

**ROBERT HAMILL DECEASED**

**TO ADVISE HM CORONER FOR GREATER BELFAST**

**ADVICE**

1. I am asked to advise HM Coroner for Greater Belfast in relation to certain matters touching the circumstances in which Robert Hamill suffered a very serious assault in Portadown in the early hours of Sunday 27 April 1997 from which he later died in hospital. The Coroner has not yet decided whether to hold an inquest.
2. The Coroner has been provided with statements from witnesses to the assault. There is no doubt that Mr Hamill was murdered as a result of an extremely vicious attack. These statements include two in particular which were made to the police by civilian witnesses on 10 May 1997 (Witness A) and 9 May 1997 (Witness B). These statements, if true, are very disturbing. Not only do they identify the assailants of Mr Hamill but they also establish, if true, that a number of police officers were in the close vicinity of the crowd who were attacking Mr Hamill and another person, but that they failed to do anything to stop the attack. One of the police officers was identified by name by Witness A. Her statement further establishes, if true, that early the next morning this police officer telephoned one of the principal assailants and warned him to get rid of the clothes which he had been wearing the previous night. There is no reason to doubt the credibility of these two witnesses. In ordinary circumstances there would be no doubt that an inquest should be held. It is clear that the evidence of these two witnesses would be of central importance at such inquest.
3. The problem is that the Coroner has been advised that neither of these witnesses is prepared to give evidence because of fears for their personal safety. He should of course satisfy himself that this is correct, and that the fears are justified, though given the circumstances it is quite understandable that they would be. I am advised that contemplated criminal proceedings have already had to be abandoned because of the reluctance of these two witnesses to give evidence.
4. The Coroner has a discretion under section 13(1) of the Coroners Act (Northern Ireland) 1959 whether or not to hold an inquest. Given the controversial circumstances of Mr Hamill's death it would be very difficult indeed to justify a decision not to hold an inquest, even without the evidence of Witnesses A and B, and

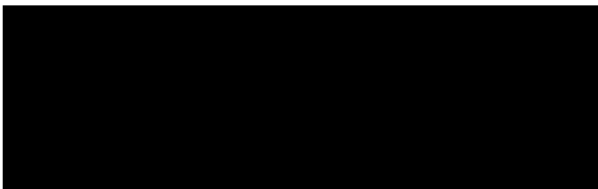
such a decision would almost certainly be challenged by judicial review. It therefore seems to me that the Coroner probably has little choice but to hold an inquest. Witnesses A and B are clearly both competent and compellable witnesses at the instance of the Coroner. It is for the Coroner alone to decide which witnesses should be called to give evidence: *McKerr -v- Armagh Coroner* [1990] 1 All ER 865. In this particular case it seems to me that Witnesses A and B would both have to be regarded as 'necessary' witnesses within the test laid down by Kerr J in *Re Bradley's Application* (1995) (unrep): see Leckey & Greer at #9-03. However, even where the Coroner considers that a witness is 'necessary' he appears to retain a discretion under section 17 whether or not to issue a summons to that witness. It seems to me that if the Coroner is satisfied that a witness's life may be placed in danger if he or she gives evidence he would be entitled to decline to summon that witness to the inquest, even though the consequence would be that the inquest would be deprived of important and relevant evidence. This is clearly a difficult issue to decide: in effect the Coroner will have to balance the public interest that justice should be done with the public interest that innocent lives should not normally be put at serious risk save in the most compelling circumstances. The DPP already appears to have made a similar decision in relation to a possible prosecution. A decision not to summon a 'necessary' witness could be challenged by judicial review, but such a challenge could only really be made on the basis that concern for the safety of the witness was an improper matter for the Coroner to take into consideration in exercising his discretion whether or not to summon that witness. I am not aware of any precedent, but I would be surprised if the court would take that view, and I would not therefore expect such a challenge to be successful. At the moment I am unclear whether or not it would place either of these witness's lives in danger for the Coroner to state publicly that he had received one or more statements from an undisclosed number of witnesses, and that he believed that they could give relevant evidence, but that he was not prepared to summon them to the inquest, or have their statements read at the inquest, because he was satisfied that to do so may place their lives in danger. If he considers that it would have this consequence then I do not think he should even make such a statement, notwithstanding that he may be pressed at or before the inquest to answer questions about the existence of other potential witnesses. However it may already be known to those under suspicion, including the assailants of Mr Hamill and/or the police officers, that Witnesses A and/or B have made statements to the police, and indeed their identities may also be known. If that is the case little, if any harm could be caused by such a statement.

5. The pre-inquest disclosure of statements is a matter for the police, though I am sure that the Chief Constable would take the views of the Coroner into account. I have been shown a copy of Home Office Circular HOC 20/1999. I am told that the Chief Constable of the RUC has agreed to comply with this circular in Northern Ireland. On one view the death of Mr Hamill might be regarded as a 'Category B' death, although strictly speaking the allegation is that his death resulted, in part, from the *inaction* of the police rather than the actions of the police. One problem about applying the Circular in this case is that it was only issued in 1999 while the statements of Witnesses A and B were made in May 1997. Accordingly they were not made aware, in accordance with #9(v), that their statements might be used in the context of an inquest and might therefore be disclosed in accordance with the Circular. If they had been made aware of this they may not have been prepared to make their statements. The Circular is not legally binding, and the case of *Re Mailey* [1980] NI 102 establishes that there is no legal entitlement to pre-inquest disclosure of documents, including statements made to the police by witnesses. However, even if the Circular is to be applied to this case it seems to me that #5 is of particular importance and should be drawn to the attention of the Chief Constable, particularly where it states:

*"In all cases Chief Officers will want to consider whether there are compelling reasons why certain documents, or parts of documents, may not be disclosed."*

If disclosure may place the witnesses' lives in danger that would appear to me to be a 'compelling reason' why the statements should not be disclosed.

6. In summary I consider that the Coroner has little choice but to hold an inquest in this case. If he considers that there is a serious risk to the witnesses' lives if they give evidence or are identified, and that this consideration outweighs the public interest that justice should be done, it would seem to follow that the inquest will necessarily have to proceed without their evidence, however unsatisfactory that may be.



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