issue of compellability and, when this avenue appeared closed, no other avenue was explored and the prosecution was dropped.
14. It is the family's submission that serious consideration should have been given to putting the matter before the Court. It appears, from the documentary evidence that the views of police who were at the consultation were not sought on the issue of fear. Similarly this issue was not canvassed with P39 who had dealt with Tracey Clarke when she made the statement and noted that she and Andrea McKee were frightened about that¹⁸. Further there is no evidence of any direction to police to seek the family's view on the issue of fear and to attempt to obtain statements from them about what they had expressed at the consultation.
15. The evidence of the police present at the consultation as to the witness's demeanour would have been admissible to support an application under Art. 3: *In re Neill* [1991] 7 NIJB 83. It may also have been argued that evidence of the demeanour of her family could similarly have been given. The evidence of P39 as to the witness's demeanour would, it is submitted, also have been admissible to support the application as evidence of a continuing state of fear. Furthermore, no expression of reluctance on her part attributed to her relationship with Hanvey or her friendship with the others was evinced at the time of her making of the statement. Rather, the preponderance of the evidence is that she expressed fear and apprehension at that time. This, it is submitted, is evidence that could be considered when deciding the weight to be attributed to the reason expressed by Tracey Clarke that she did not wish to give evidence because of her love for Hanvey and friendship with the others.

¹⁶ *ibid*

¹⁷ 17634 2(b)

¹⁸ 01-05-09 p. 151

17. In Mr Kitson's note¹⁹, the reason for dropping the prosecution is that, without the evidence of Tracey Clarke and Timothy Jameson, there was no other evidence in the case. Whilst there was no other evidence which independently connected the accused to the offence police were already aware that telephone calls had been made between the Atkinson and Hanvey household which supported the account of Tracey Clarke regarding what Hanvey had told her about the advice he had received from Atkinson²⁰. This evidence, it is submitted, would also have been admissible on an application under Art. 3, as it would have helped inform the court as to the reliability of the statement that it was sought to adduce under that provision.
16. A further issue to consider is whether the DPP acted with due diligence in withdrawing the prosecution when they did. The prosecution test, at that time, was whether there was reasonable prospect of a conviction²¹. The question in this instance is not whether the DPP reasonably took that view having lost the evidence of Clarke and Jameson, but rather whether they acted with due diligence in failing to explore the possibility of her evidence being admissible under Art. 3. The appropriate time to consider the question of a reasonable prospect of a conviction was after having investigated the issue of fear and, if the evidence was available, making the application to the Court to have the statement admitted. It should be remembered also that, at this time, the matter was at the committal stage, the application would have been made to the Magistrate whose sole concern would have been whether sufficient evidence existed to establish a *prima-facie* case to return the accused for trial²².

Decision to drop proceedings against Stacey Bridgett

17. On the 28th October 1997 Mr Kitson recorded a file note to the effect that the forensic evidence regarding Stacey Bridgett's blood was with him²³ but that he did not consider it sufficient to support the proceedings against him but that he was conscious that counsel was advising on this matter²⁴.

¹⁹ 18345

²⁰ per Michael Irwin 80530

²¹ 18-09-09 p.72

²² *R v Epping and Harrow JJ* [1983] QB 433

²³ 18342

²⁴ 18345

18. As noted above Mr Gordon Kerr QC was instructed in the case²⁵. His opinion was received by the DPP on the 13th November 1997²⁶. In it he deals with the case against Stacey Bridgett²⁷. He notes that Jonathon Wright saw Bridgett fighting, Con Neill saw him face to face with another male and later with blood around his mouth. He noted that Con Silcock had been told by a female that one of the youths that had jumped on the head of one of the injured men had been called out to as Stacey by someone in the crowd and he had responded and he was bleeding from the nose. He opined that this evidence was inadmissible, presumably as it offended the rule against hearsay. He further noted that Con Cooke had seen Bridgett at the front of the crowd trying to get at the injured and he was also observed by Con A as being in the crowd again bleeding from his nose.
19. He referred to Bridgett's denials that he was in the crowd and the forensic evidence by way of his blood on Robert Hamill's trouser leg. This confirmed he had lied at interview. He went on to say that he would like further information on the nature of the bloodstain saying that his view was that the available evidence it could be shown that Bridgett was very much involved but the nature of his involvement was not clear²⁸.
20. As a result of this Roger Davison discussed the blood staining with Lawrence Marshall who, while reluctant to express a view as to how it had got there, said it was consistent with Robert Hamill lying on the ground and a drop of Bridgett's blood dripping on him as he stood over him²⁹.
21. On the 18th November 1997 a meeting was held between Roger Davison, Raymond Kitson and Gordon Kerr QC. During that meeting, according to Mr Kitson's note, Mr Kerr QC was of the opinion the fact that Bridgett had lied to police, as established by the forensic evidence, was insufficient to inculcate him. he said that in the circumstances where he was being interviewed about a murder and had denied being near the deceased would not be regarded as very compelling by a Court³⁰. On the issue of affray his opinion was that the problem was that it could not be shown exactly what he had been doing or had done around the time of the incident.

²⁵ 81411 para. 6

²⁶ 17633

²⁷ 17639 para. 5

²⁸ 17640

²⁹ 18040

³⁰ 18043

23. The charges against Bridgett were withdrawn in November 1997. In a memorandum to the Director of Public Prosecutions, Sir Alasdair Fraser, in the context of an enquiry from the Secretary of State, Mr Kitson stated that consideration had been given to charging the suspects, including Bridgett, with public order offences. However, given the time spent on remand in custody, some six months, and bearing in mind the maximum sentence in the Magistrate's Court for such offences was six months, it was not considered necessary to prosecute for such offences³¹. In this memo Mr Kitson did not discuss the possibility of a charge of Affray.
24. The case against Bridgett and the others was subsequently reviewed within the DPP by Mr Alan White after representations on behalf of the family. He came to the view that the opinion of senior counsel that there was no reasonable prospect of a conviction relating to the death of Mr Hamill was correct but that the decision not to prosecute for Affray was fine one³².
25. It is the family's submission that the DPP should, at the very least, asked FASNI to further consider the import of the blood staining on Robert Hamill's jeans by way of blood spatter analysis. Lawrence Marshall confirmed in oral evidence that at the time he was not an expert in blood pattern analysis³³. He said that the analysis of the blood staining was selective and he had not been informed at the time that any of the assailants themselves had been injured and bleeding³⁴.
26. Secondly, in conjunction with this, the possibility of the evidence of Con Silcock regarding the unidentified woman being adduced should, the family submit, have been given more careful consideration by the prosecution. Mr Kerr QC dismisses this evidence without analysing whether it might fall into any of the exceptions to the rule against hearsay, in particular as part of the *res gestae* of the offence. The question to be considered is whether the possibility of concoction or distortion can be disregarded. If the circumstances in which a statement was made were so unusual, startling or dramatic as to make it an instinctive reaction, then a Court could conclude that the possibility of distortion or concoction could be excluded, provided the statement was made in conditions of proximate but not exact contemporaneity³⁵.

³¹ 18340

³² 18324

³³ 13-05-09 p.13

³⁴ *ibid* p. 21

³⁵ *R v Andrews* [1987] AC 281 H.L.

27. The *res gestae* point was raised with Mr Kerr QC in oral evidence. He firstly said that to qualify as *res gestae* it was not a case of whether the statement was concocted but rather that it had to be made instantly, as the offence was happening. He asserted that the statement of the woman was made after the assault on Robert Hamill and rather at a time when members of the crowd were being held back. When challenged as to whether it had to be instantaneous he said that the statement had to be made when the offence was continuing; there was continuing involvement in the offence. He did concede that the possibility of concoction was something that had to be excluded but that because a person was in a situation which excluded that possibility did not necessarily mean that the statement qualified under the *res gestae* rule. He said that in this case the person was not reporting something that formed part of the assault which caused the death, albeit that it was part of the continuing disorder³⁶.
28. With the greatest of respect to Mr Kerr QC, the family submit that this misstates the law on *res gestae* and the facts of this case. What in fact Con Silcock said in his statement was:

*“On several occasions I pushed youths away from the injured men as they appeared to try and kick the men. One of the rowdy youths was pointed out to me by a woman wearing a white top, who alleged that this youth had jumped on the head of one of the injured men. This youth was wearing a grey charcoal top. He also had blood coming from his nose. A member of this crowd called to this person, calling him Stacey. He responded to this name.”*³⁷

What is clear from this is that the woman was reporting something which had occurred as part of the assault which caused the death of Robert Hamill, viz, that the youth she pointed out had in fact jumped on Robert Hamill’s head. The remainder of the passage is Con Silcock’s own direct observation that this person was bleeding from his nose and answered to the name Stacey.

29. The leading authority on *res gestae*, was then (and still is) *R v Andrews*³⁸. Their Lordships in that case pointed out that the primary question that a judge must ask

³⁶ 16-09-09 p73

³⁷ 00700-00701

³⁸ [1987] AC 281 H.L.

when considering the issue of admissibility under this doctrine was whether the possibility of concoction or distortion can be disregarded. The issue is not one therefore primarily of the circumstances or contemporaneity with them but rather whether those factors point toward or away from the possibility of concoction or distortion. In short there are no hard and fast rules about when such a statement should be made.

30. In this case the family say that the statement was clearly made very shortly after the assault. Not only was disorder still continuing but the person pointed out was still part of the crowd and one of those identified by Silcock as attempting to get at the injured men. There is no evidence to suggest that the statement may have been concocted, indeed the fact that the woman did not identify Bridgett by name points away from the possibility that she concocted the allegation. The possibility of distortion is excluded by the fact that the statement was made in conjunction with a physical pointing out of the assailant and that it was made directly to a police officer who was in the presence of the alleged attacker. The scientific evidence further serves to exclude the possibility of distortion. Taking all these factors into consideration the family submit that there is a compelling argument for admitting that part of Con Silcock's statement in evidence.
31. That being so, the family further submit that there was, and remains, the reasonable prospect of a conviction of Stacy Bridgett for the murder of Robert Hamill.
32. If, however, that portion of the evidence of Con Silcock is inadmissible as hearsay, the family contend there remains sufficient evidence to prosecute him for the offence of affray. Mr White in his review of the evidence said that the decision not to prosecute was a fine one. That is another way of saying that, had the decision been to prosecute, he would not have disagreed with it. The main difficulty identified by Mr Kerr QC in his opinion seems to be that the evidence did not what exactly Mr Bridgett had been doing.
33. In this jurisdiction in 1997 affray was a common law offence defined as unlawful fighting used, or display of force, by one or more persons in a public place in such a manner that a reasonable person might reasonably be expected to be terrified³⁹. It typically involves a continuous course of conduct the criminal nature of which

³⁹ Valentine's NI Law.

depends on the conduct as a whole and it is not necessary to identify and prove particular incidents⁴⁰. Therefore if a defendant is an active participant in a crowd which is engaged, for instance, in unlawful fighting he is guilty of affray.

34. Mr Kerr, as outlined above, noted in his opinion the various pieces of evidence, including an eyewitness account of his actually fighting, which mark Bridgett out as an active participant in the crowd which was engaged in violent disorder. The fact that the pieces of evidence were disjointed, to use Mr White's words⁴¹, is with respect, neither here or there, if anything it serves to demonstrate that his course of contact was continuing which underlines his active participation. This evidence the family contend, allied with the police descriptions of the alarming nature of the incident, was, and is, more than sufficient to provide the reasonable prospect of the conviction of Stacey Bridgett for affray.

The decision to withdraw proceedings against Wayne Lunt

35. The evidence involving Wayne Lunt in the assault on Robert Hamill is found in the statement of Colin Prunty⁴² whom Mr Kerr QC described as one of the most impressive factual witnesses he had spoken to in some time⁴³. In his statement he said he saw a policeman grab a male who was kicking Robert Hamill. He described him as wearing a Rangers scarf and that he was taken away and put in the Land Rover. After 5-10mins he saw this man being let out of the back of the Land Rover and going back into the crowd shouting "up the UV". He asked a policewoman why he had been let go. He described the scarf in some detail and in particular the way it was worn up tight to his neck.
36. Mr Kerr QC consulted with Colin Prunty on the 30th October 1997. Mr McCarey's note of the consultation records that Colin Prunty didn't see anyone, except the man put into the back of the Land Rover, wearing a Rangers scarf⁴⁴.
37. Con A who initially detained Wayne Lunt at the scene describes him as wearing a red, white and blue scarf and says she placed him in the Land Rover⁴⁵. No other suspect is

⁴⁰ *R v Smith* [1997] Cr App R 14

⁴¹ 18324

⁴² 00513

⁴³ 17635

⁴⁴ 18063

described by her as being placed in the Land Rover during the disturbance. When arrested and interviewed Lunt confirmed he was wearing a Rangers scarf⁴⁶.

38. Colin Prunty then saw some news footage in which he purported to identify Dean Forbes as the person he had seen on the night wearing a Rangers scarf⁴⁷. As a result of this Mr Kerr Q.C. again consulted with Colin Prunty. He asked for photographs of Lunt and Forbes to be shown to Prunty. He felt that this was a proper procedure as Prunty was not an identifying witness of Lunt. Prunty was then adamant that Forbes was the person wearing the scarf and not Lunt. On the basis of this it was Mr Kerr's opinion that there was no reasonable prospect of a conviction.
39. It is clear from the other evidence that Prunty is simply mistaken about this. Once he had identified Forbes as the man wearing the Rangers scarf from the television footage he was bound to recognise him in the photograph and this could only serve to compound his error. Not only is there no other evidence of anyone wearing a Rangers scarf that night, only one person is placed by Con A in the back of the Land Rover and this person is wearing a Rangers Scarf. Had Mr Prunty only observed Lunt in the crowd and not also in the Land Rover then his evidence would have been weakened by his mistake. He did not, after being shown the photographs, resile from the assertion that the man in the crowd and in the Land Rover were one and the same. Since however, he witnessed him both in the crowd and in the back of the Land Rover, this coupled with Con A's evidence points strongly to the attacker with the scarf being Wayne Lunt.
40. The family respectfully endorse the view of McCollum LJ expressed in the trial of Marc Hobson that if Mr Prunty's observation that the man in the crowd and in the Land Rover were one and the same then this was strong prima facie evidence of his involvement in the murder⁴⁸. It is the family's submission is that his observations notwithstanding coupled with the evidence of Con A provide a reasonable prospect.

The decision to drop the prosecution of Robert Atkinson

⁴⁵ 00717

⁴⁶ 17643

⁴⁷ 09105

⁴⁸ 08748

41. On the 20th June 2000 Andrea McKee made a statement saying that the statement she had made on the 29th October 1997, insofar as it related to the alibi on behalf of R/Con Atkinson⁴⁹ was false. As a result, after the prosecution of Andrea McKee and her husband Michael for their part in the conspiracy, R/Con Atkinson finally faced criminal proceedings in relation to the part he played in the events immediately after the ultimately fatal assault on Robert Hamill.
42. The facts of the conspiracy were as set out in the Crown summary at the sentencing hearing of Michael and Andrea McKee. In short Michael McKee had told police that he was responsible for the alleged telephone call from R/Con Atkinson's home to the suspect's, Allister Hanvey. Andrea McKee confirmed this telling police they had stayed at the Atkinson's and her husband was ringing Hanvey's to check on their niece Tracey Clarke who was then Hanvey's girlfriend.
42. The committal proceedings against R/Con Atkinson his wife and Kenneth Hanvey were brought before Craigavon Magistrate's Court in 2003 some 6 years after the death of Robert Hamill. The case was listed for hearing by way of mixed committal on the 27th October 2003. Andrea McKee had previously indicated that she was willing to give evidence but wished to travel over from Wrexham and back on the same day. She was escorted by Con Patricia Murphy⁵⁰.
43. At that hearing there were defence objections to the particular RM hearing the case and he discharged himself from the case. The case was therefore adjourned to the 2nd December 2003 to run for 4 days⁵¹.
44. On the 19th December 2003 Con Murphy contacted Andrea McKee regarding the hearing on the 2nd December. Andrea McKee did not indicate any difficulty at that stage according to Con Murphy. On Sunday 21st Con Murphy spoke to Andrea McKee who told her that her son was sick. The constable, in her Inquiry statement based on her notebook from the time, that Andrea McKee told her that her son had mumps and ochtitis(*sic*). His testicles were swollen and there was a concern that he might fit due to his high temperature⁵². She explained that her son's illness had started about 2 weeks previously with an ear infection. He had been taken to see the

⁴⁹ 14956

⁵⁰ 81020 para 13

⁵¹ 33910

⁵² 81021 para 16-17

Doctor twice and there had been one home visit by the Doctor. He had been prescribed amoxicillin and calpol. Andrea told Con Murphy she was intending to take her son to the Doctor on Monday morning. She apologised but was not prepared, as a mother, to leave her child to travel to Court when he was ill.

45. On the morning of the hearing Con Murphy contacted the GP's surgery but the child's doctor was unavailable and the two other Doctors were unwilling to commit anything to writing for the Court⁵³. At the hearing the defence agreed to adjourn the case if Andrea McKee could not travel because of her child's illness. The prosecution were to provide documentary proof of the child's illness. Mr Morrison of the DPP described the adjournment as *conditional* upon this being produced at a later date⁵⁴. It appears that the Court was told that she could not attend because her two year old son had mumps and swollen testes⁵⁵. The case was fixed for mention in early January and if all was in order would proceed on the 8th March 2004. A medical certificate was to be provided to the defence by 2nd January 2004⁵⁶.
46. Later that day Con Murphy phoned Andrea McKee. She said Ms McKee informed her she had taken her child to the doctor who had diagnosed a respiratory infection. She indicated a willingness to travel to court for the new hearing date but said if it were to last more than a day would have to bring her son with her⁵⁷.
47. On the 24th December 2003 a fax was received from Wrexham police bearing the statement of Dr [REDACTED] who said he had seen the child on the 19th December 2003 and diagnosed an ear infection and the possibility of mumps. His colleague had seen him on the 22nd and an ear infection in both ears was diagnosed⁵⁸. Mr Morrison makes the point that neither diagnosis referred to swollen testes, a high temperature, danger of fitting or ocltitis (*sic*). His assessment was that this was not consistent with the information given to the Court on the 22nd December 2003. He felt that the defence would attack this evidence as an inadequate basis for an adjournment⁵⁹.

⁵³ 81022 para. 19

⁵⁴ 33911 para 17

⁵⁵ 34061

⁵⁶ 81022 para. 20

⁵⁷ 81023 para 21

⁵⁸ 34042

⁵⁹ 82017 para. 10-11

48. A further statement was obtained by Wrexham CID confirming that the doctor had visited the child at home on the 11th December 2003⁶⁰. According to D/I Whitehead, at some point Andrea McKee told police in Wrexham that she had visited an out of hours surgery in Pendine⁶¹. The police checked but could find no record of this visit. D/I Whitehead noted that the records of the out of hours surgery consisted of a notepad upon which the call details were recorded⁶².
49. In the interim Andrea McKee received a threatening letter purporting to be from the LVF. D/I Whitehead who visited her at that time noted her to be very frightened⁶³.
50. On the 9th January 2004 Mr Morrison, Christine Smith and D'I H consulted with Andrea McKee. She again asserted that she had been to Pendine out of hours surgery⁶⁴. Further meetings were held within the DPP and Mr Gerry Simpson QC was instructed to advise on Andrea McKee's general credibility and he consulted with her for this purpose.
51. In his opinion Gerry Simpson he concluded that Andrea McKee had concocted the story about taking her child to the surgery; that there was no shred of corroboration for her story and the effect of her maintaining it was to contaminate any evidence she might give and completely undermine her general credibility⁶⁵.
52. On 18th March 2004 Sir Alasdair Fraser QC, wrote to Mr Kevin McGinty informing the Attorney General that the ODPP was minded to offer no evidence in the prosecution of Res Con Atkinson and others in the light of the opinion of Gerald Simpson QC of 15 March 2004.
53. Mr McGinty discussed the matter with the Attorney General and reverted to Sir Alasdair on the evening of the 18th March⁶⁶. He raised the issue of Andrea McKee's having already pleaded guilty to her part in the conspiracy. The Director records that

⁶⁰ 34043

⁶¹ 81260

⁶² *ibid*

⁶³ 81295

⁶⁴ 33912

⁶⁵ 33915

⁶⁶ 33886

he had considered this but was conscious that, as an accomplice, the jury would have to be warned about convicting without corroboration.

54. A prepared statement to be read to the Court was discussed and in particular an amendment which stated that Andrea McKee's explanation for her non-attendance on the 22nd of December 2003 was such as to undermine her credibility on the charges before the Court.
55. The two issues arising from this sequence of events are whether the explanation for non attendance would have been acceptable to the Magistrate's Court and whether, if untrue, would have affected Andrea McKee's credibility to the extent suggested by Mr Simpson QC.
56. It is suggested by Mr Morrison that the adjournment which was granted on the 22nd of December 2003 was "conditional" on the prosecution providing satisfactory medical evidence⁶⁷. The family submit that the use of this term is somewhat disingenuous of Mr Morrison. It connotes that somehow the adjournment would not be granted unless medical evidence was produced. This is completely illogical as the adjournment was if fact granted and the case relisted. Once granted it could not be undone. What is a better description of what happened, the family submit, is that it was a condition of the adjournment, granted on the oral submissions of the prosecution, that the reasons proffered be evidenced in writing at some future point.
57. What the RM was told was, according to Mr Morrison's own note, was that the child had mumps and swollen testes. What the medical evidence disclosed was that the child had been treated for an infection in both ears and had suspected mumps. Had this medical evidence been given to the Court what would have been the outcome? Both Christine Smith and Mr Morrison both conceded in oral evidence that the case would not have been stopped⁶⁸. Indeed Mr Morrison went further and suggested that if *no* evidence was produced it was very unlikely that the case would be stopped. The RM may have felt that the position was slightly overstated on the 22nd December but may well have taken the view that the information was coming to the court third hand as the result of a telephone conversation and that inaccuracies were quite understandable in those circumstances. Any view taken by the Court would have to

⁶⁷ 33911

⁶⁸ 17-09-09 p18

have been in the context of a worried mother with a sick male child who was suspected of having mumps having had the MMR vaccine.

58. Similarly the issue of Pendine Park could have been dealt with by simply telling the Court that the witness had mentioned the visit but the Crown were unable to confirm it. Again, the family submit, it is most unlikely that the RM would have stopped the case as a result of this
59. Although Mr Morrison and Christine Smith both recognised in their oral evidence that the RM would not stop the case this was not the impression given to Mr McGinty. He said in oral evidence that his view, which he put to the Attorney General, was that the RM would stop the case and that if he had known that there was a contrary view he would have communicated this to the A-G⁶⁹. Given that the role of the A-G is superintendence of prosecutorial decisions it is of concern that he considered this case having been presented with misleading information particularly since the Director himself confirmed in oral evidence that this was not a relevant consideration for him⁷⁰.
60. The issue of Andrea McKee's credibility in light of her alleged lie in respect of the visit to Pendine is of greater concern to the family since it is this which formed the basis for the withdrawal of the prosecution. Whilst it is right to say that the issue of credibility was not one for the Court at the committal stage and the burden of proof is easily satisfied, the DPP's stated reason for withdrawing the charges was that there was no longer a reasonable prospect of a conviction. In this they relied heavily on the opinion of Mr Gerry Simpson QC.
61. Mr Simpson QC had the benefit of consulting with Andrea McKee and formed the view that she was lying about the visit to Pendine. In his opinion Mr Simpson QC says that in the circumstances of the case, the prosecution will be called upon to explain the adjournment because of her non-attendance on the 22nd of December 2003. He further says it would be inappropriate to put forward the version of events she had given believing, as he did, that it was untrue and that she would lie in the witness box⁷¹. It is unclear what exactly Mr Simpson means by this. If he means that the prosecution would have to explain to the Magistrate's Court this could have been done as outlined at 52. above. There would have been no need to put Andrea McKee in the witness box for this purpose. The defence of course may wish her to be

⁶⁹ 18-09-09 p12

⁷⁰ 18-09-09 p.91

⁷¹ 33918 para. 18

tendered for cross examination, however this is an extremely remote possibility, and in any event does not involve the prosecution putting forward anything more than what they knew. Even if an RM came to the view that the witness was lying about this particular fact there was still ample evidence that her child had been ill. All that an RM could do in these circumstances, the family submit, was to proceed with the committal.

62. If Mr Simpson means that the adjournment would have to be explained at the trial it is difficult to see on what basis the Crown Court would call upon the prosecution to explain the circumstances of an adjournment in the Magistrate's Court. Whilst the defence would, quite rightly, have sought disclosure of the various enquiries made by police, providing these would have been the totality of the prosecution's duty in this regard. There is no necessity for the Crown to lead any evidence at the trial of the adjournment. It is simply not relevant to the prosecution case in the Crown Court. Cross examination by the defence of Andrea McKee as to her credit would have, of course, been entirely proper, but this is a matter for the defence. The family do not see how, in either the Magistrate's or Crown Court, it would have been inappropriate for the Crown to rely on the evidence of Andrea McKee.
63. Whether it could be said that such cross examination would undermine the witness's credibility to such a degree that there was no reasonable prospect of conviction is the matter, with respect, which should have been the real focus of Mr Simpson's opinion. He asserts that as an accomplice the issue of Andrea McKee's credibility was of central importance, there is no analysis of what the Court's approach might be in the circumstances. He instead concludes that because she is telling a lie, as he believes, regarding the Pendine visit, this completely destroys her credibility on the charges. This, the family submit, is too great a leap to make and is not supported by any authority on the subject.
64. To be fair to Mr Simpson it is apparent from the context that he was being asked to confirm the view already held by the DPP. He was present at meetings with Ivor Morrison and Christine Smith on the 17th & 25th February 2004 when strong concerns about Andrea McKee's credibility were aired⁷². There was then a meeting in the Directors office on the 26th February. Mr Simpson expressed the view then that while there was no reason to doubt her evidence on the main issue, her credibility would be damaged by the Pendine issue⁷³. It was clear there was already a view being formed

⁷² 33913 para. 30

⁷³ 33980

within the DPP of which Mr Simpson Q.C. can only have been acutely aware when he embarked on the consultation with Andrea McKee.

65. If the trial had proceeded and Andrea McKee been cross examined as to her credit and the jury came to the view that she had told a lie about Pendine, would they come to the view, as a result, that she was lying about the involvement of the accused in the charges before the Court? As the Courts here have recognised, a person may tell lies but still give credible evidence⁷⁴. Of course the nature of the lie told and its bearing on the issues before the Court will be matters for the jury to consider. The fact is that the lie here relates to a wholly peripheral issue and one which had no nexus with any of the evidence to be adduced in support of the Crown case. The jury would have been faced with a worried mother whose infant son was ill, *after* an adjournment had been granted on that basis, telling an untruth to embellish her story. In the circumstances of the case and with the evidence of her and her husband's pleas of guilty, the family submit it is highly unlikely that a reasonable jury would come to the conclusion that there was a doubt about her evidence on the charges before the Court.
65. Mr McGinty in advising the A-G of the case asserted that, as an accomplice, Andrea McKee's evidence would *have* to be considered by the jury subject to a warning from the Judge. This, with respect, misstates the law at that time. Formerly the law was that a jury had to be warned about the danger of convicting on the uncorroborated evidence of an accomplice. That requirement was abolished in this jurisdiction by the Criminal Justice (NI) Order 1996. At the time of this prosecution the Judge had instead a wide discretion whether or not such a warning was required. The circumstances in which a warning was desirable were considered, in the context of the equivalent provision, in *R v Makanjuola*⁷⁵ by the Court of Appeal in England. There the Court said that for a warning to be appropriate there would need to be an evidential basis for suggesting that the *evidence* of the witness may be unreliable. In the family's submission, in this case, even if it were shown that Andrea McKee had lied about Pendine, this was such a peripheral issue that it did not constitute an evidential basis for saying that her evidence on the issues before the jury was unreliable and therefore no warning was necessary or desirable.
66. If a judge takes the view that some warning is desirable it is further a matter for the judge's discretion whether to direct the jury to look for some supporting evidence. The Court in *Makanjuola* expressly deprecated the suggestion that he or she should direct the jury as to the need for corroboration in the technical sense. In this case, the

⁷⁴ *R v Sayers & otrs* (1985) *unrep*

⁷⁵ [1995] 1 WLR 1348

family submit, while it is possible that a Judge may have issued a warning, it does not necessarily follow that he or she would have directed the jury to look for supporting evidence.

67. In any event supporting evidence does exist in the form of the pleas of guilty of Andrea McKee and her former husband. Whilst her plea of guilty is not corroboration in the technical sense, it is supportive of her evidence against Atkinson and, the family submit, very persuasive in that regard. Further, her husband's plea of guilty does, it is submitted, qualify as corroboration proper. It is relevant and admissible⁷⁶, it is credible⁷⁷, and it is independent in the sense that it emanates from a source other than the evidence requiring corroboration⁷⁸. The final requirement is that it must implicate the accused. The transcript of the sentencing hearing clearly sets out the Crown case against all the accused including Atkinson⁷⁹. An accused who pleads guilty is taken to have accepted all the facts as asserted by the prosecution. By pleading guilty Michael McKee implicated his co-accused by accepting the Crown version of his role and the role of the other actors.
68. For the foregoing reasons, the family submit that Sir Alasdair Fraser was plainly wrong to withdraw the case against Atkinson and Hanvey. Given the basis upon which the decision was taken it is clear there was an abject lack of due diligence in examining the pertinent and relevant issues of fact and law in this case. Whilst the Director may not have been well served by those who advised him and who dealt directly with the case, however the decision was his. He confirmed this in oral evidence and indeed accepted responsibility for decisions taken by others on his behalf⁸⁰. Contrary to the Director's apparent belief the family are firmly of the view that the case against Atkinson continues to hold out a more than reasonable prospect of conviction.

⁷⁶ *R v Scarrott* [1978] QB106

⁷⁷ *DPP v Kilbourne* [1973] AC 729

⁷⁸ *R v Whitehead* [1929] 1KB 99

⁷⁹ 20098

⁸⁰ 18-09-09 p 87

