

STATEMENT OF WITNESS

STATEMENT OF RAYMOND ANDREW KITSON

DATED THIS 14th DAY OF SEPTEMBER 2009

1. I, RAYMOND ANDREW KITSON, Senior Assistant Director of the Public Prosecution Service, declare that this statement is true to the best of my knowledge and belief and I make it knowing that if it is tendered in evidence at the Inquiry I will be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.
2. Between 1997 and 2002 I was Assistant Director of Public Prosecutions with responsibility for the Belfast and Eastern Circuits. At that time the province was divided into four circuits which are now called regions. There was an Assistant Director who was in charge of two circuits and I was in charge of the other two. I was promoted to Senior Assistant Director in 2005, which is my current role. In this role I am essentially responsible for the conduct of all prosecutions.
3. For the purposes of this statement I have refreshed my memory from the original DPP files, as well from documents disclosed to me by the Inquiry.
4. I have been asked about the practice and procedures in Northern Ireland with respect to the prosecution of offences. The role of the DPP during that period derived from the Prosecution of Offences (NI) Order 1972. It was the duty of the RUC to investigate offences and furnish the relevant information to the Director. The Director could then request further investigation and/or draw particular attention to aspects of the investigation but the conduct of the investigation was for the police alone.

5. Once a crime file was submitted, the DPP lawyer dealing with the case would consider whether there was sufficient evidence to allow an informed decision as to prosecution to be taken. If not, the lawyer would consider whether any additional evidence was necessary before a fully informed decision as to prosecution could be taken. If so, the lawyer responsible would issue an interim direction to the police requesting for example, the expedition of a pathologists' report. In certain cases, such as the Robert Hamill murder prosecution, the file would have been submitted by investigating police to the RUC Crime Department to be considered by a senior RUC officer of the rank of Superintendent or above before being submitted to the ODPP. That ensured that cases of complexity went through a stage independent of investigating police and enabled the office of the Chief Constable to identify any additional lines of enquiry and/or to express an opinion on the recommendations of the investigating officers.
6. In such a case, any interim direction would be issued to the office of the Chief Constable (Crime Department) to keep them informed of the progress of the prosecution, with a copy faxed to the investigating officer to enable him to expedite the additional matters required.
7. As regards the practice of consulting with prosecution witnesses, the practice in Northern Ireland differs from that in England and Wales. The prosecution may consult with witnesses prior to taking decisions as to prosecution. The purpose of a consultation is to determine the credibility, reliability, extent and relevance of a witness's testimony, and their willingness to give evidence.
8. Following Robert Hamill's murder two separate police files were submitted. The first was the murder file [06080-06136]. This was received by the ODPP on 7th August 1997. This was a scheduled offence and came under my responsibility as Circuit Assistant Director for the Eastern Circuit. The case would be handled within the regional circuit of the ODPP until any resulting prosecution was returned for trial at Belfast Crown Court, where all scheduled matters were tried. Thereafter, it would be handled by the Belfast Crown Court section of the ODPP. I was the ultimate decision-maker on the murder file,

although as I explain in more detail below, I delegated responsibility for certain parts of the process to my colleague Roger Davison, who was then a Senior Legal Assistant.

9. The second file received was the neglect of duty file, which also encompassed the criminal allegation against Reserve Constable Atkinson [09028]. This was received by the ODPP on 13th February 1998. It was my assumption that the whole of the file, including the allegation against Reserve Constable Atkinson, was being supervised by the ICPC. I was not aware, nor was I told at the time that the ICPC had drawn a distinction between the neglect of duty complaint made by [REDACTED] and the criminal allegation against Mr. Atkinson. After reviewing the file, I reallocated it on 16th February 1998 to my colleague Ronnie McCarey [19470], who was then a Senior Legal Assistant. I considered that since I had been the decision-maker on the murder file, the neglect of duty/Atkinson file warranted a fresh pair of eyes. I describe in more detail below the process by which the decisions were taken in respect of this file. The ultimate decision-maker was the Deputy Director Roy Junkin. He made his decision on 24th September 1999 [referred to as exhibit RAK1]. The memorandum recording Mr. Junkin's decision states that he had considered the written advices of Gordon Kerr QC, a detailed written briefing from Ronnie McCarey prepared in July 1999 [19243] and a memorandum from the Senior Assistant Director [REDACTED] dated 2nd September 1999 [referred to as exhibit RAK2]. I also considered the advices of Gordon Kerr QC and the memorandum prepared by Ronnie McCarey and, on 9th August 1999, I submitted a note to Mr. Junkin endorsing their recommendations [referred to as exhibit RAK3].

10. The prosecution of Michael and Andrea McKee for perverting the course of justice was my responsibility. Again, I will set out my involvement in more detail below. I was first consulted on the matter on 26th June 2000 [18977]. The police file was received on 12th June 2001 [22034]. I directed the prosecution of the McKees on 15th August 2001 [22917]. I instructed Carl Simpson QC to conduct this prosecution. The McKees entered guilty pleas on 4th March 2002 and were sentenced on 7th May 2002.

11. I was not directly involved in the second limb of the conspiracy prosecution, namely the prosecution of Robert and Eleanor Atkinson and Kenneth Hanvey. The police file in this matter was received by the ODPP on 19th December 2001 [17135]. It was allocated to Michael Matthews, an Assistant Director, who has subsequently retired. Following his retirement, the case was re-allocated to Ivor Morrison, also an Assistant Director who has also subsequently retired. From reading the file, I believe that Mr. Morrison assumed responsibility in or about October 2002. Whilst I am aware of the circumstances leading up to the discontinuance of this prosecution, I was not party to the making of this decision.
12. I was the decision-taker in the file submitted in connection with Timothy Jameson. This file was received by the ODPP in February 2003 [15867 and 15868]. The evidence was in my view insufficient to sustain a prosecution for murder, and I directed no prosecution on 18th April 2003 [31715].
13. My first involvement in the case concerning the murder of Robert Hamill followed a meeting on 12th May 1997 between the Deputy Director Daniel Magill, the senior investigating officer Detective Chief Superintendent McBurney, and Detective Superintendent Hooke from Crime Branch. I was not present at this meeting, although I have since seen a note of the meeting signed by Mr. Magill's secretary on his behalf the following day [31613]. From reading the note it appears that this was a police briefing to inform the ODPP of the outline of the case against the six men who had been arrested and charged. The minute records that allegations had been made that police at the scene failed to intervene quickly enough. It also refers to the evidence of Tracey Clarke and Timothy Jameson, to the finding of Stacey Bridgett's blood on Robert Hamill's jeans, and to the doubts which Professor Crane had expressed about the cause of death. The last entry of the minute records that Mr. Magill told Mr. McBurney that he would, if necessary, arrange a further consultation between the ODPP and the police.
14. The following day I was asked by Roy Junkin (who at that time was Senior Assistant Director) to attend a meeting with police. Mr. Junkin and I met with Mr. McBurney, P39

and Detective Superintendent Harvey from the office of the Chief Constable. I made manuscript notes of that meeting [31603] from which a typewritten file note was subsequently prepared [19069]. From reading the notes, it appears that the principal focus of the meeting was the issue of bail for the six accused who had been charged, and the questions surrounding the cause of death. The ODPP would need to be aware of the apparent strengths and weaknesses of the case, in order to determine whether it was proper to seek a remand in custody. I can see from the notes that there was a discussion about how to handle the statements of Tracey Clarke and Timothy Jameson at the remand hearing, and of the need to protect their identities. In the minutes I have recorded the conclusion that it was proper to seek a remand in custody, but that the position would need to be reviewed once the pathologist's report was available. We needed the pathologist's statement because obviously that would determine whether or not we could seek further remands and what representations we could make to the bail court.

15. I cannot remember whether, at the time of the meeting on 13th May, I had seen the minute of the meeting with the Deputy Director the previous day [31613]. As far as I recall, I was not briefed prior to the meeting with Mr. McBurney. I recall that Mr. McBurney provided a bundle of witness statements for the purpose of the meeting, including the statements of Tracey Clarke and Timothy Jameson. I recall that I read quickly through the statement of Tracey Clarke at the meeting and I can see that I have made some manuscript markings on the statement [31616].
16. I have been referred to a portion of my manuscript note of the meeting which relates to Tracey Clarke at page 31607. My note makes reference to the fact that her aunt had told the police what she, Tracey, had to say about the incident. The fact that I have not recorded the aunt's name would indicate to me that I was not aware of it at the time. The relevance of this information would not have occurred to me at this stage. I have recorded that Tracey Clarke was described by the police as a "good, reliable witness".
17. At page 31608 I have written "Atkinson" followed by a large exclamation mark and the words: "Would have known all the people. Said nothing. Subject to further

investigation”. I cannot now recall the details of what was said at this meeting or whether DCS McBurney specifically raised the allegation that Reserve Constable Atkinson had tipped off Allister Hanvey. However, I had available to me Tracey Clarke’s witness statement in which the allegation is made, so I would have been aware of it. It may be that the exclamation mark is a reminder to myself to refer to the statement. I cannot now recall whether I was informed by DCS McBurney that the police were in the process of obtaining itemised billing to substantiate Tracey Clarke’s allegation.

18. I have been asked whether the allegation made against Reserve Constable Atkinson in Tracey Clarke’s witness statement was one in respect of which the ODPP could have invoked the powers under Article 6(3) of the Prosecution of Offences Order 1972. The relevant part of Article 6(3) provides that the DPP may require the Chief Constable “to ascertain and furnish to the Director information regarding any matter which may appear to the Director to require investigation on the ground that it may involve an offence against the law of Northern Ireland”.
19. Article 6(3) enables the DPP to refer a matter to the Chief Constable for investigation where it has come to the DPP’s attention that an offence may have been committed which is not currently the subject of a police investigation. If, for example, the ODPP became aware that a criminal allegation against a police officer was not being investigated by police, then it would be possible to invoke Article 6(3). However, there were no grounds to invoke Article 6(3) in this instance because the allegation against Reserve Constable Atkinson was, to our knowledge, already being investigated by police. It is clear from my manuscript note at 31608 that Mr. Junkin and I were informed that Reserve Constable Atkinson was “subject to further investigation”. We had no reason to doubt that the allegations would be properly investigated. We were being briefed by DCS Mc Burney who was the senior detective from the area and by the Chief Constable’s representative, Superintendent Harvey. Moreover, I would have assumed throughout that the investigation into an allegation of this nature would be supervised by the ICPC.

20. I have been asked about my handwritten notes at pages 31611-31612 relating to Professor Crane. These notes appear to refer to a separate conversation, after the meeting of 13th May. They record the results of a discussion between Mr. McBurney and Professor Crane concerning the cause of death issue.
21. I had no further meetings with the investigating team prior to the submission of the police report into the murder, which was received by the ODPP on 7th August 1997 [06080-06136].
22. Having considered the police report and supporting material, I issued an interim direction on 12th August 1997 asking that the outstanding forensic evidence be provided to the ODPP before a prosecution decision could be taken. I also requested that a separate report in a sealed envelope concerning witnesses A and B should be forwarded under appropriate classification if necessary. This report had been referred to in the main police report, but was not appended to it.
23. The report on witnesses A and B arrived on 15th August 1997 [15952]. It contained their original witness statements and questionnaires. The covering letter written by P39 confirmed that a separate police report concerning the allegation against RC Atkinson was to be submitted in due course. Referring to Tracey Clarke it read:

“Due to the implications made reference a serving police officer namely R/C Atkinson, who has many contacts within the Portadown station, but who now serves at Craigavon RUC station, it was felt appropriate to refrain from identifying the witness at this stage. In addition a separate DPP file is being submitted which will include this allegation.”
24. By the beginning of October 1997 the pathologist’s report had still not been received. I assigned the case to Roger Davison with instructions to progress the matter as far as possible. I know from a file note compiled by Mr. Davison that he spoke to DI Irwin on 10th October [18096]. According to the note Mr. Irwin expressed concern that, following Drumcree, the attitude of the protestant community had hardened, and that there was a

risk that Tracey Clarke and Timothy Jameson may no longer be willing to testify. He also told Mr. Davison that Colin Prunty could only be contacted via [REDACTED] solicitors.

25. On 13th October 1997 I attended a meeting with Mr. Davison and the Director to discuss the potential problems with these central witnesses. I can see from the note of that meeting [18093] that Mr. Davison related his conversation with DI Irwin to myself and the Director, and that the Director gave instructions that Gordon Kerr QC should be briefed in the case and consult with the witnesses, if possible that week. I know that on the same day Mr. Davison issued instructions to Mr. Kerr to conduct consultations with Tracey Clarke, Timothy Jameson, Colin Prunty and Jonathan Wright [18095/28455]. I also know that the following day, 14th October, Mr. Davison issued a further interim direction, repeating the request for the outstanding forensic evidence, and requiring that arrangements be made for the consultations to go ahead.
26. The first consultations took place on 17th October 1997, with Tracey Clarke and Jonathon Wright. A further consultation took place on 21st October with Timothy Jameson. I did not attend these consultations but I subsequently read Roger Davison's file note recording what took place [17591].
27. On 24th October 1997 Roger Davison passed the file back to me. From recollection, I believe he returned the file to me because he was due to go on leave. The file was accompanied by a manuscript note written by Mr. Davison summarising the evidential position as it stood at that time [18081] and a typed note of the consultations which had by then taken place [17591]. The manuscript note recorded that:

“Witness A will not give evidence. Witness B claims that he cannot recollect anything. He is clearly lying. Neither Witness A nor Witness B can be relied upon”.

The note went on to say that without the evidence of Witness A or B there could be no prosecution of Forbes, Hanvey or Robinson. It was pointed out that whilst there was

other evidence establishing the presence of these three individuals, there was nothing to connect them to the assault on Robert Hamill. Mr. Davison expressed the view that there was some evidence of disorderly conduct, particularly in relation to Robinson, but that given the period they had already spent in custody on the murder charge, it would be inappropriate to prosecute them for a minor public order offence. Mr. Davison recommended that, subject to counsel's opinion, there should be no prosecution of Forbes, Hanvey or Robinson. As regards the remaining accused, Mr. Davison summarised the evidence which could implicate them in the attack on Mr. Hamill. He pointed out that the case against Wayne Lunt would depend upon the evidence of Colin Prunty, who had not yet been seen in consultation, and that any final decision on Stacey Bridgett should await the receipt of forensic evidence concerning the discovery of Bridgett's blood on Robert Hamill's trousers.

28. I considered the file over the weekend. On 27th October, which was a Monday, I telephoned Gordon Kerr QC. Mr. Kerr said that he was still in the process of drafting a written Opinion. He expressed the view that without the evidence of Tracey Clarke and Timothy Jameson (Jameson could no longer be relied upon) there was no case against Forbes, Hanvey or Robinson. He confirmed that in his view Tracey Clarke was a credible witness. I asked him about the possibility of summoning her to give evidence since she was a compellable witness. He told me that he had discussed this possibility with Roger Davison but not with the police. I said that I would need to give further consideration to the possibility of compulsion. Mr. Kerr also confirmed that he could not reach a decision on Wayne Lunt until he had consulted with Colin Prunty. I have recorded this conversation in a file note [18342].
29. Following my conversation with Gordon Kerr I spoke to DI Michael Irwin. He agreed that without the evidence of Tracey Clarke and Timothy Jameson there was no case against Forbes, Hanvey or Robinson. I said that I would need to reach a final decision since all three were in custody. I asked him for advice as to whether, if Tracey Clarke was summonsed to give evidence there was a reasonable prospect that she would testify. He said that in his view she would not testify under any circumstances. I asked him to

reflect on this overnight and consult with his superiors if necessary which he agreed to do. He also informed me that the forensic evidence concerning the presence of Bridgett's blood on Robert Hamill's trousers was now available. I included this conversation in my file note [18342].

30. On 28th October I spoke to Mr. Irwin again. He said that he discussed the position with P39. She was the officer closest to Tracey Clarke. Both Mr. Irwin and P39 thought there was no prospect that Tracey Clarke would testify, whatever sanction was applied to her. I have recorded in my note of this conversation [18345] that I had spoken in the meantime to Detective Superintendent Cooke, who had attended the consultation with Tracey Clarke. He shared the view of Mr. Irwin and P39. I indicated that in these circumstances I would direct no prosecution against Forbes, Hanvey and Robinson. I have recorded in my note that decisions on the other three accused would pend further enquiries and consideration of counsel's advice.
31. I have been asked what consideration I gave to adducing the statement of Tracey Clarke under Article 3 of the Criminal Evidence (Northern Ireland) Order 1988 before directing no prosecution of Forbes, Hanvey and Robinson. This is an issue which I would have routinely considered in circumstances such as this. Before I spoke to Gordon Kerr I had read Roger Davison's note of the consultation [17591] which recorded that Tracey Clarke had said she would rather die than give evidence, that she loved Allister Hanvey, and that it would be hard to give evidence against the others because she knew them. The note also records that "she and her family are all very worried about the possibility of attacks by loyalist paramilitaries".
32. Although I have made no specific note to this effect, I am quite certain that I would have discussed the possibility of adducing Tracey Clarke's statement under Article 3 with Gordon Kerr during our conversation about the use of her evidence on 27th October. If I had thought there was any real prospect of being able to adduce the statement, I would have pursued this option. On my reading of Mr. Davison's file note, the principal reason given by Tracey Clarke for refusing to testify was that she loved Hanvey and was loyal to

the other accused. This would not have afforded a basis for an application under Article 3. The statutory threshold for admission would not have been met. This was the view that Gordon Kerr subsequently expressed in his written Opinion which was received by the ODPP on 13th November 1997 [17633].

33. I note that in his Opinion Mr. Kerr states that the only information which would have supported an application under Article 3 came from Tracey Clarke's parents, but that her own declared reason for not testifying was that she loved Allister Hanvey and that the others were her friends. It was counsel's view that on the basis of her declared reason for not testifying, there was no basis on which an application under Article 3 could legitimately have been made. That was also my view and, as I have said, I am sure I discussed this with Mr. Kerr at the time.
34. Moreover, Tracey Clarke's evidence was so central to the case against Forbes, Hanvey and Robinson that, in my view, a judge in this jurisdiction would be most unlikely to admit it under Article 3 without an opportunity for cross-examination. Since the statement had been prepared for the purposes of a criminal investigation and prosecution, there was a statutory presumption against admitting it in evidence unless the prosecution show that its admission would be in the interests of justice.
35. I have been asked what consideration I gave to prosecution for public order offences. So far as summary offences (such as disorderly conduct or obstruction of police) were concerned, I agreed with the view expressed by Roger Davison in his note of 24th October [18081]. Each of the accused had by then spent almost six months in custody, which was the equivalent of a twelve month prison sentence. In those circumstances, I did not consider that a prosecution for a summary offence was required in the public interest.
36. The same public interest considerations did not apply to more serious public order charges such as affray. Accordingly, I considered the possibility of a charge of affray against each of the accused before making final prosecution decisions. In the absence of

Tracey Clarke and Timothy Jameson there was no evidence which could implicate Hanvey and Forbes. The position with Robinson was slightly different. There was independent evidence that he had been behaving in a disorderly fashion. He had been seen by Jonathan Wright running around “like a headless chicken”. There was no independent evidence to support the allegation that he was directly involved in the attack, but he had been seen by police officers taunting and shouting towards Robert Hamill and trying to push through the police lines. RC Atkinson said in his statement that he had to strike him to keep him back. In order to support a charge of affray at common law it is necessary to prove “unlawful fighting”. The evidence was, in my view sufficient to establish disorderly conduct, but clearly insufficient to establish affray. For the reasons I have outlined, I did not consider that a charge of disorderly conduct met the public interest test for prosecution. Accordingly, I concluded that Robinson should not be prosecuted for a public order offence.

37. On 29th October I issued a direction for no prosecution against Forbes, Hanvey and Robinson [10620/18347]. At the same time, I directed that a decision in relation to Wayne Lunt would await consultation with Colin Prunty and that a decision in relation to Hobson and Bridgett would await consideration of counsel’s Opinion and receipt of the post mortem report.

38. I have been asked whether I considered calling for the police file concerning the allegation against RC Atkinson before reaching a view on the murder prosecutions. I had been informed in the confidential memorandum received on 15th August 1997 [15952] that a police file was to be submitted on this matter and accordingly I was expecting to receive one. Plainly, the allegation against RC Atkinson could have been relevant to a murder prosecution, particularly of Hanvey. The allegation made by Tracey Clarke was, in essence, an allegation that RC Atkinson had acted as an accessory to the murder by assisting an offender. If the file had been available, I would undoubtedly have considered it alongside the murder file. However, I was dealing at this point with six individual who had been in custody for almost six months. Any consideration of the hearsay allegation made against Reserve Constable Atkinson by Tracey Clarke was overtaken by events

when she declined to give evidence and a decision was reached that she could not be compelled and the conditions for seeking the admission of her witness statement were not met. If, subsequently, a file had been received which provided new evidence against Hanvey then the “no prosecution” decision would have been reconsidered. However without the evidence of Tracey Clarke there was no case against Hanvey and there was no other evidence available to me in support of the tipping off allegation. It would in those circumstances have been wrong to continue the prosecution or to have sought a continuation of Hanvey’s remand in custody.

39. On 28th October I wrote to [REDACTED] solicitors in an effort to make arrangements for the consultation with Colin Prunty. The consultation went ahead on 30th October. Mr. Prunty was interviewed by Gordon Kerr QC in the presence of my colleague Ronnie McCarey. Mr. McCarey prepared a manuscript note of the consultation [18068] and a typed note [18062]. I have also seen a further note of the consultation on file, possibly prepared by [REDACTED] solicitors [41284]. According to Mr. McCarey’s notes, Colin Prunty presented as a credible witness on his general description of the attack. He said that one of the men who had been attacking and kicking Robert Hamill on the ground was pulled away by police and taken to the police landrover. He did not purport to identify this man but gave a general description of him. The man was wearing a Rangers scarf tied up to his neck.

40. On 3rd November I had a meeting with Diane Hamill and Fiona Ryan, Robert Hamill’s sisters, in order to explain the reasons why the charges had been withdrawn against Forbes, Hanvey and Robinson. They had telephoned me and I invited them to come in and see me. During the course of the meeting they told me that a man they knew had seen the men being released on television, and had identified one of them as the man he had seen kicking Robert Hamill, who had then been pulled away and taken to the back of the landrover. It became clear to me during the course of this meeting that the man they were referring to was Colin Prunty. I realised that this evidence was not consistent with my understanding of Mr. Prunty’s testimony. I recorded this meeting in a file note [18011].

41. Until that point, we had been proceeding on the basis that the man Mr. Prunty was describing must have been Wayne Lunt since there was independent evidence clearly establishing that Lunt had been placed into the back of the landrover and then released, and that he had been wearing a Rangers scarf. Given the potential significance of this new information I contacted police and arranged for a further statement to be taken from Mr. Prunty. A further statement was taken from Mr. Prunty on the same day [09105]. In the statement Mr. Prunty said that he had recognised one of the men he had seen being released from custody as the man he had seen wearing a Rangers scarf who had been taken to the back of the police landrover.
42. I arranged for Gordon Kerr QC to see Mr. Prunty again in consultation on 5th November at Portadown police station. I was present during the consultation. Mr. Prunty said that he was nearly 100% certain that the person he had seen was Forbes, and that it definitely was not Lunt. He said the only person who “crossed his mind” was Forbes. He was shown photographs of Lunt and Forbes and unhesitatingly picked the photograph of Forbes. He said that if asked in cross-examination whether the person he saw attacking Robert Hamill was Wayne Lunt he would say “no”. During the course of the meeting he also said that he had hit the man who had been taken to the back of the landrover. He said he had been close up to the man at the time and had slapped him in the face. I made a handwritten note of this consultation [28443]. It is also recorded in Gordon Kerr’s Opinion received on 13th November [17633].
43. I have been asked why Mr. Prunty was shown photographs during this consultation and whether there was a risk that this could compromise any prosecution of Lunt. I cannot remember precisely how many photographs were shown to Mr. Prunty. I believe that he was shown at least three photographs including one of Forbes and one of Lunt. This was not, however, a formal identification procedure. If Mr. Prunty had picked the photograph of Lunt, it would not have been possible for the Prosecution to adduce this evidence as part of its case at trial. However, Mr. Prunty was not at that stage being relied upon as an identification witness against Lunt in the ordinary sense. Prior to the 3rd November he

was not purporting to identify anyone, but merely to describe the sequence of events he had witnessed. If he had picked out the photograph of Lunt, it may still have been possible to prosecute Lunt (without adducing the identification by photograph) but such a prosecution would have been very difficult in view of the statement Mr. Prunty had made to police. As it turned out, however, he confirmed his statement to police and picked out the photograph of Dean Forbes with absolute confidence.

44. Prior to this development, the case against Lunt had rested on two propositions, each of which was essential to proving guilt. The first proposition was that the man Mr. Prunty had seen kicking Robert Hamill on the ground was the same man as he later saw being taken to the police landrover, and placed inside. This depended entirely on the evidence of Mr. Prunty and on the correctness of his assertion that the two sightings were of one and the same man. Mr. Prunty's account allowed for a short interval of time between his sighting of the man he saw among the crowd attacking Robert Hamill, and his sighting of the man wearing a Rangers scarf being taken hold of by police and taken away to the police landrover. Constable A's statement made it clear that Lunt was not attacking Robert Hamill on the ground at the time she took hold of him. The Prosecution therefore needed to prove, as a first step, that Mr. Prunty was reliable and correct in his evidence when he asserted that the two men were one and the same.

45. The second essential proposition was that the person who had been taken to the police landrover, detained and then released, was Wayne Lunt. This was capable of being independently proved. Constable A had detained Wayne Lunt and put him into the back of the police van. She had taken his name and address before releasing him. She could say that he was wearing a scarf matching the description of a Rangers scarf. She could also say that after releasing the man, she had been approached by another man who had remonstrated with her for releasing Mr. Lunt. This accorded with Mr. Prunty's account of his own behaviour. Mr. Lunt admitted in interview that he had been wearing a Rangers scarf and had been put into the back of the landrover. Moreover, Mr. Prunty had said during consultation that he struck the man he saw being released, and Mr. Lunt had said in interview that after he had been let out of the landrover a man had taken a swing

at him. There was no evidence of any other person having been put into the police landrover and then released.

46. The development in Mr. Prunty's evidence did not directly affect the second proposition but in my view it fatally undermined the first. Neither Constable A, nor any other police officer, could give evidence directly implicating Lunt in the attack on Robert Hamill. In order to establish that Lunt was involved in the attack it would have been necessary to prove that Mr. Prunty was correct in saying that the first man he saw (involved in the attack) was the same person as the second man he saw (being taken to the landrover and placed inside). Mr. Prunty was confident that the two were one and the same, but was now purporting to identify Dean Forbes as the man concerned. In the circumstances, Gordon Kerr and I saw no practical alternative to the showing of photographs to clarify what he was saying.
47. Once Mr. Prunty had confirmed his identification of Dean Forbes, the case against Lunt became, in our joint view, untenable. Plainly, the identification of Forbes would have to be disclosed to the defence and, in fairness, would probably have to be led by the Prosecution at any committal or trial. The Prosecution would have to put Mr. Prunty forward on the basis that his evidence of identification was unreliable and wrong insofar as he said that the man he saw was Dean Forbes (and not Wayne Lunt) but, at the same time, that he was reliable and correct when he said that the man he saw kicking Robert Hamill on the ground was the same man he later saw being taken to the police landrover. Once it was clear that he would say in evidence that he was sure that the man he saw attacking Robert Hamill was not Wayne Lunt, it became effectively impossible to rely on his evidence to convict Lunt. In the absence of any other evidence implicating Lunt directly in the attack, the case against him was fatally flawed. I did not believe that any prosecution of Lunt would survive a committal for trial, let alone result in a conviction. This view was in accordance with the view of Gordon Kerr QC. In his written Opinion received on 13th November 1997 he advised that there was no reasonable prospect of a conviction for murder [17633]. He repeated this view in a consultation on 18th November with myself and Mr. Davison. The notes record that we were all agreed on this matter

[18041 and 18038]. Accordingly, on 18th November I issued a direction withdrawing the prosecution of Wayne Lunt [08994].

48. I have been asked what consideration was given to prosecuting Lunt for affray. During the consultation on 18th November 1997 there was a discussion about the possibility of prosecuting Lunt for affray. My note of the consultation [18041 and 18038] records the joint view of those present that such a charge would be extremely difficult to sustain in the absence of Colin Prunty's evidence. The situation was confused and the evidence did not make it possible to establish precisely what he had been doing. Constable A said that she saw him around the crowd and that he kicked out when she took hold of him. It was concluded that the evidence was insufficient to prosecute for affray. Minor offences of disorderly conduct and resisting arrest were also considered but rejected on the basis that he had already spent six months in custody.
49. On 3rd November the ODPP received the statement of Lawrence Marshall of FSANI, which established that a spot of Stacey Bridgett's blood had been found towards the bottom of the leg of one of Robert Hamill's jeans [17797 and 17798]. The police had informed the ODPP of this evidence at the meeting of 12th May 1997 but the statement of evidence was not provided until November. The statement would have been served on the solicitors for the accused.
50. Bridgett had been implicated by Tracey Clarke and Timothy Jameson, but the evidence of these witnesses was no longer available to the Prosecution. In their absence, the evidence was capable of establishing that Bridgett was present, that he was involved in disorderly conduct, and that he had been sufficiently close to Robert Hamill for a spot of his blood to have dropped or spattered onto Mr. Hamill's jeans. However, there was no direct evidence capable of proving that he was involved in the attack itself. Jonathan Wright's statement alleged that he had seen Bridgett trading punches, but at some distance away from the attack on Robert Hamill. Constable Neill saw him face to face with another man at the landrover and later saw him with blood around his mouth (as did Constable

A). Constable Cooke put him at the front of the crowd trying to get through to the injured persons on the ground.

51. In his interview with police, Bridgett had denied being anywhere near Robert Hamill at any point. He said that he had been near to the landrover when he was struck on the nose, and that he then went home. The evidence of the finding of his blood on Robert Hamill's jeans obviously showed that he had been close to Mr. Hamill at some point, and appeared capable of establishing that Mr. Hamill was on the ground at the time. It also showed that his account to the police was untrue. However, taken alone, the forensic evidence did not establish any physical contact between the two men, and there was no other evidence capable of proving when and how the blood transfer had occurred.
52. Gordon Kerr QC addressed this issue in his written Opinion, received on 13th November 1997 [17633]. He expressed the view that the forensic evidence, taken in conjunction with the evidence of police witnesses, showed that Bridgett had lied in interview, and that he had been close enough, while bleeding, to drip or spatter his blood onto the deceased. However, Mr. Kerr was of the opinion that the forensic evidence was insufficiently clear to enable him to say whether the blood stain was probative of direct physical contact. He asked for further clarification of the nature and extent of the stain.
53. In light of this advice I tasked Roger Davison to follow up this inquiry with Mr. Marshall [18035]. Mr Davison spoke to Mr. Marshall on 17th November. His file note [18040] records that Mr. Marshall told him that there was one other spot of blood, near to the first one, which had not been tested. The blood mark on the left leg of Mr. Hamill's jeans was not Bridgett's. It was smeared, and thus different in nature from the Bridgett blood stain. The spot of Bridgett's blood was circular rather than elongated, so there was no means of knowing the direction it had come from. Mr. Marshall was reluctant to offer any explanation as to how the blood had got there, although he said it was consistent with Robert Hamill lying on the ground and a drop of Bridgett's blood falling on him as he stood over Mr. Hamill.

54. The case against Bridgett was considered in the consultation with Mr. Kerr QC on 18th November [18041 and 18038]. Mr. Kerr's view was that the evidence was not sufficient to sustain a conviction of Bridgett for murder. The most that could be proved was that at some stage Bridgett was sufficiently close to Robert Hamill that his blood had dropped directly onto Mr. Hamill's jeans. There was no evidence to show what Bridgett was doing at the time, or what he had done prior to that point. In Mr. Kerr's opinion, the fact that Bridgett had lied in interview was not sufficient to prove that he was guilty. Given that he was being interviewed for murder, Mr. Kerr considered that it was not surprising that he should distance himself, even if innocent.
55. I agreed with Mr. Kerr's view. The evidence was capable of proving that Bridgett was in and around the scene at the time, but from that evidence we could not prove exactly when, and we could not prove exactly what he did. The forensic evidence fell short of proving actual physical contact. Accordingly, I decided that the test for prosecution was not met for an offence of murder.
56. The possibility of prosecuting Bridgett for affray was also considered at this meeting. I was initially inclined to the view that there was some evidence which might be capable of supporting a charge of affray. Bridgett had been seen by Jonathan Wright trading punches, albeit at some distance from the main attack. My provisional view was that this might be sufficient to prove the necessary element of "unlawful fighting". Mr. Kerr disagreed. He thought the prospects of proving affray were "doubtful" since it was not possible to prove exactly what Bridgett had done.
57. After the meeting I reflected on Mr. Kerr's advice and concluded, on balance, that he was right, and that the test for prosecution for affray was not met. The evidence of Jonathan Wright was capable of establishing that Bridgett was involved in a fight, but the other protagonist was not identified, and there was no evidence capable of showing who initiated the fight. On the evidence of Jonathan Wright the possibility of self-defence could not be excluded, and the use of force in self-defence is not "unlawful fighting".

58. I have been asked whether the ODPP considered directing the police to re-interview Bridgett following the discovery of the blood stain, to confront him with the fact that he must have lied in his earlier interview. As I have pointed out, the ODPP were aware of the blood stain evidence from 12th May onwards (although the statement of Mr. Marshall was not available until October). In my view it was a judgment for the police to make whether or not to re-interview him and put the forensic evidence to him at that stage. Following the submission of the murder file, I would have expected the police to consult with the DPP if they considered that it was appropriate to conduct a further interview of Bridgett following the receipt of Mr. Marshall's statement in October. As far as I recall, I was never specifically asked for my advice on the matter, but if I had been asked I do not think I would have advised a further interview. From the Prosecution's point of view, we already had a proven lie. That was as good as the evidence was likely to get. There would be nothing to gain by affording Bridgett an opportunity to seek to explain the bloodstain away, and there was no reason to suppose that a further interview would result in a confession to murder. A tactical question of this nature is essentially a matter of judgment, but my own view is that a further interview would have been more likely to weaken the Prosecution case than to strengthen it. There was no reasonable expectation that a further interview would provide any evidence on which to prosecute Bridgett.
59. I have been asked whether consideration was given to seeking further and more detailed forensic tests on Mr. Hamill's jeans. This is, in essence, a matter for the police and FSANI. If it had been obvious that further testing was necessary then it would have been open to the ODPP to request that further tests be carried out. It did not, however, occur to me, or to Mr. Davison or indeed Mr. Kerr that additional forensic tests would significantly affect the position. We relied on Mr. Marshall to determine which areas of blood staining should be analysed. Clearly, if he had thought that further tests would prove fruitful then he would have conducted these. Mr. Marshall was the leading expert in Northern Ireland at the time. If he had considered that an opinion on the significance of the blood spot was beyond his expertise, or that an expert who specialised in blood pattern analysis should have been instructed, then I would have expected him to say so. He made no such suggestion. I saw no basis for the proposition that another expert

should have been instructed. Mr. Davison and Mr. Kerr apparently took the same view. So far as I am aware, nothing has emerged since to suggest that further or better forensic evidence would have led to any different conclusion.

60. I have also been asked about a passage in the evidence of Constable Silcock. He recorded in his witness statement that he had been told by an unidentified woman at the scene that she had seen a man jumping on Robert Hamill's head who was bleeding from his nose, and that this man had responded to the name Stacey. In his Opinion Mr. Kerr advised that this was clearly inadmissible against Bridgett. That was a view with which I agreed. It was evidence of an apparently anonymous witness who could not be cross-examined. It did not appear to me to fall into the category of *res gestae*, although I would have deferred to the advice of counsel on this.
61. Having reached the conclusion that there was insufficient evidence to prosecute Bridgett for murder or affray, I directed no prosecution on 18th November [08994].
62. In relation to the prosecution of Robinson, there was one matter on which my own view was inconsistent with the view expressed by Gordon Kerr QC in his written Opinion, namely the prospects of successfully prosecuting Robinson for affray. When I reviewed the evidence on 28th October, I considered that there was clearly insufficient evidence to prove "unlawful fighting" and accordingly that affray could not be made out. I was firmly of the view that the test for prosecution was not met. I therefore directed no prosecution on 29th October 1997 [10620/18347]. I subsequently received Mr. Kerr's Opinion on 13th November [17633]. In that Opinion Mr. Kerr expressed the view that the whilst the evidence was insufficient to establish Robinson's direct involvement in the attack on Robert Hamill it would, taken at its height, support a charge of affray. I disagreed with Mr. Kerr. Although I have made no note of it, it is my recollection that the matter was discussed during the consultation on 18th November. I informed Mr. Kerr of my view on the affray charge and, after discussion, he agreed with me. I did not record this discussion in my note of the consultation. It would not have been necessary

for me to record this as it required no further action. The “no prosecution” decision had already been taken in relation to Robinson and encompassed both murder and affray.

63. On 3rd December 1997 the office of the Attorney General wrote to the Director seeking information about the prosecutorial decisions that had been taken up to that point in order to enable the Attorney to respond to a letter from the Secretary of State [17681]. In order to assist the Director in responding to the letter, I prepared at his request a memorandum on 9th December [18335]. I met with the Director at 10.30 a.m. on the 9th December to discuss the drafting of his response. The Director had studied the material I provided to him, including the Opinion of Gordon Kerr QC, and he asked me a series of further questions about the process of decision-making in order to clarify various matters. From recollection, I believe that he asked me in particular about the decision not to prosecute Robinson or Bridgett for affray. He had identified the fact that in his written opinion Gordon Kerr’s had expressed the view that the evidence, at its height, could support an affray charge against Robinson, and he wanted to understand how a decision had been reached that Robinson should not be prosecuted for affray. He also noted that in conference Mr. Kerr had expressed the view that it was doubtful whether there was sufficient evidence to prosecute Bridgett for affray. In each case, the Director wanted to know whether the apparent difference of view had been resolved through debate or discussion with counsel. I explained the position to him.

64. I had a further meeting with the director at 12.30 p.m. on the 10th December to discuss the draft letter which was still a work in progress. Once the draft letter was available, the Director wanted to clarify the position directly with Gordon Kerr QC to ensure that he was in agreement with the letter, and was satisfied that it correctly reflected the advice he had given and the discussions that had taken place between myself and Mr. Kerr. The Director wanted to be certain that every aspect of the letter was accurate. A further meeting was accordingly arranged between the Director, myself and Mr. Kerr. This meeting took place at 3.30 p.m. on 10th December. Mr. Kerr read the letter and confirmed that it accurately recorded his final views on the matter. The Director annotated a copy of the letter with the words: “Mr. Gordon Kerr QC read this on

10.12.97 and was entirely content” [18230]. The Director subsequently signed the letter and sent it to the Attorney General [17665].

65. At the time this letter was sent, no final decision had been taken in relation to Marc Hobson. However, it was clear that Hobson would be prosecuted for an offence related to the death of Mr. Hamill. The evidence of Constable Neill established that Hobson had kicked at Robert Hamill whilst he was on the ground. In his written opinion received on 13th November [17633] Mr. Kerr had advised that it was necessary to clarify with Constable Neill whether he saw a kick connect, or an attempted kick, since his statement was ambiguous on this point. Mr. Kerr advised that if it was a kick, and if the post mortem report confirmed that Mr Hamill died from multiple injuries, then a prosecution for murder might be justified. If it was an attempted kick, then it may be difficult to prove the intent, and it may be necessary to prosecute him for attempted GBH. He also considered that it may be appropriate to add a charge of affray.
66. The prosecution of Hobson was discussed in consultation on 18th November [18041 and 18038]. Mr. Kerr said that he wanted to consider the post mortem report before deciding on the appropriate charge, and reiterated that it would be necessary to clarify the evidence of Constable Neill concerning the kick. On the same day I issued an interim direction requiring that a further statement be taken from Constable Neill addressing this issue [08994]. The results of this inquiry were sent by the police on 12th December and received by the ODPP on 16th December [09672]. Constable Neill was able to say that he saw Hobson kick directly at Robert Hamill in the shoulder or head area, from a couple of feet away.
67. On 22nd December I received a supplementary Opinion from Gordon Kerr QC dealing with the case against Hobson [17631]. Having considered the post mortem report (which concluded that Mr. Hamill had died as a result of multiple blows) counsel advised that all those who kicked him were likely to have contributed to the cause of death so that it was not necessary to identify a particular blow inflicted by any particular individual. He advised that the evidence of Constable Neill put Hobson firmly into a joint enterprise as

an active participant and that he should be prosecuted for murder. I have endorsed the Opinion with a manuscript note for the attention of the Director. The note is “for information” and states that I agree with counsel’s Opinion and that I intended to have Mr. Davison issue directions accordingly and prepare papers for committal proceedings. On 20th January 1998 a direction issued formally confirming that Hobson would be prosecuted for murder.

68. On 28th January Hobson was remanded for a preliminary enquiry. I was not personally involved in conducting the prosecution of Marc Hobson, or in directing proofs, ie selecting the witnesses to be called to give evidence. These matters were being handled by Roger Davison. I did, however, become aware that Reserve Constable Atkinson was to be called as a Prosecution witness. I am not certain when I first became aware of this. However, during the first week of April 1998 I received an application by Detective Superintendent Hooke requesting that Mr. Atkinson be permitted to give his evidence from behind a screen at the mixed committal which was scheduled to take place at Craigavon Magistrates Court on 20th April [28202]. The procedure at that time was that any application for screening had to come from an Assistant Chief Constable. Superintendent Hooke was the Head of Branch for the Chief Constable. The application included a report from DI Irwin [28501]. I referred the matter to Roy Junkin, with a recommendation that there were insufficient grounds on the papers to make the application and a suggestion that we meet with Detective Superintendent Harvey to tease out the basis for the application. On 15th April I attended a meeting with Roy Junkin and Detective Superintendent Harvey. As a result, it was decided that no application could properly be made since the applicable legal criteria were not met. These matters are recorded in the relevant file notes [18135].
69. I have been asked whether I consider that it was appropriate for RC Atkinson to be advanced as a credible witness of truth in the Hobson prosecution when there were allegations hanging over him that he had sought to assist an offender by tipping off Allister Hanvey. The neglect of duty file, which included the allegation against RC Atkinson, was received by the ODPP on 13th February 1998 [09028]. On 16th February I

considered the file and allocated it to Ronnie McCarey [19470]. The police report summarised the evidence against RC Atkinson and recommended no prosecution. It referred to the statements taken from Michael and Andrea McKee supporting Atkinson's account. It did not make reference to the fact that Andrea McKee had initially provided information to DI Irwin on 8th May 1997 or that she had accompanied Tracey Clarke whilst her statement was taken on 10th May 1997. At paragraph 35 it concluded:

“Having found no evidence other than the telephone billing to substantiate the allegation of Witness A, one can remain sceptical but there is absolutely no other evidence to substantiate the allegation by Witness A. I therefore recommend no prosecution.”

70. At the time the decision was made to call Atkinson as a witness, there were therefore, at its height, suspicions against him, but no evidence on which to prosecute. From recollection, I believe that the direct evidence against Hobson in relation to the murder came from Constable Neill. RC Atkinson's evidence did not identify Hobson, but provided supporting evidence of the attack on Robert Hamill. I can see why Roger Davison, in preparing committal papers, would have included Reserve Constable Atkinson as a witness, irrespective of whether there was the unproven allegation against him.
71. In such a situation it is of course necessary to consider disclosure to the defence. My understanding from reading the file is that the defence were provided with disclosure from the complaints and discipline file, including the interviews of RC Atkinson. I have, for example, seen a letter from Roger Davison to Richard Monteith, dated 31st March 1998 in which Mr. Davison makes it clear that he proposes to disclose material from the complaints and discipline file to the Hobson defence [18148]. Similarly, I have seen a letter from Richard Monteith to the ODPP dated 23rd September 1998 asking whether any of the officers have been prosecuted [18277 and 31534]. The letter makes reference to the interview of RC Atkinson for offences including assisting an offender and withholding information.

72. Gordon Kerr QC, who had advised on the murder prosecution, and who had conduct of the prosecution of Marc Hobson, was also instructed to advise on the neglect of duty file and the tipping off allegation against Reserve Constable Atkinson. This ensured continuity and would have ensured that counsel advising on disclosure in the Hobson case would be fully apprised of all relevant circumstances.
73. I understand that there was a difference of view between Mr. Kerr QC and Stephen Burnside, the ODPP prosecutor who had conduct of the Hobson case at Belfast Crown Court, as to whether the statement of Tracey Clarke should be disclosed to the defence. Mr. Kerr was apparently of the view that the relevant portion of Tracey Clarke's statement dealing with the allegation against RC Atkinson should have been disclosed.
74. I am informed that the statement of Tracey Clarke was eventually served in a form in which the identities of those named in the statement had been redacted, including the name of RC Atkinson. I was not consulted about this, nor was I aware at the time that it had happened. I do not know whether the police were consulted about the implications of disclosing the statements of Tracey Clarke and Timothy Jameson to the Hobson defence team.
75. As I have pointed out above, I was not directly involved in the day to day management of the neglect of duty/Atkinson file. Nonetheless, I had some dealings with the matter, and I read certain briefings shortly before the final decisions were taken. I allocated the file to Mr. McCarey on 16th February 1998 [19470]. From the file I can see that Mr. McCarey issued an interim direction on 27th February 1998 saying that a final direction would pend consultation with Mr. McBurney [19469].
76. The police report on the neglect of duty/Atkinson matters made no reference to the fact that Andrea McKee, whose statement exculpated Atkinson, had met with DI Irwin on 8th May 1997 and provided information which led to Tracey Clarke being interviewed by police on 10th May 1997, nor did it make an reference to the fact that Andrea McKee had been present when Tracey Clarke's statement was taken.

77. Gordon Kerr QC produced a written Opinion on the neglect/Atkinson file which is undated but which, from its position in the file, appears to have been received between February and May 1998 [19334]. As to the allegation against RC Atkinson, Mr. Kerr concluded that there was no evidence capable of proving the allegations. He pointed out that Tracey Clarke's refusal to testify against Hanvey would clearly extend to this allegation, and expressed the view that the telephone contact, in itself, proved nothing, and had been explained by those concerned.
78. On 12th May 1998 Mr. McCarey issued a further interim direction asking the police to contact [REDACTED] solicitors to see whether the Hamill family were in a position to identify other witnesses or evidence relevant to the neglect of duty allegation [15148]. During the period which followed a number of letters were sent to [REDACTED] solicitors to follow this up, some of which were authored by me.
79. On 22nd January 1999 Mr. McCarey issued a further interim direction to the effect that a final decision on the neglect of duty/Atkinson file would pend the conclusion of the Hobson trial and take account of any material emerging [19369]. Following the conclusion of the Hobson trial, a number of interim directions were issued, some of them by me, requiring that transcripts be obtained for consideration. On 20th May 1999 I wrote to the police and to Gordon Kerr QC enclosing the comments of the trial judge [19388]. The purpose of this letter was to ascertain whether there was anything of relevance which might affect the decision to prosecute. On the same day I drafted a memorandum to Mr. McCarey indicating that relevant transcripts had been provided to Gordon Kerr QC (in order that he could express a concluded view on the neglect/Atkinson file) and indicating that the police would liaise with the ICPC to determine whether any further lines of investigation were required [referred to as Exhibit RAK4].
80. On 8th June 1999 Mr. McBurney wrote to say that having reviewed the trial transcript and judgment, there were in his view, no further lines of enquiry to be pursued [referred to as Exhibit RAK5].

81. Gordon Kerr QC also provided a short written Opinion which concluded that the transcripts of the Hobson trial did not affect his view that there were no reasonable prospects of convicting any officer for the neglect of duty offence [19345]. Thereafter, Mr. Kerr produced a fourth and final Opinion, received on 1st July 1999, which reviewed the evidence to date. As to the allegation against RC Atkinson, he concluded that there had been no change in the evidential position and therefore that his earlier opinion (see paragraph 73 above) still stood.
82. During July 1999 Ronnie McCarey drafted a very detailed and comprehensive analysis of the neglect of duty allegations, as well as the tipping off allegation against RC Atkinson [19243]. As to the neglect allegation he concluded that although the officers could, with hindsight, have better directed their actions after being alerted to the risk of disorder by Mr. Mallon, their conduct did not disclose a criminal neglect of duty. As to the allegations against RC Atkinson, he concluded that the evidence was insufficient to warrant prosecution. Whilst the evidence of the phone calls was suspicious, the witness statements from the McKees and Mrs. Atkinson provided an explanation.
83. On 9th August I received a notification from the ICPC, dated 4th August, to the effect that the ICPC had not identified any further lines of enquiry that needed to be pursued [referred to as RAK6]. On the same day, I referred the file for decision to Roy Junkin, the Deputy Director. From my covering memorandum it is clear that I had read Mr. Kerr's Opinions, as well as Mr. McCarey's detailed memorandum on the case. I expressed the view that I had nothing to add. I concurred with the opinion that there was no reasonable prospect, on the available evidence, of prosecuting any officer for any offence. I did not refer to the allegation against Reserve Constable Atkinson separately but it was dealt with separately in the Opinions of Gordon Kerr QC and in the detailed memorandum prepared by Mr McCarey.
84. From the file I can see that the matter was subsequently referred by Mr. Junkin to [REDACTED] who was then Senior Assistant Director, for his views. There is a memorandum

on file from Mr. McCarey, dated 26th August 1999 to this effect [referred to as RAK7]. This would have been a normal procedure since Mr. ██████ reported directly to Mr. Junkin. On 2nd September 1999 Mr. White added his views to the file. He agreed that the evidence was insufficient to prosecute any officer for the neglect of duty offence. As regards the allegations against RC Atkinson, he expressed the view that there was no evidence on which to base a prosecution. He pointed out that Witness A's allegations were hearsay, and that she had, in any event, refused to give evidence.

85. The final decision was made by Mr. Junkin on 24th September 1999.. In his file note he has recorded that he read all the relevant material, and had considered the advices of counsel as well as the files notes provided by Mr. McCarey and Mr. ██████ to the effect that the available evidence was insufficient to afford a reasonable prospect of conviction against any of the officers. He expressed agreement with their advice and concluded that a direction for no prosecution should issue. The direction was issued on 29th September 1999 [62249]. The case against RC Atkinson was therefore independently considered by four members of the ODPP as well as by senior crown counsel. All concluded that the evidence was, at that stage, insufficient to afford a reasonable prospect of conviction.
86. Following the conclusion of the Hobson trial, ██████ solicitors wrote to the Director, drawing attention to the remarks of McCollum LJ concerning the evidence of Colin Prunty, and asking for a reconsideration of the decision not to proceed with the prosecution of Wayne Lunt [18253]. The letter also sought disclosure of the forensic evidence against Bridgett and confirmation that the ODPP would reconsider the decision to abandon the prosecution of Bridgett.
87. The Director referred the matter to the Deputy Director, Roy Junkin, on 20th July, asking that each of the prosecution decisions be reviewed under Mr. Junkin's supervision with a view to providing a substantive reply [18251]. The conduct of the review was entrusted to ██████ who, at that time, was Senior Assistant Director and my immediate line manager. On 9th August 1999 I provided Mr. ██████ with a full set of papers to enable him to carry out his review [18834].

88. Mr. ██████ reported to Roy Junkin on 13th August 1999 [18321]. He concluded that there had been no basis to seek the admission of Tracey Clarke's witness statement under Article 3 of the Criminal Evidence (Northern Ireland) Order 1988, and that the decision to abandon the prosecution of Forbes, Hanvey and Robinson was correct. He concluded that in light of Mr. Prunty's evidence, the decision to abandon the prosecution of Wayne Lunt for murder was correct. As regards Bridgett he was in clear agreement with the decision to drop the murder charge, but felt that the decision on affray was more evenly balanced. He agreed with the conclusion I had reached on the affray charge, although he considered that the decision was a fine one. I do not disagree with this assessment. The decision was finely balanced and, as I have indicated, I reached a decision for no prosecution through the process of discussion with counsel.
89. In addition to Mr. ██████'s review, the Prosecution decisions relating to the murder file have also been independently reviewed by senior counsel. During the course of the Hamill family's application for judicial review, in which they sought an extension of the terms of reference for the Inquiry, the Secretary of State instructed David Perry QC to review the prosecution decisions. He also concluded that the decisions were correct on the evidence. I refer to Mr. Perry's three Opinions [referred to as RAK8, RAK9 and RAK10 respectively]. Further, I understand that Mr Perry, in the course of consultation with the Secretary of State and Attorney General on 12th December 2007, indicated that he had reviewed the decisions and reached the view that they were all reasonable and furthermore that he would have reached the same decisions on the basis of the evidence presented. [Exhibited as RAK11].
90. On 26th June 2000 I attended a meeting with Mr. McBurney and Mr. Irwin to discuss a major development in the case against Reserve Constable Atkinson [17625]. Mr. Mullan of the ICPC was also in attendance. The meeting followed a telephone conversation between the Chief Constable and the Director on 22nd June. I have seen a minute of that conversation which records that Mr. McBurney had re-interviewed RC Atkinson and he had changed his story [18977]. This is obviously an error.

91. At the meeting on the 26th June 2000 Mr. McBurney told me that in preparing for the coroner's inquest he had learned that Michael and Andrea McKee had separated and that he had accordingly decided to interview them individually to see whether they maintained their story about the telephone calls. He told me that on 20th June Andrea McKee had made a witness statement admitting that what she had said in her earlier statement of October 1997 was untrue. Her new statement amounted to an admission that she had done an act with intent to pervert the course of justice. Mr. McBurney was seeking advice on two issues. Firstly, he wanted to know whether he had been right to take a witness statement from Andrea McKee rather than interviewing her under caution and secondly he wanted to know how he ought to proceed with Michael McKee.
92. I was clear that these were investigative questions for the police. They were not matters upon which the ODPP could or should give advice at this stage of the process. In particular, questions of immunity from prosecution (which is effectively what was being canvassed) could not be decided in advance of the receipt of a written submission from police. A decision to treat an accomplice as a witness, rather than to prosecute, was a matter which required the Director's approval, and it could never be resolved without the relevant evidence being available.
93. I explained to Mr. McBurney that it was not for me to say whether he had been right or wrong to take a witness statement from Andrea McKee without administering a caution. The matter would be reported to the Director and, in due course, consideration would be given to any issues which might flow from the failure to interview her under caution. In particular, if she were prosecuted, it was doubtful whether her statement could be adduced in evidence against her. I also told Mr. McBurney that I could not advise him how he should proceed in relation to Michael McKee, although it could be argued that whilst Andrea was on the periphery of any conspiracy, Michael's role was central and he should be treated as such. I explained that these were serious allegations which needed to be reported formally via RUC Crime Branch to the ODPP. I explained that I could not,

and did not have the authority to, determine any questions of immunity from prosecution in advance.

94. There were two further meetings in which this issue was discussed. On 5th December I attended a meeting at Gough Barracks with Mr. McBurney, DCI K and DS H, and with Mr. Chris Mehaffey and other investigators from the Police Ombudsman's office which had taken over the supervision of the investigation from the ICPC [16673]. I was not present throughout the meeting, but was asked to join for a short time to deal with certain legal issues. I can see from the minute of the meeting [at 16676] that Mr. Mehaffey was seeking my advice on how to use Andrea McKee's evidence if the prosecution of Reserve Constable Atkinson and others was to rely on her testimony. The minute records that I explained the independent role of the ODPP and said that we would not be in a position to make decisions until the investigation file had been submitted. If the police believed that Andrea McKee's role was peripheral, and that she had been prevailed upon by others, and if her evidence was to be central in prosecuting RC Atkinson and others, then the police could recommend that she be granted an immunity from prosecution when the investigation file was submitted. I explained that this issue could not be decided in advance, that it was a matter for the Director, and that it was a decision to be taken in light of all the information and public interest factors at stake. I said that I was aware of Mr. McBurney's decision to record Andrea McKee's witness statement without administering a caution. I expressed the view that she was nonetheless a suspect. The question whether she was to be used solely as a witness or proceeded against for her part in the conspiracy and thereafter used as a witness would be decided upon receipt of the police file. In the meantime, her statement represented evidence in the hands of the police and could be used for the purposes of investigation, and interviews of other suspects. I then left the meeting. I can see from this minute that after I left the meeting those present decided that Andrea McKee would not be arrested or interviewed under caution at that stage, but would be included in the file submitted to the DPP and that directions would then be sought from the DPP as to how to deal with her [16677].

95. On 28th February 2001 I attended a further meeting at the ODPP at which these issues were discussed [74152]. By this time DCS Colville Stewart had replaced Mr. McBurney as Senior Investigating Officer. Also present were DCI K and Mr. Mehaffey of PONI. I can see from the minute that Mr. Stewart reviewed the evidence at the start of the meeting and indicated that he wanted to plan future steps in the investigation. I explained again the role of the ODPP. I said that since the matter was still in the hands of the police, I would not be in a position to give any definitive directions until the investigative file had been formally submitted to the ODPP. I emphasised that operational decisions were a matter for the police at this stage of an investigation, but that I would, where possible, provide guidance on any legal issues arising. It is clear from the minute that the question of Andrea McKee's possible immunity from prosecution was again raised and that I reiterated that any decisions about her status, and how she was to be treated, were a matter for the police at this stage (i.e. prior to the submission of an investigation file to the DPP) [74156]. The minute records that DCS Stewart would make the decision, but that the police officers and PONI were agreed that in order to strengthen Andrea McKee's credibility she should be prosecuted for her part in the conspiracy.
96. The police file on Andrea McKee was received on 12th June 2001 [22034]. It recommended her prosecution for conspiracy to pervert the course of justice. No question of immunity from prosecution was raised. The report and covering letter made it clear that the police expected that she would plead guilty to the charge against her and then give evidence for the Prosecution against the co-conspirators.
97. On 15th August 2001 I issued a direction that Andrea and Michael McKee be prosecuted for conspiracy to pervert the course of justice [22917]. I also issued directions for the committal proceedings, in which I indicated that statements should be taken from Mr. McBurney and Mr. Irwin setting out the nature of the inquiry into RC Atkinson which was being carried out at the time Andrea McKee made her statement of 29th October 1997, the explanation Mr. Atkinson had given in interview, the information provided by the McKees and the Hanveys, and the effect which the statement had had on the investigation into RC Atkinson.

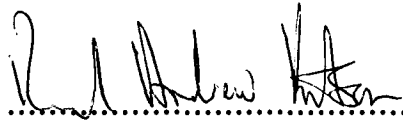
98. On 29th November 2001 I wrote to the police asking, among other things, when the police file in relation to RC Atkinson and others would be submitted [22899]. Before Atkinson could be prosecuted it was going to be necessary to have the evidence of Andrea McKee in an admissible form. It was therefore necessary to co-ordinate the timing of the prosecutions so that the prosecution of the McKees would be concluded before it became necessary to adduce the evidence of Andrea McKee in the prosecution of Atkinson and others.
99. The Atkinson and others file was received on 19th December 2001 and was allocated to Michael Matthews. Mr. Matthews issued an interim direction on 16th January 2002 directing that a supplementary police report be provided following the conclusion of the McKee prosecution [20087].
100. On 31st January a consultation took place with Carl Simpson QC who had been instructed to prosecute in the McKee case [22875]. Also in attendance were Mr. Matthews (PPS), DCS Colville Stewart, DCI K and DS H. Andrea McKee's intention to plead guilty and give evidence for the prosecution in Atkinson and others was explained to Mr. Simpson. The question of approaching Michael McKee as a witness was discussed. From the minute I believe I emphasised that it was for police to decide whether or not he should be approached as a witness, but that he should not be given any kind of promise as to what would happen if he did. A question was raised whether Andrea McKee should be sentenced immediately upon her plea of guilty, or whether sentence should be adjourned until she had given evidence in Atkinson and others. Carl Simpson advised that it was the invariable practice in this jurisdiction to proceed immediately to sentence. He did not consider it appropriate for a defendant to plead guilty and then have sentence deferred on the basis that he or she would be willing to give evidence for the prosecution in a future case against co-defendants. He said that this approach was supported by authority.
101. This was my experience. There were good reasons to proceed to sentence immediately. If sentence were deferred it could always be argued that the witness had a motive for

giving evidence, namely to secure a reduction in sentence. If he or she had already been sentenced, then this motive was more difficult to attribute. In any event, it had become the settled practice in this jurisdiction and I saw no reason to disagree with senior counsel's view that it was the appropriate course here.

102. I recall that Mr. Colville Stewart expressed a contrary view at the meeting, and he followed this up with a letter on 11th February 2002 urging me to reconsider the issue. I considered the points made in his letter but in the end I decided to adhere to the view I had already formed.

103. On 4th March 2002 Andrea and Michael McKee each entered pleas of guilty to the indictment. Sentence was adjourned for the preparation of reports. On 12th March I forwarded the entire McKee file to Mr. Matthews for consideration in connection with the prosecution of Atkinson and others. The McKees were sentenced on 7th May 2002. After this point, I had no direct involvement in the prosecution of Atkinson and others.

SIGNED:



RAYMOND ANDREW KITSON

DATED:

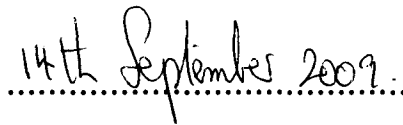


EXHIBIT RAK1

RAK 1.



Deputy Director

DPP Ref: 753/98

Mr [REDACTED]

I am familiar with the prosecution of Hobson and the overall facts and circumstances of that case, pertaining both to his conduct and that of other potential offenders. I have re-read such portions of it as are appropriate together with the judgment of McCollum LJ. I have now also read the comprehensive report below by Mr McCarey and, where appropriate, I have read the other papers and material on the file.

I note that the ICPC is satisfied that there are no fresh lines of enquiry which require to be pursued.

I have read and considered the advices of Mr Kerr QC.

The considered advices proffered by senior counsel, Mr McCarey and yourself is that the evidence available is insufficient to afford a reasonable prospect of the conviction of Constable Neill, R/Constable Cornett (now [REDACTED], R/Constable P40 or R/Constable Atkinson.

I agree with the conclusions reached. A direction for no prosecution should now issue.


DEPUTY DIRECTOR

24 September 1999

Mr. McCarey

Please prepare a direction accordingly before me, please discuss with me arrangements for informing the complainants, police and the press.

Avoyl.

27/9/99

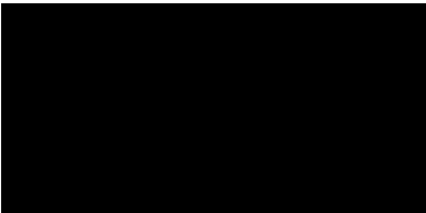
82120

EXHIBIT RAK2

RAK 2

Deputy Director

1. I refer to Mr McCarey's minutes of July 1999 and 26 August 1999 and Mr Kitson's minute of 9 August 1999.
2. The evidence is exhaustively analysed in the police report and in Mr McCarey's minute. It is also analysed in the advice of Senior Counsel.
3. I agree with Mr McCarey that the evidence is so inconsistent that it is impossible to establish with any certainty the precise sequence of events, and their duration.
4. Further, I can see no evidence from which it could be concluded that police officers witnessed the assault on Mr Hamill and Mr D and did nothing to prevent it.
5. Indeed there is evidence to the contrary. Firstly, if the attack was as sudden and violent as the 'Thomas St' witnesses allege, police could not have prevented it and secondly, there is evidence to support the police account of a longer sequence of events in which police did intervene.
6. I note that McCollum LJ, in his judgment in R -v- Hobson, commented that, on the basis of the evidence of the 'Thomas St' witnesses, it was unlikely that police could have dismounted and intervened in time to save Mr Hamill. Further, he stated that, when police did intervene, they acted resolutely.
7. It may be that the police landrover was not positioned as well as it might have been. It may also be the case that police did not pay sufficient attention to Mr Mallon. However, there is no evidence that either of these failings, if they were failings, were wilful.
8. As regards the separate allegation about R/Constable Atkinson, there is no evidence on which to base a prosecution. Witness A's allegation of what Hanvey told her is hearsay, quite apart from the fact that Witness A has since refused to give evidence.
9. I therefore agree with the recommendation for no prosecution.



2 September 1999

AW/MB

82122

EXHIBIT RAK3

RAK 3

DEPUTY DIRECTOR

753/98
2209/97 CL

ROBERT HAMILL

1. I refer to the Director's minute of 20 July 1999 and to our meeting with the Director on 30 July 1999.

2. The present position is as follows:-

a. Letter from [REDACTED] Solicitors 6 July 1999.

I have now provided Mr [REDACTED] with the crime file 2209/97 together with a minute referring him to the relevant internal minutes on file which sets out my reasoning for the decisions for no prosecution.

b. Complaint file in relation to the death of Robert Hamill (753/98)

The ICPC has replied by letter dated 4 August (received 9 August) that having reviewed the papers submitted (that is to say the transcript of the Hobson trial) the Commission is satisfied that there are no fresh lines of enquiry relating to the criminal investigation which require to be pursued.

We are now in a position to take decisions as to prosecution.

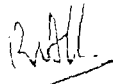
In this regard we hold the advices of Senior Counsel, Mr Kerr QC. There is also on file a full minute from Mr McCarey (albeit in draft form) analysing the evidence both from the police investigations and from the trial of Hobson.

Mr Kerr advises no prosecution.

Mr McCarey advises no prosecution.

I have nothing to add to the above advices and recommendations. In my view there is no reasonable prospect on the available evidence of the conviction of any police officer for any criminal offence arising out of the incident on 27 April at Market Street/Thomas Street.

Mr McCarey returns from annual leave tomorrow, 10 August. He can take matters forward for you. The file remains in his security cabinet.


R A KITSON

9 August 1999

82124

EXHIBIT RAK4

RAK 4

MR R McCAREY

DPP Ref: 753/98

ROBERT HAMILL (DECEASED)

I refer to previous minutes on this file and to the Further Interim Direction to police of 1 April 1999.

Transcripts of the evidence of certain witnesses have now been obtained. I would be grateful if you would proceed to consider the contents of the transcript with a view to further discussion, in conjunction with Senior Counsel to whom I have also briefed a copy of transcript, as to whether any further steps require to be taken before a concluded view on this case can be taken. It is to be noted also that I have forwarded a copy of the transcript to police with a view to them considering, in conjunction with the ICPC, whether any further lines of investigation are required.

Please do not hesitate to discuss the case with me further before you reach concluded decisions in the case. You will recall that the Director wishes to see this case before final directions are issued.



R A KITSON

20 May 1999

EXHIBIT RAK5

RAK 5



THE ROYAL ULSTER CONSTABULARY

COMPLAINTS & DISCIPLINE DEPARTMENT, GOUGH BARRACKS
ARMAGH NORTHERN IRELAND BT60 1BW

Tel: [REDACTED]

Mr R Kitson
Belfast Circuit
Department of the Director of
Public Prosecutions
Royal Courts of Justice
BELFAST
BT1 3NX

Please reply to:
Your reference: 753/98
Our reference: B147/1345/97
Date: 8 June 1999

SUBJECT: ALLEGATION OF CRIMINAL CONDUCT AGAINST A POLICE OFFICER BY
[REDACTED], SOLICITOR ON BEHALF OF DIANE HAMILL,
PORTADOWN, ON BEHALF OF ROBERT HAMILL

Dear Sir

I refer to your further interim direction dated 26 May 1999.

Please find attached reply from D/Chief Superintendent McBurney as requested.

Yours faithfully

[REDACTED]

SUPERINTENDENT

[REDACTED]

Mr Mc Burney

- (1) Report from D/Chief Superintendent Mc Burney delivered to me to-day
- (2) I note his recommendation and conclusions.
- (3) You are presently considering the case of the conduct of the police officers.
- (4) Please arrange to discuss the report of D/Chief Supt. Mc Burney with me. I note that he has forwarded the papers (including his report) to the I.C.D.C.?
Whether this has been done by Capt. C.E.D.

H.Q. Ref. No:

S/Divisional Ref. No:
Divisional Ref. No: RCS 10/98

ROYAL ULSTER CONSTABULARY

'H' Division ARMAGH Sub-Division/Department
CID SOUTH REGION Station/Branch 1 JUNE 1999 Date

SUBJECT: ALLEGATION OF CRIMINAL CONDUCT AGAINST A POLICE OFFICER BY
[REDACTED] SOLICITOR, ON BEHALF ON DIANE HAMILL, [REDACTED]
[REDACTED] PORTADOWN ON BEHALF OF ROBERT HAMILL

TO: SUPERINTENDENT
COMPLAINTS & DISCIPLINE
GOUGH

- As a result of the attached interim direction and taped transcript, which was received on 28 May 1999, and having considered this with the remarks made by the Learned Trial Judge, Lord Justice McCollum, I do not believe that any further lines of investigation are required. The two police officers who gave evidence at the trial of R v Marc Hobson have already been interviewed on tape regarding their actions on 27 May 1997. I do not believe that there are any further significant points arising from the cross-examination of these officers during the above trial which requires further exploration.

The Learned Trial Judge highlighted the fact that given rise to "Some public controversy," he felt it was appropriate that he should analyse the evidence given and throw whatever light possible on the occurrence of the events which led to this tragic death.

In doing so he highlighted three points of which the factual basis were not disputed. To this end point number 3 is immaterial to the allegation under investigation and in which the Learned Lord Justice was not aware of the full facts.

In dealing with points 1 and 2 the Lord Justice refers to aspects which to a large extent have been highlighted in the original investigation file and which comments on the judgement of the officers on this particular occasion leaving them open to criticism.

However, the Lord Justice was also "Satisfied that the officers came across the road shortly after the attack and that the evidence which suggests otherwise is explained by confusion and distress on the part of the hall patrons." He also accepts that the injuries sustained by the deceased have not established that a prolonged beating took place and that the fatal injury could have been caused by one blow or a blow combined with a heavy fall.

In considering the above facts I am satisfied that no offence is disclosed under statute or common law and whilst the actions of the police officers may represent a misjudgement of the situation, but only so on reflection, this cannot and does not amount to a criminal offence in the circumstances.

I therefore submit these papers for further consideration and the information of the Independent Commission for Police Complaints.



W A M McBURNEY
REGIONAL HEAD OF CID
SOUTH REGION
EXT NO:- [REDACTED]

EXHIBIT RAK6

RAK 6



Independent Commission for Police Complaints for Northern Ireland
 Chamber of Commerce House - 22 Great Victoria Street - Belfast BT2 7LP
 Phone [REDACTED]

Paul A. Donnelly, BA, MSc

Chief Executive [REDACTED]

BA

Mr A Kitson
 Assistant Director
 Department of the Director of Public Prosecutions
 1 Courts of Justice
 Belfast
 BT3 3NX

Your Ref: 753/98

Our Ref: C1039/97 4

4/11 August 1999

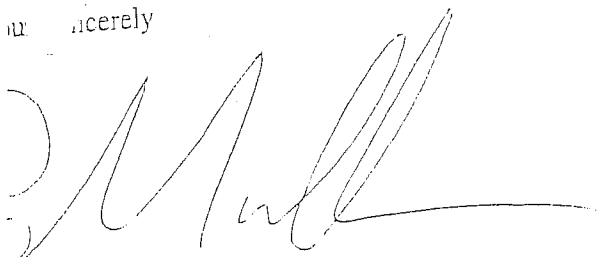
Mr Kitson

COMPLAINT BY [REDACTED] SOLICITOR
 BEHALF OF DIANE HAMILL

Refer to your letter of 22 July 1999 with which you enclosed a transcript of Paul Hobson's trial.

Having reviewed the papers submitted, the Commission is satisfied that there are no fresh lines of inquiry relating to the criminal investigation which require to be pursued.

Yours sincerely


 Chief Executive

RECEIVED
 INITS.....
 9 AUG 1998
 OFFICE OF DIRECTOR
 OF PUBLIC PROSECUTIONS

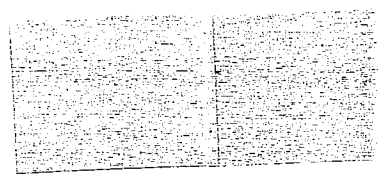


EXHIBIT RAK7

RAK 7

MR [REDACTED]

DPP REF: 753/99

COMPLAINT AGAINST THE POLICE BY DIANE HAMILL

The Deputy Director has requested that this file be forwarded through you.

I would draw your attention to my note to Mr Kitson and to Mr Kitson's note dated 9 August 1999 to the Deputy Director.

L. McCarey

W A R McCAREY - TEL [REDACTED]

26 August 1999

EXHIBIT RAK8

RAK 8

RE THE DIRECTOR OF PUBLIC PROSECUTIONS FOR NORTHERN IRELAND

AND THE DEATH OF ROBERT HAMILL

ADVICE

1. Introduction

- 1.1 On 27th April 1997, a violent incident occurred in Portadown, County Armagh, Northern Ireland. In the course of this incident, Robert Hamill, aged 25, sustained serious injuries. He was taken by ambulance to Craigavon Area Hospital from where he was later transferred to the Royal Victoria Hospital Belfast. He never regained consciousness and died in hospital on 8th May 1997.
- 1.2 An investigation into the incident by the Royal Ulster Constabulary ('RUC') led to the prosecution of one individual, Paul Hobson, for the offences of murder and causing an affray. Hobson's trial took place in the Crown Court of Northern Ireland between 22nd and 25th February 1999 before McCollum L.J. sitting without a jury. On 25th March 1999, McCollum L.J., in a fully reasoned decision, acquitted Hobson of murder but convicted him of affray, and sentenced him to 4 years imprisonment.
- 1.3 Five other individuals were also charged with the offence of murder but proceedings against them were discontinued in October and November 1997.
- 1.4 Despite Hobson's conviction and the fact that some of the events of 27th April 1997 were investigated during the course of the trial, the role of certain RUC officers in the events has been the subject of intense speculation. This is because a Police patrol vehicle, containing four officers, was parked about 20 yards from the place at which

160

Robert Hamill suffered his injuries. Moreover, information was provided to the officers investigating the death that a reserve constable, who had been one of the patrol crew, later telephoned a youth, Allister Hanvey, who was present at the scene and advised him to destroy his clothing and thereafter kept him informed of the progress of the investigation. Allister Hanvey was one of those later charged with murder but discharged from any criminal proceedings on 31st October 1997.

- 1.5 On 16th November 2004, the Secretary of State for Northern Ireland established an inquiry under section 44(1) of the Police (Northern Ireland) Act 1998 (subsequently converted into an Inquiry under the Inquiries Act 2005) with the following terms of reference:

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

- 1.6 The Inquiry is chaired by Sir Edwin Jowitt, a retired judge of the High Court of England and Wales. It was established following the investigation by Judge Cory, a retired Justice of the Supreme Court of Canada, into “*allegations of collusion by the security forces*” in Northern Ireland. In 2005, the Inquiry Chairman, and in early 2007, the Hamill family, sought to extend the Inquiry’s terms of reference so as to enable the Inquiry to consider and investigate the prosecutorial decision-making in the case. The question of whether or not to extend the Inquiry’s terms of reference is currently under consideration by the Secretary of State.

- 1.7 It is against this background that I have been asked to advise on two discrete issues, which may be formulated as follows:

- (i) *Whether the decisions taken by the Director of Public Prosecutions for Northern Ireland (‘the Director’) and his staff were reasonable.*

161

(ii) *Whether, having regard to the respective functions of the prosecuting authorities on the one hand and the investigating authorities on the other, there were steps which the Director should have taken which would have provided a reasonable expectation that evidence sufficient to meet the test for prosecution would be obtained.*

1.8 Before addressing these two issues it may be helpful to set out the factual background and the legal framework within which the issues fall to be considered.

2. The Factual Background

2.1 The incident on 27th April 1997 took place near the junction of Market Street, High Street, Thomas Street and Woodhouse Street. This is recognised by the Police as a potential trouble spot in a town with a sharp inter-communal divide. The protagonists in the incident were described by McCollum L.J., when giving judgment in Hobson's trial, as "*loyalists*" and "*nationalists*". This was not intended to reflect any precise affiliation on the part of either group but merely to assist in the narrative. It is helpful to adopt the same descriptions where necessary in the course of this Advice.

2.2 On the evening of Saturday 26th April 1997, Robert Hamill went to a dance at St. Patrick's Catholic Hall in Thomas Street. He left the hall at about 1.30 a.m. with **D** **E** (**D**'s wife) and **F** (**D**'s sister). They walked along Thomas Street in the direction of Woodhouse Street.

2.3 A Police Land Rover patrol vehicle was parked in a place to observe the junction. It contained four officers: Constable Neill, who was the driver and only regular Police Officer in the group, Reserve Constable Cornett, who was in the front passenger seat and Reserve Constables Atkinson and **P40** in the rear. At this stage the junction appeared to be quiet and Constable Neill began to move off when a Catholic, Thomas Mallon, waved down the vehicle and told the crew that his friends were coming down Thomas Street. At this point Constable Neill drove the vehicle a little further away from the junction and repositioned it so that the occupant's view of the junction was restricted to what they could see through the observation slits in the side of the vehicle. This manoeuvre was carried out because two loyalists (Stacey Bridgett and

Dean Forbes) approached Mallon in a threatening manner and the movement of the vehicle was successful in preventing this incident from developing further.

2.4 Stacey Bridgett and Dean Forbes then approached the passenger side of the Land Rover and spoke to Reserve Constable Cornett (in the passenger seat) and Constable Neill.

2.5 According to the Police Officers the next thing that happened was that a male (either Colin Prunty, who had also attended the dance at St. Patrick's Hall, or Colin Hull, another youth present at the scene) began to pull Constable Neill out of the Land Rover, shouting words to the effect of "*You watched that happening and you did nothing*".

2.6 All four officers then dismounted from the vehicle and, according to Constable Neill and Reserve Constable Atkinson, they saw a group of around 50 loyalists confronting a group of about 12 nationalists and almost immediately a number of fights broke out. In the course of giving evidence at the Hobson trial, Constable Neill thought he could remember seeing Robert Hamill and another man running towards each other, the implication of that evidence being that Robert Hamill was still on his feet at the stage the officers left the vehicle and that he was himself possibly engaging in aggressive conduct.

2.7 Certain of the events can be given a precise time:

- (i) At 1.45:37 a.m. Reserve Constable Cornett called for reinforcements;
- (ii) At 1.48 a.m. Reserve Constable Cornett called for an ambulance;
- (iii) At 1.58 a.m. the ambulance arrived.

2.8 The account given by the Police Officers is that they did their best to stop the fighting. Within a couple of minutes they did see two bodies on the ground and it was this that prompted the call for the ambulance at 1.48 a.m.. Police reinforcements were quickly on the scene and order was restored with the loyalists being pressed away from the injured men, Robert Hamill and his friend **D** , aged 29. Even at this point, some of the loyalists were trying to get past the Police and lunged or kicked out at Hamill who was by this time unconscious.

2.9 Both Mr. Hamill and Mr. **D** were taken to Craigavon Area Hospital. Mr. **D** was soon discharged having suffered relatively minor injury. Mr. Hamill was seen by a casualty officer who found no open injury. However, it was noted that he had difficulty in breathing and a decision was made to transfer him to the Neuro-Surgical Unit in the Royal Victoria Hospital. There he was treated for a relatively minor brain injury but, on 8th May 1997, he suffered a sudden, unexpected deterioration in his condition and died.

2.10 A post-mortem examination revealed:

- (i) Externally his injuries appeared trivial (a small bruise and two small areas of abrasion);
- (ii) Internally the injuries did not seem particularly severe;
- (iii) However, microscopic examination of the brain revealed damage (diffuse axonal injury) of a type frequently recognised as occurring as a result of repeated blows to the head such as by punching or kicking and this was the most likely mechanism of injury in this case. This condition is most commonly encountered in road traffic accidents where, as a result of acceleration/deceleration, the head is violently jolted and internal injuries are caused;
- (iv) Bruising on the body and arms and a fairly large area of bruising overlying the right side of the pelvis, the latter consistent with the application of blunt force and which might have been caused by a kick. (These injuries were not serious enough to have played any part in the death.)

2.11 The cause of death was the injury to the brain. In Hobson's trial, McCollum L.J. summarised the effect of the post-mortem findings by stating:

"The injury to the brain would therefore appear to have been caused by a jolting type of injury rather than by direct contact but there was no reason to doubt that the fatal injury was sustained as a result of the violent assault ..."

2.12 Returning to the events at the junction. The area eventually became quiet and by 3.00 a.m. the streets in the vicinity were deserted. At about 5.30 a.m. the town street cleaner was told to avoid the junction of Market Street and at 7.25 a.m. the scene of the disturbance was taped off. Some evidence was found in the street but it had no real forensic significance (for example there were broken bottles, some with fingerprints). This was an incident that could only be reconstructed by relying on the eye-witness accounts.

Observations On The Events

2.13 At this stage it is possible to make some preliminary observations on the events. First, the attack on Robert Hamill and his friend **D** appears to have taken place at some time between 1.40 a.m. and 1.48 a.m., the latter being the time when Reserve Constable Cornett called for an ambulance. Secondly, there were possibly as many as sixty people in and around the vicinity of the attack. Thirdly, the evidence subsequently obtained in the course of the Police investigation suggested that many of those present, whether nationalist or loyalist, had been drinking. Fourthly, as McCollum L.J. noted, in the course of his judgment, the situation was "confused" and he went on to state that "it is difficult to extract a coherent account even from the eye-witnesses".

3. The Investigation

3.1 In the course of the investigation statements were obtained from Police Officers present at the scene, civilian witnesses also present at the scene and from local residents. In the case of the local residents, house to house inquiries were conducted in an effort to discover whether anyone might have seen or heard anything significant.

3.2 The four Police Officers in the Land Rover, who had stood down from duty at about 3.30 a.m., were called back from their homes later that morning and made statements to the detectives who were by that stage involved in investigating the incident. The officers' accounts were to the effect that at the time they dismounted from the Land

Rover there were no bodies on the ground and the fighting broke out at or about the time they were leaving the vehicle. They then acted to separate the factions and pull out the outnumbered nationalists.

3.3 The Hamill group provided statements which suggested that the attack by the loyalists was unprovoked and came out of nowhere, and that the Police Officers appeared on the scene only after the attack on Robert Hamill. This would be consistent with the comment "*You watched that happening and you did nothing*" (see paragraph 2.5 above) being made to the officers as a reference to the attack on the deceased.

3.4 By contrast with this account, there were some statements from witnesses to the effect that there was some scuffling or fighting at the junction before the main attack took place and it is possible that the comment made to the officers referred to this earlier incident.

3.5 In the immediate aftermath of the incident, the only evidence implicating any particular individual in the attack on Robert Hamill was provided by Constable Neill, whose statement (dated 27th April 1997) contained a description of a person kicking out at the injured man. Although not named, the person described was clearly Hobson.

3.6 On 9th May 1997, that is the day after Robert Hamill died, the investigating officers obtained a witness statement from an eighteen year old youth, Witness B (a member of the loyalist group) which implicated four individuals in the attack on Robert Hamill. These individuals were:

- (i) Paul Hobson (also known as Marc Hobson);
- (ii) Allister Hanvey;
- (iii) Dean Forbes; and
- (iv) A person known only as "*Fonzy*" believed by the Police to be Andrew Allen. (Witness B declined to attend an identification parade to identify this person and in the absence of any other evidence to implicate him, Allen was not charged with any offence. He was however interviewed under caution and denied any wrongdoing.)

3.7 On 10th May 1997, the investigating officers obtained a witness statement from a young woman, Miss A (also a member of the loyalist group), which implicated five individuals in the attack on Robert Hamill. These individuals were:

- (i) Paul Hobson;
- (ii) Allister Hanvey;
- (iii) Dean Forbes;
- (iv) Stacey Bridgett; and
- (v) Rory Robinson.

3.8 Evidence was also obtained from Colin Prunty (statement dated 8th May 2007). As noted above, he had been at St. Patrick's Hall and was close to or following the Hamill group down Thomas Street when he witnessed the attack. He identified one of the attackers as a person wearing a Glasgow Rangers football scarf who had been placed in the back of the Police Land Rover. By reference to the other available evidence it was possible to identify this person as Wayne Lunt. (Constable **A**, one of the officers who arrived at the scene following the call for reinforcements, placed Lunt in the rear of the Police Land Rover after he had kicked out at her (at 1.57 a.m.). He was released from the vehicle at 2.05 a.m. after the officer had obtained his name and address.)

3.9 On 15th May 1997, Jonathan Wright (a member of the loyalist group) gave a statement in which he described Rory Robinson in the middle of the crowd running around "*like a headless chicken*". He also saw Stacey Bridgett trading punches with one person. This statement contradicted an earlier one (dated 11th May 1997) in which he said, "*I didn't see anybody fighting*". His decision to make the second statement was explained by him in these terms: "*I made this statement because not telling the full facts the first time has been praying on my conscience*".

3.10 As a result of the information provided by witnesses A and B and Colin Prunty, six individuals were arrested, interviewed and charged with murder. These six individuals were:

- (i) Paul Hobson;

- (ii) Allister Hanvey;
- (iii) Dean Forbes;
- (iv) Stacey Bridgett;
- (v) Rory Robinson; and
- (vi) Wayne Lunt.

3.11 Following their arrests they were interviewed under caution and none made any admission of criminal behaviour.

4. The Allegation of Perverting the Course of Public Justice

4.1 As noted above, on 10th May 1997, the investigating officers obtained a witness statement from Miss A. In the course of this statement, Miss A alleged that about three days after the incident she had spoken to Allister Hanvey (her former boyfriend) who told her that, at about 8.00 a.m. on Sunday 27th April 1997 (that is about six hours after the fatal attack) he had been telephoned by Reserve Constable Atkinson (one of the four officers in the Police Land Rover). In the course of this telephone conversation Atkinson had told Hanvey to "*get rid of the clothes he was wearing the previous night*". Miss A also stated that Hanvey had told her that Atkinson was ringing him every day to keep him up to date with the Police investigations.

4.2 It appears that following the receipt of this information the Police spent some time investigating whether or not Hanvey had, in fact, disposed of any clothing, but these inquiries came to nothing.

4.3 On 9th September 1997, Reserve Constable Atkinson was interviewed about the allegation and denied it. His telephone billing records were obtained and these records revealed that a call had in fact been made from Atkinson's home address to the home of Allister Hanvey at 8.37 a.m. on Sunday 27th April. There was evidence of a similar call on 2nd May. On 9th October 1997, Atkinson was interviewed for a second time. He explained the first call by stating that Andrea McKee and her husband James McKee (the uncle of Miss A and the proprietor of a martial arts club) were spending the night of the attack at his home, and that Mr. McKee telephoned the Hanvey house to check on Miss A's safety as soon as he heard that there had been

trouble on the streets. The second phone call (on 2nd May 1997) was made by Mrs. Atkinson to discuss the martial arts business.

4.4 Atkinson's account was corroborated by Mr. and Mrs. McKee and also by his wife.

5. **The Course of the Criminal Proceedings**

5.1 By October 1997, the position was that six individuals were in custody having been charged with murder. These individuals were Paul Hobson, Allister Hanvey, Dean Forbes, Stacey Bridgett, Rory Robinson and Wayne Lunt. It was also the case that the investigation into Atkinson was continuing.

5.2 As noted above, as matters developed the only person tried for the murder of Robert Hamill was Paul Hobson. Moreover, the investigation concerning Atkinson did not lead to a trial in his case. It is necessary to explain what happened (at this stage in summary only) to the five suspects who were not prosecuted and also to explain the course of events in relation to Atkinson.

The Murder Charges

5.3 The key evidence against five of the suspects came from Miss A, Witness B and Colin Prunty. By 10th October 1997, the investigating officers became aware of an unwillingness on the part of Miss A and Witness B to give evidence. It appears that this unwillingness was motivated, at least in part, by events at Drumcree during the summer of that year (civil disturbances had taken place during marches by loyalists). At a meeting with representatives of the prosecution on 17th October 1997, Miss A indicated that she would not give evidence against any of the accused. The position in her case was that she knew a number of the defendants, having been brought up in the same area as them, and was again involved in a relationship with Allister Hanvey.

5.4 At a meeting with representatives of the prosecution held on 21st October 1997, Witness B claimed that he could not recollect any of the events of 27th April. When the contents of his witness statement were put to him, he said that at the time it had

been compiled he simply agreed with everything the Police had suggested to him. He stated that he did not wish to give evidence.

5.5 As a result of these developments, it was concluded that there was no reasonable prospect of obtaining a conviction against three of the accused and the charges against Allister Hanvey, Dean Forbes and Rory Robinson were discontinued on 31st October 1997.

5.6 On 3rd November 1997, Colin Prunty provided a second witness statement in which he stated that having seen a video recording of the three individuals who had been released on 31st October 1997 (a recording which he had been shown by members of the Hamill family), he recognised one of the individuals as the person he had seen wearing the Glasgow Rangers scarf (see paragraph 3.8 above). He was now adamant that the person was Dean Forbes. It will be remembered that Wayne Lunt had been arrested and charged with murder on the basis of Colin Prunty's first witness statement. This was on the basis that the events described by Mr. Prunty appeared clearly to implicate Wayne Lunt in the attack on Robert Hamill. However, when shown photographs of both Wayne Lunt and Dean Forbes, Mr. Prunty stated unequivocally that Lunt was not the person he had seen kicking at Robert Hamill. As a result of this development further enquiries were made in relation to Dean Forbes. In particular, the investigating officers considered whether there was any evidential basis for suggesting that Forbes was in fact the person who had been brought by the Police to the Land Rover and whether he had been wearing a Glasgow Rangers football scarf. There was no evidence to support such a suggestion. It was concluded that, as a result of Prunty's latest evidence, there was no reasonable prospect of obtaining a conviction against Wayne Lunt and proceedings against him were discontinued on 19th November 1997.

5.7 So far as the suspect Stacey Bridgett is concerned, he had originally been implicated in Robert Hamill's death by Miss A. By early November 1997, it was known to the investigating officers that a forensic science examination had revealed that a small spot of Bridgett's blood had been found on the right leg of the trousers worn by Robert Hamill. This spot of blood was about the size of a one penny coin and was positioned about an inch from the bottom of the trouser leg. When interviewed by the Police following his arrest Bridgett denied being near Robert Hamill, but if the

scientific evidence was correct this denial was untrue. However, it was concluded that without the evidence of Miss A, or any other evidence to show that he was involved in unlawful violence, the evidence did not provide a reasonable prospect of conviction and on 19th November 1997 proceedings against Bridgett were discontinued.

The Atkinson Investigation

- 5.8 By the end of 1997 the investigation into the activities of Reserve Constable Atkinson had reached the position whereby his account of events had been corroborated by Mr. and Mrs. McKee, as well as his wife.
- 5.9 Subsequently, Mr. and Mrs. McKee separated and Mrs. McKee moved to Wales. On 20th June 2000, she provided a statement to the investigating officers and admitted that she and her husband were not at Atkinson's house on the night of the attack, and it was at Atkinson's instigation that her husband had said that he made the telephone call to Hanvey's house. When confronted with this admission, Mr. McKee also admitted that he had lied to the Police.
- 5.10 As a result of their admissions, Mr. and Mrs. McKee were prosecuted for an offence of doing an act with intent to pervert the course of public justice. On 7th May 2002, they appeared before the Crown Court sitting at Craigavon and pleaded guilty. Mrs. McKee was sentenced to 6 months' imprisonment suspended for 2 years and Mr. McKee was sentenced to 6 months' immediate imprisonment.
- 5.11 Following her conviction Mrs. McKee indicated that she would be prepared to give evidence against Atkinson and his wife, as well as Kenneth Hanvey, the father of Allister Hanvey, who had given the Police false information about the telephone call to his house on the morning of 27th April 1997, namely that the telephone call was of an innocent nature.
- 5.12 In April 2003, proceedings were commenced against Mr. and Mrs. Atkinson for the offence of conspiracy to pervert the course of justice and against Kenneth Hanvey for obstructing the Police.

- 5.13 The defendants indicated that they required Mrs. McKee to give oral evidence at the committal proceedings and Mrs. McKee attended Craigavon Magistrates' Court on 27th October 2003. Unfortunately, the proceedings could not proceed on that date and they were adjourned and re-fixed to commence on 22nd December 2003.
- 5.14 On 21st December 2003, Mrs. McKee contacted the Police and stated that she would not be able to travel to Northern Ireland. She said that her young child was ill. In fact this explanation proved to be untrue.
- 5.15 On 15th March 2004, Gerald Simpson Q.C., Leading Counsel instructed on behalf of the prosecution, advised that Mrs. McKee could not be put forward by the prosecution as a witness capable of belief.
- 5.16 On 19th March 2004, the three defendants were discharged from the committal proceedings.
- 5.17 Having set out the essential factual background, it is now appropriate to set out the relevant legal framework.

6. **The Legal Framework**

The Director of Public Prosecutions for Northern Ireland

- 6.1 At the time of the events in question Article 6(3) of the Prosecution of Offences (Northern Ireland) Order 1972 provided:

"It shall be the duty of the Chief Constable, from time to time to furnish to the Director facts and information with respect to –

- (a) *indictable offences alleged to have been committed against the law of Northern Ireland;*
- (b) *such other alleged offences as the Director may specify;*

and at the request of the Director, to ascertain and furnish to the Director information regarding any matter which may appear to the Director to require investigation on the ground that it may involve an offence against the law of Northern Ireland or information which may appear to the Director to be necessary for the discharge of his functions under this Order.”

- 6.2 As a result of changes effected by section 31(5) of the Justice (Northern Ireland) Act 2004 (in force 13th June 2005), the Director is now under a statutory duty to give Police forces such advice as appears to be appropriate in matters relating to the prosecution of offences.
- 6.3 The position in Northern Ireland (as in England and Wales) is that it is (and was) the function of the Chief Constable and the Police to investigate alleged or suspected offences and to furnish relevant facts and information to the Director. It is (and was) the function of the Director to consider the facts and information brought to his notice and where the Director thinks proper to initiate, undertake and carry on criminal proceedings.

Interviewing Witnesses

- 6.4 Unlike the position in England and Wales, in Northern Ireland it has long been the practice for prosecuting counsel to meet and interview witnesses in order to ensure that the witnesses are willing to give evidence and are properly capable of being put forward as credible. In December 2004 the Attorney General published a report on pre-trial interviews with witnesses by prosecutors in England and Wales. These interviews were piloted in four areas and it is believed that they will strengthen the prosecution process in this jurisdiction by allowing the prosecutor to assess the reliability of a witness's evidence.

Joint Enterprise Killing

- 6.5 The leading case on joint enterprise killing is *R v. Powell and Daniels* [1999] 1 AC 1. In that case the House of Lords confirmed that it is sufficient to found a conviction for murder, in the case of a secondary party, if the secondary party realised that the principal might kill with intent to do so or intend to cause grievous bodily harm. It

was also decided that it was sufficient for the secondary party to be guilty of murder if he realised that there was a risk that the principal might cause grievous bodily harm with intent, but the secondary party would not be guilty of either murder or manslaughter if the principal acted outside the scope of the joint enterprise, for example by using a weapon of a type different from that contemplated by the secondary party.

- 6.6 Following the decision in *R v. Powell and Daniels*, judges and jurors found difficulty in grappling with the complexities of joint enterprise liability and in *R v. Rahman* [2007] EWCA Crim 342, the Court of Appeal provided model guidance on the approach to such cases. In *Rahman*, the appellants were each convicted of murder. The victim had sustained a fatal stab wound from a knife during an attack on him by a number of men, many of whom were armed with blunt instruments. The prosecution case was that each of the appellants had been a party to a joint enterprise to inflict unlawful violence on the victim. It could not be proved which person had inflicted the fatal blow. Each appellant denied possession of a knife and each asserted that he had not foreseen, believed, known or realised that anyone else in the group had a knife. Each claimed that the person who had inflicted the wound, whoever that was, had been acting outside the scope of any joint enterprise to attack. The Court of Appeal (at paragraph 69) provided guidance in the following terms:

“In order to convict D of murder the jury must first be sure that P [the person whose act actually causes death] unlawfully caused the death of V intending to kill him or cause him really serious bodily harm and secondly be sure that D played some part in the attack on V. The route to verdict could then be:

1. *Are you sure that D intended that one of the attackers would kill V intending to kill him or that D realised that one of the attackers might kill V with intent to kill him. If yes, guilty of murder. If no, go to 2.*
2. *Are you sure that either:*
 - (a) *D realised that one of the attackers might kill V with intent to cause him really serious bodily harm; or*

(b) *D intended that serious bodily harm would be caused to V;*
or

(c) *D realised that one of the attackers might cause serious bodily harm to V intending to cause him such harm.*

If no, not guilty of murder. If yes, go to question 3.

3. *What was P's act which caused the death of V? (e.g. stabbing, shooting, kicking, beating.) Go to question 4.*

4. *Did D realise that one of the attackers might do this act? If yes, guilty of murder. If no go to question 5.*

5. *What act or acts are you sure D realised that one of the attackers might do to cause V really serious harm? Go to question 6.*

6. *Are you sure that this act or these acts (which D realised one of the attackers might do) is/are not of a fundamentally different nature to P's acts which caused the death of V? If yes, guilty of murder. If no not guilty of murder."*

6.7 Thus, in a case of gang violence where death results, a secondary party will be liable for murder (caused by the act of the principal) if:

(a) he intended that one of the attackers would kill, or realised that one of the attackers might kill, with intent to kill;

or

(b) he realised that one of the attackers might kill or cause serious bodily harm with intent to cause serious bodily harm, or intended that serious bodily harm would be caused;

and

(c) realised that one of the attackers would do the act which actually caused death.

- 6.8 In broad terms, liability for manslaughter would arise where the secondary party is part of a joint enterprise to cause unlawful bodily harm short of really serious injury.

Affray

- 6.9 The position in Northern Ireland is that affray is a common law misdemeanour. The elements of the offence, for present purposes, may be summarised as unlawful fighting by one or more persons against another or others in a public place in such a manner that a bystander of reasonably firm character might reasonably be expected to be terrified.

Prosecution Witnesses

- 6.10 In any criminal prosecution, it is for the prosecution to decide, by the exercise of discretion, which witnesses are required to prove the prosecution case. However, this discretion must be exercised in accordance with certain well-established principles. The general rule is that the prosecution ought normally to call or offer to call all the witnesses who give direct evidence of the primary facts of the case. One exception to the general rule is where the prosecutor regards the witness' evidence as unworthy of belief.

Decisions To Prosecute

- 6.11 In *R v. Director of Public Prosecutions, Ex parte Manning* [2001] QB 330, the High Court (Lord Bingham C.J. and Morison J.), in the context of a challenge by way of judicial review of a decision not to prosecute, stated (at 344):

"In most cases, the decision [to prosecute] will turn not on analysis of the relevant legal principles but on the exercise of an informed judgment of how a case against a particular defendant, if brought would be likely to fare in the context of a criminal trial ... The exercise of this judgment involves an assessment of the strength by the end of the trial, of the evidence against the defendant and of the likely defence."

- 6.12 More recently in *The Hon. Samarine Sharma v. Carla Brown-Antoine and others* [2007] 1 WLR 780, Lord Bingham stated (at paragraph 14):

“It is the duty of police officers and prosecutors engaged in the investigation of alleged offences and the initiation of prosecutions to exercise an independent, objective, professional judgment on the facts of each case. It not infrequently happens that there is strong political and public feeling that a particular suspect or class of suspect should be prosecuted and convicted ... This is inevitable, and not in itself harmful so long as those professionally charged with the investigation of offences and the institution of prosecutions do not allow their awareness of political or public opinion to sway their professional judgment.”

7. The Director’s Decision-Making (The Murder Charges)

- 7.1 Having set out the factual background and the relevant legal framework, it is now necessary to consider the prosecutorial decision-making process and the reasons given to justify the discontinuance of the proceedings against five of the murder suspects.
- 7.2 In order to put the matter in context, it is relevant to observe at this stage that a Police investigation file in relation to the incident on 27th April 1997 was not received by the Director’s office until 7th August 1997. It follows that for a period of just over three months the matter was being investigated by the Police without formal reference to the Director. This was consistent with the principle that responsibility for the investigation rested with the Chief Constable and not with the Director. (For the sake of completeness it should be noted that on 12th May 1997 the Deputy Director met Superintendent Hooke and Superintendent McBurney and was informed about the case in general terms. On 13th May 1997, Superintendent McBurney, Superintendent Harvey and Detective Chief Inspector **P39** met officials from the Director’s office and again there was discussion about the case in general terms.)
- 7.3 The statements and exhibits submitted to the Director were accompanied by a detailed report (dated 30th July 1997) prepared by one of the investigating officers,

Detective Inspector Irwin, together with the "Views and Recommendations" of his Supervising Officer, Detective Chief Inspector **P39**

7.4 Detective Inspector Irwin expressed the view: (a) that the six suspects (Hobson, Hanvey, Forbes, Bridgett, Robinson and Lunt) who were then in custody should be charged with the murder of Robert Hamill; and (b) that there was no evidence to proceed with any offence committed against **D**

7.5 So far as Paul Hobson was concerned, the position was summarised by Detective Inspector Irwin in the following way:

- (i) Hobson was originally interviewed as a potential witness on 9th May 1997.
- (ii) He was arrested on 10th May 1997.
- (iii) When interviewed he denied being involved in any assaults and stated that he had been in the company of Allister Hanvey and Jonathan Wright.
- (iv) The evidence against him was contained in the statements provided by Jonathan Wright (who saw him running into the "fighting crowd"); Miss A (who saw five men assault Hamill, including one she knew as "Muck" which was known to be Hobson's nickname); Witness B (who saw him fighting in the crowd) and Constable Neill (who identified him as the person kicking out at Robert Hamill).

7.6 So far as Allister Hanvey was concerned, the position was summarised by Detective Inspector Irwin in the following way:

- (i) Hanvey was originally interviewed as a potential witness on 7th May 1997.
- (ii) He was arrested on 10th May 1997.
- (iii) When interviewed he denied being involved in any assaults and stated that he had been in the company of Paul Hobson and Jonathan Wright.

- (iv) The evidence against him was contained in the statements given by Miss A (who saw five men assault Hamill and named Hanvey as one of them) and Witness B (who recognised Hanvey and saw him kick a person lying on the ground (believed to be Hamill) three or four times in the chest area).

7.7 So far as Dean Forbes was concerned, the position was summarised by Detective Inspector Irwin in the following way:

- (i) Forbes was first arrested on 6th May 1997.
- (ii) He was arrested for a second time on 10th May 1997.
- (iii) When interviewed he denied taking part in any assaults and said that when the incident began he was at the Police Land Rover talking to the Police. He then walked towards the rear of the Land Rover and was aware of fighting and two people being kicked.
- (iv) The evidence against him was contained in the statements given by Miss A (who saw five men assault Hamill and named Forbes as one of them) and Witness B (who saw Forbes punch a man believed to be Colin Hull).

7.8 So far as Stacey Bridgett was concerned, the position was summarised by Detective Inspector Irwin in the following way:

- (i) Bridgett was first arrested on 6th May 1997.
- (ii) He was arrested for a second time on 10th May 1997.
- (iii) When interviewed he denied being involved in any assaults. He first became aware of a disorder when he was in the vicinity of the Police Land Rover. He was hit on the nose by an unknown male.
- (iv) The evidence against him was contained in the statements obtained from Miss A (who saw him and others assault Robert Hamill), Jonathan Wright (who saw him "trading punches" with an unidentified male) and Constable

Cooke (an officer who arrived at the scene when reinforcements were called and who saw Bridgett at the front of the crowd).

7.9 The Report also made reference to the fact that it was expected that evidence would be forthcoming to link blood from Bridgett to Hamill's clothing.

7.10 So far as Rory Robinson was concerned, the position was summarised by Detective Inspector Irwin in the following way:

- (i) Robinson was initially seen on 29th April 1997 and asked about his movements at the time of the events under investigation.
- (ii) He was arrested on 10th May 1997.
- (iii) When interviewed he denied being involved in any assaults and said that he had seen scuffles as he walked through the town centre.
- (iv) The evidence against him was contained in the statements provided by Miss A (who saw him and others assault Hamill) and Witness B (who saw him fighting with someone unknown). In addition there was evidence from four Police Officers that he had been seen to act in a provocative and aggressive manner (Constables Neill, Adams and Cooke and Reserve Constable Atkinson).

7.11 So far as Wayne Lunt was concerned, the position was summarised by Detective Inspector Irwin in the following way:

- (i) Lunt was arrested on 10th May 1997.
- (ii) When interviewed he denied being involved in any assaults. He admitted that at the time of the incident he had been wearing a Glasgow Rangers football scarf and that he had been spoken to in the Police Land Rover by a Woman Police Constable.

- (iii) The evidence against Lunt was contained in the statement provided by Colin Prunty (who stated that a person wearing a Glasgow Rangers scarf who had been placed in the rear of the Police Land Rover was one of those assaulting Hamill as he lay on the ground).

7.12 The Report also contained details of the arrest and interview of David Woods and Andrew Allen. Woods was arrested and interviewed on 15th May 1997. He gave an account of walking into Thomas Street and being the subject of sectarian abuse by a male (believed to be Colin Prunty) and then being hit by another male (believed to be Robert Hamill). He said that he was on his own when this happened and he went into his sister's flat which was nearby. Woods was later released unconditionally. Andrew Allen was interviewed on 15th May and 12th June 1997. He described the assault on Woods and said that he too had been assaulted by two men. This led to an intervention by the crowd. The two men were knocked to the ground by the crowd but recovered and ran off. Allen denied attacking Hamill but admitted that he was known as 'Fonz'. (The significance of this latter point is that, as noted above, Witness B said that he had seen a person called "Fonzy" kick Robert Hamill on the face while he lay on the ground. However, Witness B declined to attend an identification parade and there was no other evidence against Allen.)

7.13 At the end of his detailed Report, Detective Inspector Irwin identified a number of "Points of Note":

"It is to be highlighted that there are a number of difficulties associated with this incident which include:

- (a) *The conviction of Witness A and Witness B to proceed with their evidence in the face of pressure to retract.*
- (b) *Conflicting accounts of how the incident arose and in particular the evidence of Colin Prunty who has identified Wayne Lunt as an assailant ...*

- (c) *Outstanding medical evidence in relation to the deceased, Hamill's treatment at the Royal Victoria Hospital and the subsequent post-mortem result.*
- (d) *The whole nature of the incident which was spontaneous to the initial contact between both groups. As a result Police are unable to establish who, if any, inflicted the fatal blow to Robert Hamill.*
- (e) *Reluctance by witnesses to give evidence due to the sectarian nature of the incident and the present feelings within the Portadown community."*

7.14 Detective Inspector Irwin expressed the view that in his opinion the evidence given by Miss A and Witness B was both truthful and correct and he recommended an early consultation with the two witnesses as well as Colin Prunty.

7.15 Detective Chief Inspector **P39** agreed with Detective Inspector Irwin's recommendations and noted:

"The evidence of witnesses 'A' and 'B' is crucial ... I strongly support the recommendation that an early consultation be held with these witnesses."

7.16 The Report and accompanying evidence was considered on behalf of the Director by Mr. R.A. Kitson who was at that time an Assistant Director with responsibility for the Belfast and Eastern Circuit. On 12th August 1997, Mr. Kitson issued an Interim Direction to the Police to the effect that directions as to prosecution would await the receipt and consideration of forensic, post-mortem and medical reports.

7.17 By early October, the various reports were still not to hand and the prosecution file was passed to Mr. Davison, a Professional Officer in the Director's Office, with instructions to proceed with the case, insofar as it was possible.

7.18 On 10th October 1997, Mr. Davison spoke to Detective Inspector Irwin and was informed that certain crucial civilian witnesses (Miss A and Witness B) might not now be willing to give evidence.

- 7.19 On 14th October 1997, a further Interim Direction was issued on behalf of the Director. This indicated that consultations were to be held with the four principal civilian witnesses: Miss A, Witness B, Colin Prunty and Jonathan Wright. Senior Counsel, Mr. Gordon Kerr Q.C. (who had been instructed to advise in the potential prosecution for murder as opposed to the later proceedings for perverting the course of public justice, in which Gerald Simpson Q.C. had conduct of the case) was instructed to consult with the witnesses and advise as appropriate.
- 7.20 A consultation with Miss A and Jonathan Wright took place on 17th October 1997.
- 7.21 A further consultation took place on 21st October 1997 with Witness B.
- 7.22 The matters to emerge from these consultations were:
- (i) Miss A indicated that she would not give evidence against any of the accused.
 - (ii) Witness B claimed that he could not now recollect anything.
 - (iii) Jonathan Wright presented as a witness willing and capable of giving credible evidence. (The significance of his evidence was, however, limited. He saw Bridgett engaged in a fight, to the left of the main incident, with an unidentifiable person and stated that Robinson was in the crowd running about "*like a headless chicken*". He also stated that Hobson had run into a crowd fighting in the middle of the road.)
- 7.23 Following the consultations Mr. Kerr Q.C. provided oral advices which were subsequently confirmed in a written advice (undated but received by the Director on 13th November 1997).
- 7.24 So far as Miss A was concerned, Senior Counsel noted that Miss A was "*quite clear that she would not give evidence*" and advised that there was no basis for making an application under Article 3 of the Criminal Justice (Evidence) Order 1988 (reading of statements made by witnesses who are ill, intimidated etc.).

7.25 So far as Witness B was concerned. Senior Counsel noted:

“He claimed the information contained in his statement was gleaned from gossip and talk from around the town about the incident. He agreed that he had just been wasting police time. It was perfectly clear to me that his position was probably at least partially induced by fear but it was clear that there would be no evidence to support any Article 3 (reading of statements etc.) application even if it would have been proper to consider one in these circumstances. In any event the police view was that the father was a local businessman who may have felt his son giving evidence would be commercially disastrous. In the event Witness B cannot be considered as a reliable witness on the papers.”

7.26 On Friday 24th October 1997, Mr. Kitson again assumed conduct of the case. This was because Mr. Davison was about to go on annual leave and the matter was becoming urgent given that the six accused were in custody.

7.27 On Monday 27th October 1997, Mr. Kitson spoke to Mr. Kerr Q.C., who was at that stage still in the process of preparing his written opinion. Mr. Kerr stated that neither Witness A nor B could be relied on to give evidence and that without their statements there was no case to answer against three of the accused: Forbes, Hanvey and Robinson. Mr. Kitson raised the question of summoning Miss A to court. It was agreed that this would be raised with the Police. Later that day, Mr. Kitson contacted Detective Inspector Irwin and his file note of the conversation includes the following:

“I raised [with] the D/Inspector the question of the summoning of Witness A to court. I said that this was a matter which had not been discussed, as I understood it, with police. I said this was a difficult issue. This was a serious case and witness A could give relevant and cogent evidence. There was the question of compelling her to give that evidence. However, I needed police advices as to whether if summoned to court, there was a reasonable prospect of witness A giving evidence. D/Inspector Irwin’s view was that there was not. He did not consider that in any event and no matter what happened that witness A would give evidence [against] any of the accused. I told D/Inspector Irwin that this was an important point and I suggested he

reflect on it overnight, consult with his superiors, if necessary, and come back to me the next day."

- 7.28 On Tuesday 28th October 1997, Mr. Kitson was informed that it was the view of Detective Inspector Irwin and Detective Chief Inspector **P39** (who had had previous dealings with the family of Miss A) that there "*was no reasonable prospect, no matter what sanction was applied ... of Witness A giving evidence in court*". This view was also supported by Superintendent Cooke who, on behalf of the Chief Constable, had attended the consultation with Witness A.
- 7.29 As a result of these developments, Mr. Kitson decided that there was no case to answer against Forbes, Hanvey and Robinson and, having satisfied himself that no other evidence was likely to become available, he informed Detective Inspector Irwin that he intended to issue a "*No Prosecution*" Direction as soon as possible (the three accused being in custody). He also asked the Detective Inspector to ensure that the relatives of the deceased were informed of the decision.
- 7.30 On 29th October 1997, Mr. Kitson issued his Direction to the Chief Constable and on 31st October 1977, at the Maze Court, Forbes, Hanvey and Robinson were discharged.
- 7.31 At this stage the position in relation to the three accused who remained in custody was as follows:
- (i) Wayne Lunt was implicated in the killing by Colin Prunty, a witness who had yet to be seen in consultation by Mr. Kerr Q.C..
 - (ii) Paul Hobson was implicated in the killing by Constable Neill and (to a lesser degree) by Jonathan Wright.
 - (iii) Stacey Bridgett was linked to Hamill as a result of the blood found on Hamill's trousers. There was also evidence from Jonathan Wright that Bridgett had been involved in a fight with an unidentified person, although this was to the left of the main incident.

- 7.32 On 30th October 1997, a consultation took place with Colin Prunty. At the conclusion of this consultation Mr. Kerr Q.C. advised orally that there was sufficient evidence to prosecute Lunt for an offence relating to the death of Robert Hamill. Whether that offence was murder, manslaughter or some lesser offence was to be decided after consideration had been given to the pathologist's report which at that stage was still unavailable.
- 7.33 On 3rd November 1997, Diane Hamill and Fiona Ryan, sisters of Robert Hamill, called, by arrangement, to see Mr. Kitson. In the course of this meeting Mr. Kitson was informed by Fiona Ryan that she was aware that one of the accused discharged from court on 31st October 1997 had been identified by a witness as one of Robert Hamill's attackers. It was apparent to Mr. Kitson that the witness was in fact Colin Prunty. In light of this information, Mr. Kitson telephoned Detective Inspector Irwin and advised that a further statement be taken from Mr. Prunty as a matter of urgency. This was done later that same day. In this latest statement Mr. Prunty stated that he had been shown a video recording of the three individuals, who had been released on 31st October 1997, leaving the courthouse. Mr. Prunty was now adamant that the person he had seen in the back of the Police Land Rover, wearing the Glasgow Rangers football scarf, was Forbes and not Lunt. Moreover, when Mr. Prunty was shown a photograph of Lunt and a photograph of Forbes he stated unequivocally that if he were asked if Lunt was the person he was referring to and whom he had seen kicking at Robert Hamill, he would say no.
- 7.34 As a result of this development, further Police inquiries were requested in relation to Forbes. In particular, the Police were asked whether there was any evidence that he was in fact the person who had been brought to the Police Land Rover and whether there was any evidence that he had been wearing a Rangers scarf. The Police response was that there was no such evidence.
- 7.35 In light of Mr. Prunty's latest statement Mr. Kerr Q.C. advised orally and subsequently in writing that there was no reasonable prospect of obtaining a conviction of Lunt for any offence relating to the death of Robert Hamill. In his written advice (received by the Director on 13th November 1997) Senior Counsel stated:

"I have considered the proposition that Prunty could be considered a reliable witness as to his assertions to the actions of the man he describes and ask the Court to consider that he must be describing Lunt on the basis of the other evidence [viz. that Lunt was the person placed in the Police Landrover and was wearing a Rangers' scarf]. I have to say that this is a most unlikely course to suggest and I cannot advise it."

Senior Counsel also noted that the only other evidence of Lunt's involvement in the disorder came from Constable **A**, who was the officer who placed Lunt in the rear of the Police Land Rover at about 1.57 a.m.. She had seen Lunt at about 1.55 a.m. carrying a bottle and running in the direction of the crowd at the junction of Thomas Street. As she approached him he ran off in the direction of Church Street. On the basis of Prunty's most recent statement and the other available evidence, Senior Counsel concluded: *"there is no reasonable prospect of a conviction of Lunt for murder and in my view even affray might be difficult"*.

- 7.36 On 18th November 1997, Mr. Kitson and Mr. Davison met Mr. Kerr Q.C. to consider and discuss the written advice. The note of this meeting, prepared by Mr. Kitson, summarised the discussion in relation to offences other than murder and concluded:

"There was no evidence available as to what Lunt was actually doing and how much he participated in any disturbance. It was concluded that the evidence was insufficient to prosecute Mr. Lunt for an offence of affray. Minor offences of disorderly behaviour and even resisting a police officer were considered but rejected on the basis that, even if there was evidence of such offences Lunt had been in custody for 6 months."

- 7.37 On 19th November 1997, Mr. Kitson issued a Further Direction to the Chief Constable to the effect that the holding charge of murder be withdrawn at the earliest opportunity. The holding charge was in fact withdrawn later that day at the Remand Court at H.M. Prison at the Maze.

- 7.38 At the consultation with Senior Counsel on 18th November 1997, Mr. Kitson and Mr. Davison also discussed the case against Stacey Bridgett. By the time of this consultation the Director had received (on 3rd November 1997) the report of Mr.

Lawrence Marshall of the Forensic Science Agency of Northern Ireland. Moreover, Mr. Marshall had been spoken to by Mr. Davison (on 12th November 1997). The scientific evidence was that Bridgett's blood, one spot the size of a one penny piece, had been found on the deceased's trousers. Senior Counsel advised that this evidence was not sufficient to sustain a prosecution of Bridgett (even when coupled with his lies in interview that he had been nowhere near the deceased). The note of the consultation contains the following:

"The most that could be proved was that at some stage he was sufficiently close to Hamill that his blood had dropped directly onto Hamill. There was no evidence to show what he had been doing or what he had done. The fact that he had lied during interview was in Mr. Kerr's opinion not sufficient to inculcate Bridgett. Mr. Kerr argued that given the circumstances where he was being interviewed by police about the murder and his possible involvement in it, a lie in those circumstances as to his presence close to the deceased would not in the Court's view be very compelling. Mr. Kerr also said that in relation to a charge of affray it was doubtful whether there was sufficient evidence to sustain such a charge. Again the real difficulty was that it could not be proved or shown exactly what he had done or had been doing at and around the time of the incident."

7.39 On 19th November 1997, Mr. Kitson notified the Chief Constable that the Police holding charge against Stacey Bridgett "will be withdrawn at the earliest opportunity" and Bridgett was discharged later that day.

7.40 Thus, of the six persons originally charged with murder only one, Paul Hobson, remained in custody. In a written advice received by the Director on 22nd December 1997, Mr. Kerr Q.C. advised that Hobson be prosecuted for murder. On 27th January 1998, a Direction was raised to the Police that Hobson should be prosecuted for the murder of Robert Hamill. As noted above, Hobson was eventually acquitted of murder but convicted of affray and sentenced to 4 years' imprisonment.

7.41 By letter dated 6th July 1999 (that is after the conclusion of Hobson's trial), [REDACTED] a solicitor in Lurgan acting on behalf of Diane Hamill (Robert Hamill's sister) invited the Director:

- (a) To confirm his intention to reconsider the decision not to proceed with the murder charge against Mr. Lunt.
- (b) To confirm whether he would reconsider his decision not to proceed against Mr. Bridgett.
- (c) To clarify the exact basis upon which he decided to withdraw the Police holding charges against the five individuals.

7.42 As a result of this letter, the Director requested the Deputy Director to supervise a review of the decisions. The review was carried out by Mr. [REDACTED], Senior Assistant Director, who concluded:

- (a) The decisions in respect of Forbes, Hanvey and Robinson were correct.
- (b) The decision in respect of Lunt was correct.
- (c) The decision not to proceed against Bridgett for murder was correct, although the evidence in respect of an offence of affray was more evenly balanced. However, the evidence was disjointed and while the decision was a "*fine one*" there was no reasonable prospect of a conviction for the lesser offence.

8. The Director's Decision-Making (Atkinson)

8.1 As noted above, on 1st April 2003 the Director issued Directions to the Chief Constable to prosecute Robert Atkinson, his wife Eleanor and Kenneth Hanvey. The evidence against the three accused was contained in a witness statement provided by Andrea McKee.

8.2 The committal proceedings were originally scheduled to take place on 27th October 2003 and Mrs. McKee attended the Craigavon Court house on that date. She had travelled from Wales where she now lived. Unfortunately, the committal proceedings did not take place on that date as the defence successfully objected to the competence

of the deputy Resident Magistrate to preside over the proceedings. The matter was adjourned to 22nd December 2003.

- 8.3 On 21st December 2003, Mrs. McKee contacted the Police in Northern Ireland and told them she would be unable to attend Court the following day because her son was ill.
- 8.4 On 22nd December 2003, the Resident Magistrate adjourned the proceedings. The defence representatives argued that the adjournment should be conditional upon the Crown producing satisfactory medical evidence at a later date. It was agreed that the case would be mentioned in early January 2004, and, if all was in order, the committal proceedings would commence on 8th March 2004.
- 8.5 On 23rd December 2003, Mrs. McKee contacted the Police in Northern Ireland and told them that she had received a threatening letter which purported to have been sent by the Loyalist Volunteer Force in Portadown. The letter threatened her home if she went ahead to give evidence in the case. (The circumstances surrounding the sending of this letter were later investigated but the investigation was unable to uncover evidence as to the identity of the person responsible.)
- 8.6 On 9th January 2004, Mrs. McKee was seen by prosecuting counsel, Christine Smyth, and Ivor Morrison of the Director's Department. In the course of this consultation Mrs. McKee stated:
- (i) she had visited Pendine surgery with her child on 19th December 2003;
 - (ii) she had spoken to a female who may have been a receptionist;
 - (iii) her child was seen by a grey haired doctor;
 - (iv) she was still willing to give evidence.
- 8.7 Enquiries made at the surgery failed to provide any supporting evidence for Mrs. McKee's account of events and suggested that it was in fact untrue.
- 8.8 On 17th and 25th February 2004 Gerry Simpson Q.C., Christine Smyth and Ivor Morrison met Detective Superintendent **K** , the Senior Investigating Officer

in the case. At these meetings strong concerns were expressed about Mrs. McKee's credibility as a witness.

- 8.9 On 27th February 2004, the case was mentioned before the Resident Magistrate at Craigavon Magistrates' Court and Ivor Morrison requested further time to consider the validity of the adjournment granted by the Court on 22nd December 2003 and for the case to be taken out of the list on 8th March 2004. The defence objected to the application. The Resident Magistrate reluctantly agreed to the prosecution request, but indicated that he considered the situation to be most unsatisfactory. The case was adjourned until 19th March 2004.
- 8.10 On 2nd March 2004, Gerry Simpson Q.C. consulted with Mrs. McKee at the Director's offices in Belfast. Also present at this consultation were Ivor Morrison and two Police Officers.
- 8.11 Senior Counsel concluded that Mrs. McKee had concocted the story about taking her child to the surgery and in an Advice dated 15th March 2004, he stated:

"In the trial of the [three] defendants she would be the principal witness as to fact and her evidence would have to be treated as that of an accomplice. Accordingly her credibility is of central importance.

*In the circumstances of this case the prosecution will be called upon to explain the adjournment which resulted from her non-attendance on 22 December. The explanation given by **McKee** is untruthful in my view in light of the police inquiries. It would be inappropriate to put this version of events forward knowing that as will inevitably happen if she goes into a witness box she will give untruthful evidence.*

The overall effect of her maintenance of the story for which there is not a shred of corroboration, is to contaminate any evidence that she may give and completely to undermine her general credibility. In those circumstances I am not in a position to advise that she can be put forward by the prosecution as a witness capable of belief."

8.12 Ivor Morrison agreed with the views expressed by Counsel and the proceedings against the three accused were discontinued.

9. Discussion

9.1 The decisions under consideration fall into two distinct categories. First, the decisions not to prosecute in the cases of Forbes, Hanvey, Bridgett, Robinson and Lunt. Secondly, the decisions to discontinue the proceedings against Mr. and Mrs. Atkinson and Mr. Hanvey (Snr.).

Dean Forbes

9.2 To recap, Forbes was charged on 10th May 1997. At that time the only evidence of Forbes' involvement in the killing was contained in the statement given by Miss A (dated 10th May 1997). She identified Forbes as one of a group (including Hanvey, Bridgett, Hobson and Robinson) who jumped on and kicked Robert Hamill. Witness B stated that he had seen Forbes punch a male (believed to be Colin Hull). When interviewed Forbes said that he was at the Police Land Rover at the time the incident began and denied being involved in any violence.

9.3 It is clear that without the evidence of Miss A and Witness B there was no case to answer against Forbes, both in relation to killing and any lesser offence such as affray. So far as the killing is concerned, without the evidence from Miss A there was nothing to link him with the attack on Robert Hamill. So far as the offence of affray is concerned, without the evidence from Witness B there was no evidence to prove that he had engaged in any violent conduct. Moreover, the evidence from Witness B appears to have been insufficient to substantiate a charge of affray. This is because a bystander of reasonably firm character would not necessarily be terrified by the actions of Forbes as described by Witness B. Even if this is wrong, Witness B retracted his evidence and claimed the information in his statement was false, having been gleaned from gossip and talk from around the town about the incident.

9.4 By 29th October 1997, the position confronting the Director was:

- (i) Miss A had made it clear that she would not give evidence against any of the accused.
- (ii) Although Miss A was a compellable witness, the Director was informed by the senior investigating officers, speaking on behalf of the Chief Constable, that there was no reasonable prospect of the witness giving evidence in court, no matter what sanction was applied.
- (iii) There was no reasonable prospect of reading her statement under Article 3 of the Criminal Justice (Evidence) Northern Ireland Order 1988.
- (iv) Witness B claimed that he could not recollect anything and his statement was untrue.

9.5 It follows that in the absence of evidence from Miss A or Witness B, and without sufficient other evidence being available, the Director had no alternative but to direct no prosecution of Forbes.

9.6 In my opinion, the Direction given to the Chief Constable on 29th October 1997 was reasonable as there was no reasonable prospect of obtaining a conviction in Forbes' case.

9.7 As already noted, Forbes was discharged on 31st October 1997. On 3rd November 1997, Colin Prunty provided a second statement to the investigating officers in which he purported to identify Forbes as the person he had seen on 27th April in the rear of the Police Land Rover, having been put there by Police, wearing a Glasgow Rangers football scarf. According to Prunty this was the person he had seen kicking at Robert Hamill. The difficulty with this evidence was twofold:

- (i) Forbes was not the person who had been put into the rear of the Police Land Rover (the weight of the evidence proved that the person in the Land Rover was Wayne Lunt).

- (ii) There was no evidence that Forbes had been wearing a Glasgow Rangers football scarf (the weight of the evidence was to the effect that Lunt was wearing such a scarf, as in fact he admitted when interviewed under caution).

9.8 As a result, the position confronting the Director on 3rd November 1997 was that Mr. Prunty's first statement had implicated Lunt in the killing but his second statement appeared to implicate Forbes, but only on the basis that he was the person wearing the football scarf etc.. Further Police enquiries were requested in relation to Forbes, in particular whether there was any evidence to establish that Forbes was in fact a person who had been brought to the Land Rover, wearing a football scarf, and who was subsequently released by Police. No such evidence became available. This left the prosecution in the following position:

- (i) Any case against Wayne Lunt would have to be presented on the basis that Prunty was correct when he stated that the person he saw in the rear of the Police Land Rover wearing the Glasgow Rangers football scarf was responsible for kicking Robert Hamill, but incorrect when he stated that it was Forbes.
- (ii) Any case against Forbes would have to be presented on the basis that Prunty was correct in his identification of Forbes as the person he had seen kicking Robert Hamill, but incorrect when he said that the same person was put in the rear of the Police Land Rover and wearing a football scarf.

9.9 Senior Counsel advised that presenting a case on either of these bases was untenable. This was also the Director's view.

9.10 In my opinion the decision not to proceed against Forbes on the basis of Prunty's evidence was reasonable. There was no reasonable prospect of conviction. A court could not have convicted either Lunt or Forbes on the basis of Prunty's evidence.

Allister Hanvey

9.11 To recap, Hanvey was charged on 10th May 1997. The evidence of Hanvey's involvement in the killing was contained in the witness statements provided by Miss

A and Witness B. Miss A recognised him as one of the group assaulting Robert Hamill. Witness B recognised Hanvey and described him kicking a person on the ground (believed to be Hamill) three or four times in the chest area. There was no other evidence relating to Hanvey's involvement in the incident. (When interviewed under caution Hanvey denied being involved in any assaults and stated that he was always several yards from the fighting.)

9.12 By 29th October 1997, the position confronting the Director was as set out at paragraph 9.4 above.

9.13 It follows that in the absence of evidence from Miss A or Witness B and without sufficient other evidence being available, the Director has no alternative but to direct no prosecution of Hanvey.

9.14 In my opinion, the Direction given to the Chief Constable on 29th October 1997 was reasonable as there was no reasonable prospect of obtaining a conviction for any offence in Hanvey's case.

Rory Robinson

9.15 To recap, Robinson was charged with murder on 11th May 1997. The evidence against him came from Miss A who saw him and others assault Robert Hamill as he lay on the ground. In addition, Witness B saw him fight with someone but could give no further details. There was also evidence from the Police witnesses that he was seen acting in a provocative and aggressive manner (Constable Neill, Constable Adams, Reserve Constable Atkinson and Constable Cooke).

9.16 By 29th October 1997 the position confronting the Director was as set out at paragraph 9.4 above.

9.17 It follows that in the absence of evidence from Miss A or Witness B and without sufficient other evidence being available, the Director had no alternative but to direct no prosecution of Robinson for murder.

9.18 So far as any lesser offence (such as affray) is concerned, the evidence available to the Director was capable of establishing:

- (i) Robinson was running through the crowd like a "*headless chicken*" (Jonathan Wright).
- (ii) He was taunting and trying to break through the Police (Constable Neill).
- (iii) He was struck by an officer to keep him back (Reserve Constable Atkinson).
- (iv) He was one of the crowd shouting "*I hope they die*" as the injured men were placed into the ambulance (Constable Silcock).
- (v) He was seen by an officer but was doing nothing of significance (Constable Adams).
- (vi) He was trying to push past Police (Constable Cooke).

9.19 The combined effect of this evidence, taken at its highest, is that he was an agitated individual within the crowd; made policing the incident more difficult and shouted, together with others, "*I hope they die*" when order had been restored. There was no evidence of Robinson's involvement in any violence against Robert Hamill or

D

9.20 In these circumstances, the decision of the Director to discontinue the proceedings for murder and not proceed with a prosecution for any lesser offence appears to have been reasonable.

Stacey Bridgett

9.21 To recap, Stacey Bridgett was charged with murder on 10th May 1997. The principal evidence against Bridgett was contained in the statement provided by Miss A. She described how Bridgett and others assaulted Robert Hamill as he lay on the ground. In addition, there was the evidence that a spot of Bridgett's blood was found on

Robert Hamill's trousers. There was some other evidence concerning his movements in the vicinity of the disturbance.

9.22 By 29th October 1997, the position confronting the Director was that Miss A's evidence was no longer available.

9.23 Senior Counsel advised that the blood evidence was not strong enough to implicate Bridgett in the unlawful violence directed against Robert Hamill and the Director agreed.

9.24 It seems to me that his decision was reasonable. In the absence of any evidence that Bridgett had actually assaulted Robert Hamill, the evidence merely showed that he was at some stage close enough to the deceased for some blood to have dripped onto his trousers. At any trial, the difficulty for the prosecution would have been the inability to say precisely when and in what circumstances the blood came into contact with Mr. Hamill. This difficulty would have been compounded by the fact that it was impossible to say who had inflicted the fatal injury and when it had been inflicted. In this connection it is necessary to deal with evidence contained in a statement made by Constable Silcock, dated 27th April 1997. Constable Silcock was one of the officers who arrived at the scene following Reserve Constable Cornett's call for assistance at 1.47 a.m.. He described how he went to the assistance of the two injured men who were lying on the ground. His statement then contains the following:

"A large group 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 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 ... had blood coming from his nose. A member of the crowd called to this person, calling him Stacey. He responded to this name."

9.25 It could be argued that the statement of the woman wearing the white top was so spontaneous that it formed part of the transaction under consideration and was thus admissible as an exception to the hearsay rule (the *res gestae* exception). The law relating to spontaneous statements was authoritatively clarified by the House of Lords

in *R v Andrews* [1987] AC 281. In the course of his opinion Lord Ackner stated that the primary question for the judge is whether the possibility of distortion or concoction can be disregarded. In this case the difficulties confronting the prosecution were: (i) that the woman's identity was not known; (ii) the incident was confusing; and (iii) the statement made by the woman purported to identify one of the attackers but this evidence could not have been tested by cross-examination so as to establish its reliability.

9.26 It was the view of Senior Counsel that the evidence of Constable Silcock was "clearly" not admissible against Bridgett, and while no reasons were given for this view it appears to reflect a realistic assessment of the likelihood of this evidence being used against Bridgett at any trial. The danger of admitting this evidence to the disadvantage of Bridgett is obvious and I agree with Senior Counsel's conclusion. This conclusion was accepted by the Director and it was reasonable of the Director to reach the same view.

9.27 The only remaining issue in Bridgett's case is whether there was any evidence of the commission by him of any lesser offence, such as affray. There was no evidence to show that Bridgett committed any specific act of violence and although the evidence showed that he was part of the crowd and suffered a bloody nose, this would not in itself be sufficient to prove the commission by him of any offence.

9.28 For the reasons set out above, the Director's decision to issue a Direction on 19th November 1997, that the Police holding charge against Bridgett be withdrawn at the earliest opportunity, was reasonable.

Wayne Lunt

9.29 To recap, Lunt was charged on 10th May 1997. The sole evidence implicating him in the killing was the statement of Colin Prunty. He described a person kicking Robert Hamill as he lay on the ground. He then observed the same person being placed in the rear of the Police Land Rover and stated that he was wearing a Glasgow Rangers football scarf. Lunt admitted in interview that he was wearing such a scarf but denied assaulting any person.

- 9.30 At the consultation with Senior Counsel held on 3rd November 1997, Mr. Prunty stated that the person he referred to in his statement was not Lunt. He stated unequivocally that if asked whether Lunt was the person to whom he was referring and whom he had seen kicking Robert Hamill, he would say no. Senior Counsel then advised that there was no reasonable prospect of obtaining a conviction of Lunt for any offence relating to the death of Robert Hamill. The Director agreed.
- 9.31 It appears to me that this conclusion was inevitable and the decision of the Director not to proceed with the murder charge against Lunt was reasonable.
- 9.32 The question that then arose was whether or not Lunt could be prosecuted for any lesser offence such as affray. In his written advice (received by the Director on 13th November 1997) Senior Counsel advised that "*even affray might be difficult*". The other evidence against Lunt was:
- (i) He was seen with a scarf over his face carrying a bottle and running at a crowd at the junction of Thomas Street. As police stopped alongside him he ran off towards Church Street (Constable **A**).
 - (ii) At 1.57 a.m. he was taken to the Police Land Rover by Constable **A** where he remained until 2.05 a.m. (Constable **A**).
 - (iii) He kicked Constable **A** once on the left shin and once on the left ankle (Constable **A**).
- 9.33 At a consultation with Senior Counsel held on 18th November 1997, Senior Counsel concluded that the evidence was insufficient to prosecute Lunt for affray. This was also the view of the Director. In my opinion this conclusion was reasonable. The difficulty facing the Director was that there was no evidence of his precise involvement in the incident and there was no reasonable prospect of conviction.
- 9.34 On the basis of the facts set out above, the Direction issued by the Director on 19th November 1997, that the charge against Lunt be withdrawn at the earliest opportunity, was reasonable.

The Atkinson Proceedings

9.35 The Atkinson prosecution was discontinued after it was concluded that Mrs. McKee could not be put forward as a witness capable of belief. This was the view of both Gerry Simpson Q.C. and Ivor Morrison, reached after they had seen Mrs. McKee in consultation on 2nd March 2004. Leading Counsel recorded his views in a written advice dated 15th March 2004. The problem arose because Mrs. McKee failed to attend the committal hearing and gave an explanation for her failure that proved to be untrue. When confronted with the proof that it was untrue, she gave an elaborate explanation which was incredible.

9.36 It is possible, of course, that Mrs. McKee was untruthful about her reasons for not attending the committal but truthful in her account of the events in April 1997, particularly as she had pleaded guilty to her part in the conspiracy to pervert the course of public justice. However, it was for the prosecution to make the assessment of whether she could be relied upon as a credible witness and whether it would be right for the prosecution to call her as a witness worthy of belief.

9.37 In my opinion, the decision of Leading Counsel was one reasonably open to him as Counsel in the case, particularly as he had himself seen and heard the witness in consultation. Moreover, it was reasonable of the Director to reach the same conclusion. It follows that the decision not to continue with the prosecution was reasonable.

10. The Steps Taken by the Director

The Murder Investigation

10.1 In addition to the decisions concerning prosecution, I have been asked to consider whether there were steps which the Director (through his officials) should have taken which would have provided a reasonable expectation that evidence sufficient to meet the test for prosecution would be obtained.

- 10.2 The starting point of the analysis on this aspect of the case is to consider the materials provided to the Director in August 1997. These materials included:
- (i) the Report compiled by the Senior Investigating Officers;
 - (ii) a bundle of witness statements running to almost 400 pages;
 - (iii) a bundle of interview records running to almost 1200 pages.
- 10.3 On its face, the Police investigation had been thorough. Statements had been obtained from all those who were identified as being present at the incident and house to house inquiries had been conducted in an effort to discover whether any of the local residents could contribute to an understanding of what precisely had occurred in the period leading up to and the period after the death.
- 10.4 By the time of the Director's involvement the case against the suspects was in place. The only outstanding matters were the awaited post-mortem and forensic science reports.
- 10.5 The first Interim Direction issued by the Director to the Chief Constable was dated 12th August 1997. This was to the effect that any directions as to prosecution would await the receipt and consideration of the post-mortem and forensic science reports. This appears to be in accordance with good practice and was reasonable.
- 10.6 The second Interim Direction was issued on 14th October 1997. This indicated that consultations were to be held with four principal civilian witnesses (Miss A, Witness B, Colin Prunty and Jonathan Wright). This also appears to be in accordance with good practice and was reasonable.
- 10.7 On 29th October 1997, the Director issued a Direction for no prosecution of Forbes, Hanvey and Robinson. For the reasons set out above, I have concluded that this was a reasonable decision and there is no basis for concluding that any further enquiries by the Police would have uncovered evidence hitherto unavailable to the prosecution.
- 10.8 Further Police enquiries were requested in relation to Forbes on 3rd November 1997. This followed the consultation with Prunty. The Police were asked whether there was

any evidence to prove that Forbes had been brought to the Police Land Rover and whether he was wearing a football scarf. No such evidence became available.

- 10.9 The next Direction was dated 19th November 1997, when the Chief Constable was informed not to proceed with the holding charge against Bridgett and Lunt. This decision was reasonable.
- 10.10 In summary, the Director appears to have taken appropriate steps during the course of the murder proceedings and there were no additional steps which the Director should have taken which would have provided a reasonable expectation that evidence sufficient to meet the test for prosecution would be obtained. In this connection it is significant to note that Senior Counsel instructed by the Director did not advise that further enquiries were necessary or that additional evidence should be obtained. It is reasonable to infer that both the Director and Counsel were satisfied that all the evidence that could be obtained was available to the prosecution.

The Atkinson Proceedings

- 10.11 In the Atkinson proceedings there was some delay in obtaining the telephone billing records to prove that a call had been made from Atkinson's home address to Hanvey's home address. This was an operational matter for the Police and had no impact on the investigation which did not progress anywhere until 2002, when Mrs. McKee agreed to give evidence against Robert and Eleanor Atkinson and Kenneth Hanvey.
- 10.12 The prosecution against the three defendants depended entirely on the evidence given by Mrs. McKee and there is no basis for suggesting that there were steps the Director should have taken to obtain any additional evidence.

11. Conclusion

- 11.1 On any view this was a difficult case, involving as it did a spontaneous fast moving incident and a large group of individuals. It was made more difficult by the inability to say who had been responsible for the act which caused Robert Hamill's death.

11.2 I have considered with care the materials provided to me (the Police Report, statements, exhibits, contemporaneous documents from the Director's office and counsel's advices) and have concluded:

(i) the decisions made by the Director for no prosecutions in the cases of Forbes, Hanvey, Robinson, Bridgett and Lunt were reasonable in all the circumstances of the case;

(ii) the decision made by the Director to discontinue the proceedings against Mr. and Mrs. Atkinson and Kenneth Hanvey was reasonable.

11.3 It is significant to note the decisions were made only after receiving advice from Senior Counsel instructed to conduct the prosecution in each case.

11.4 There is no basis for suggesting that there were steps which the Director should have taken which would have provided a reasonable expectation that evidence sufficient to meet the test of prosecution would be obtained.

11.5 Overall, it appears that the case was assessed both objectively and professionally.

11.6 I hope that what I have written is clear. If I can assist further please do not hesitate to contact me.

6 King's Bench Walk,
Temple, E.C.4.

DAVID PERRY Q.C.
4th January 2008

RE THE DIRECTOR OF PUBLIC PROSECUTIONS
FOR NORTHERN IRELAND
AND THE DEATH OF ROBERT HAMILL

A D V I C E

ATTORNEY GENERAL'S OFFICE
20 Victoria Street
London
SW1H 0NF

EXHIBIT RAK9

RAK 9

RE THE DIRECTOR OF PUBLIC PROSECUTIONS FOR NORTHERN IRELAND
AND THE DEATH OF ROBERT HAMILL

SECOND ADVICE

1. Introduction

1.1 In this matter I have previously advised on two discrete issues, namely, whether the decisions taken by the Director of Public Prosecutions for Northern Ireland ('the Director') and his staff were reasonable, and whether there were steps which the Director should have taken which would have provided a reasonable expectation that evidence sufficient to meet the test for prosecution would be obtained. I concluded that the first issue was to be answered in the affirmative and the second issue in the negative.

1.2 The relevant background is set out in detail in that earlier Advice.

1.3 I have now been asked to consider a number of issues arising from advices written by counsel to the Hamill Inquiry, Ashley Underwood Q.C. and Julie Anderson.

1.4 Before identifying the precise issues which arise for consideration, it may be helpful to summarise the effect of the advices written by counsel to the Inquiry.

2. The Advices Written By Counsel

2.1 Counsel to the Hamill Inquiry have written two relevant advices. They are both undated but the first appears to have been written in about June 2005 and the second in December 2006

The First Advice

- 2.2 In the first advice, counsel recommended that a request be made for the terms of reference for the Inquiry to include:

".. whether the Director of Public Prosecutions [for Northern Ireland] or those advising him wrongfully failed to take all reasonable steps to secure convictions arising out of the death of Robert Hamill."

- 2.3 The recommendation for an extension of the Inquiry's terms of reference was explained by counsel on the basis that they had 'concerns' relating *"to a number of decisions which [the Director], his officials and Counsel took about prosecuting those suspected of murdering Robert Hamill or of conspiring to pervert the course of justice in respect of the murder."*

- 2.4 The concerns were outlined in the body of the advice and may be summarised as follows:

- (a) There was evidence of a joint enterprise by identified persons to murder Mr. Hamill but the prosecution was advanced only on the basis of Hobson being seen to kick at Mr. Hamill. The Director ought to explain why the other identified aggressors who appeared to be acting in concert were not prosecuted to trial.
- (b) Counsel for the Director interviewed Witnesses A and B and took the view that they should not be compelled to give evidence. The practice of counsel interviewing witnesses ought to be justified and the decisions resulting from the interviews should be explained.
- (c) The decision not to prosecute Stacey Bridgett for murder should be explained.
- (d) Witness B was eventually charged with murder, but the charge was not proceeded with. The decision not to proceed requires explanation.

- (e) The conspiracy charges against Atkinson and others were abandoned on the premise that Mrs. McKee could not be relied on. This calls for an explanation.
- (f) A reasonable prosecutor could properly have carried on with the murder charge against Lunt.
- (g) To the extent that the forensic evidence was insufficiently comprehensive, the Director ought to explain why.

2.5 It is relevant to note that counsel acknowledged that these concerns were provisional and they recognised that they might "*all be met with wholly satisfactory explanations*".

Counsel's Second Advice

2.6 In their second advice, counsel to the Inquiry raised the following matters (expressed in my own words) as ones which caused them concern:

- (i) Lunt was not prosecuted despite all the evidence which showed that Prunty could only have been describing him.
- (ii) Counsel instructed by the Director advised that Bridgett should not be prosecuted even though there was some evidence against him and no consideration was given to re-interviewing him after forensic evidence linked him to Mr. Hamill came to light.
- (iii) There was no proper analysis of the possibility of prosecuting Robinson and others for at least affray.
- (iv) There was no proper analysis of the evidence against the Defendants as a whole with a view to presenting a case on a joint enterprise basis.
- (v) The decision not to proceed against Atkinson and others is a controversial decision.

- (vi) Witness handling.

3. The Request For Advice

3.1 I have been asked to comment on the matters raised by counsel to the Inquiry and I have also been asked to address two additional matters:

- (i) *Whether the decision not to proceed against any of the suspects for a lesser offence (other than affray) was reasonable.*
- (ii) *Whether the delay in obtaining the scientific evidence was attributable to fault on the part of any person.*

4. Discussion

Counsel's First Advice

Joint Enterprise

- 4.1 The first point made by counsel to the Inquiry is that there was evidence of a joint enterprise by identified persons to murder, but the prosecution was advanced only on the basis of Hobson being seen to kick at Mr. Hamill. The question raised is why other identified aggressors who appeared to be acting in concert were not prosecuted.
- 4.2 The first point to note is that "*joint enterprise*" is a particular aspect of the doctrine of secondary liability. It may be helpful to summarise certain first principles. As is well known, the law recognises two main varieties of participation in crime; as a principal (that is the person who actually carries out the offence) or as a secondary party (either through assistance or encouragement or through membership of a joint enterprise that led to the offence). Thus in a case of murder the principal is the person who fulfils the *actus reus* and *mens rea* requirements of the crime. To illustrate the point, if *P* and *S* attack *V* in concert yet it is a particular blow by *P* that causes death independent

of the effect of the earlier blows by *S*, then *S* cannot be convicted of murder as a principal and must be convicted as a secondary party. While the outcome may be the same (both are convicted of murder) the *actus reus* and *mens rea* elements required to be proved in order to convict *S* are formally different from those required to convict *P*.

4.3 The basis of a secondary party's liability may arise as a result of encouragement or assistance given to the principal or because the secondary party and the principal had jointly embarked upon an enterprise involving the commission of the crime. In the former case, the secondary party's liability only arises if:

- (a) he intends to aid or abet the principal; and
- (b) he appreciates the nature of the principal's actions (that is, he must know or foresee the essential matters relating to the principal's actions which make those actions an offence).

In the case of joint enterprise liability, the secondary party must foresee that in the course of a joint enterprise to commit crime A, the principal might commit crime B (with the requisite *mens rea* for that crime). The commission of crime B must occur as an incident of the joint enterprise and not in a manner that is fundamentally different from the possibility foreseen by the secondary party.

4.4 The next point to note is that counsel to the Inquiry do not explain the basis upon which they assert that there was a "*joint enterprise ... to murder Mr. Hamill*". Nor do they identify the persons alleged to be involved in this joint enterprise. In fact, there was no evidence of a joint enterprise to murder (as opposed to an assault) and when considering the case against each individual it is necessary to have regard to the admissible evidence. On the assumption that the "*identified persons*" referred to in counsel's advice are Forbes, Robinson, Hanvey, Lunt and Bridgett, the position in each of their cases is set out in my earlier Advice. For ease of reference, the relevant paragraphs are set out below.

Dean Forbes

9.2 *To recap, Forbes was charged on 10th May 1997. At that time the only evidence of Forbes' involvement in the killing was contained in the statement given by Miss A (dated 10th May 1997). She identified Forbes as one of a group (including Hanvey, Bridgett, Hobson and Robinson) who jumped on and kicked Robert Hamill. Witness B stated that he had seen Forbes punch a male (believed to be Colin Hull). When interviewed Forbes said that he was at the Police Land Rover at the time the incident began and denied being involved in any violence.*

9.3 *It is clear that without the evidence of Miss A and Witness B there was no case to answer against Forbes, both in relation to killing and any lesser offence such as affray. So far as the killing is concerned, without the evidence from Miss A there was nothing to link him with the attack on Robert Hamill. So far as the offence of affray is concerned, without the evidence from Witness B there was no evidence to prove that he had engaged in any violent conduct. Moreover, the evidence from Witness B appears to have been insufficient to substantiate a charge of affray. This is because a bystander of reasonably firm character would not necessarily be terrified by the actions of Forbes as described by Witness B. Even if this is wrong, Witness B retracted his evidence and claimed the information in his statement was false, having been gleaned from gossip and talk from around the town about the incident.*

9.4 *By 29th October 1997, the position confronting the Director was:*

- (i) Miss A had made it clear that she would not give evidence against any of the accused.*
- (ii) Although Miss A was a compellable witness, the Director was informed by the senior investigating officers, speaking on behalf of the Chief Constable, that there was no reasonable prospect of the witness giving evidence in court, no matter what sanction was applied.*

(iii) *There was no reasonable prospect of reading her statement under Article 3 of the Criminal Justice (Evidence) Northern Ireland Order 1988.*

(iv) *Witness B claimed that he could not recollect anything and his statement was untrue.*

9.5 *It follows that in the absence of evidence from Miss A or Witness B, and without sufficient other evidence being available, the Director had no alternative but to direct no prosecution of Forbes.*

9.6 *In my opinion, the Direction given to the Chief Constable on 29th October 1997 was reasonable as there was no reasonable prospect of obtaining a conviction in Forbes' case.*

9.7 *As already noted, Forbes was discharged on 31st October 1997. On 3rd November 1997, Colin Prunty provided a second statement to the investigating officers in which he purported to identify Forbes as the person he had seen on 27th April in the rear of the Police Land Rover, having been put there by Police, wearing a Glasgow Rangers football scarf. According to Prunty this was the person he had seen kicking at Robert Hamill. The difficulty with this evidence was twofold:*

(i) *Forbes was not the person who had been put into the rear of the Police Land Rover (the weight of the evidence proved that the person in the Land Rover was Wayne Lunt).*

(ii) *There was no evidence that Forbes had been wearing a Glasgow Rangers football scarf (the weight of the evidence was to the effect that Lunt was wearing such a scarf, as in fact he admitted when interviewed under caution).*

9.8 *As a result, the position confronting the Director on 3rd November 1997 was that Mr. Prunty's first statement had implicated Lunt in the killing*

but his second statement appeared to implicate Forbes, but only on the basis that he was the person wearing the football scarf etc.. Further Police enquiries were requested in relation to Forbes, in particular whether there was any evidence to establish that Forbes was in fact a person who had been brought to the Land Rover, wearing a football scarf, and who was subsequently released by Police. No such evidence became available. This left the prosecution in the following position:

- (i) Any case against Wayne Lunt would have to be presented on the basis that Prunty was correct when he stated that the person he saw in the rear of the Police Land Rover wearing the Glasgow Rangers football scarf was responsible for kicking Robert Hamill, but incorrect when he stated that it was Forbes.
- (ii) Any case against Forbes would have to be presented on the basis that Prunty was correct in his identification of Forbes as the person he had seen kicking Robert Hamill, but incorrect when he said that the same person was put in the rear of the Police Land Rover and wearing a football scarf.

9.9 Senior Counsel advised that presenting a case on either of these bases was untenable. This was also the Director's view.

9.10 In my opinion the decision not to proceed against Forbes on the basis of Prunty's evidence was reasonable. There was no reasonable prospect of conviction. A court could not have convicted either Lunt or Forbes on the basis of Prunty's evidence."

Allister Hanvey

9.11 To recap, Hanvey was charged on 10th May 1997. The evidence of Hanvey's involvement in the killing was contained in the witness statements provided by Miss A and Witness B. Miss A recognised him as one of the group assaulting Robert Hamill. Witness B recognised Hanvey and described him kicking a person on the ground (believed to be

Hamill) three or four times in the chest area. There was no other evidence relating to Harvey's involvement in the incident. (When interviewed under caution Harvey denied being involved in any assaults and stated that he was always several yards from the fighting.)

9.12 *By 29th October 1997, the position confronting the Director was as set out at paragraph 9.4 above.*

9.13 *It follows that in the absence of evidence from Miss A or Witness B and without sufficient other evidence being available, the Director has no alternative but to direct no prosecution of Harvey.*

9.14 *In my opinion, the Direction given to the Chief Constable on 29th October 1997 was reasonable as there was no reasonable prospect of obtaining a conviction for any offence in Harvey's case."*

Rory Robinson

"9.15 *To recap, Robinson was charged with murder on 11th May 1997. The evidence against him came from Miss A who saw him and others assault Robert Hamill as he lay on the ground. In addition, Witness B saw him fight with someone but could give no further details. There was also evidence from the Police witnesses that he was seen acting in a provocative and aggressive manner (Constable Neill, Constable Adams, Reserve Constable Atkinson and Constable Cooke).*

9.16 *By 29th October 1997 the position confronting the Director was as set out at paragraph 9.4 above.*

9.17 *It follows that in the absence of evidence from Miss A or Witness B and without sufficient other evidence being available, the Director had no alternative but to direct no prosecution of Robinson for murder.*

9.18 *So far as any lesser offence (such as affray) is concerned, the evidence available to the Director was capable of establishing:*

- (i) *Robinson was running through the crowd like a "headless chicken" (Jonathan Wright).*
- (ii) *He was taunting and trying to break through the Police (Constable Neill).*
- (iii) *He was struck by an officer to keep him back (Reserve Constable Atkinson).*
- (iv) *He was one of the crowd shouting "I hope they die" as the injured men were placed into the ambulance (Constable Silcock).*
- (v) *He was seen by an officer but was doing nothing of significance (Constable Adams).*
- (vi) *He was trying to push past Police (Constable Cooke).*

9.19 *The combined effect of this evidence, taken at its highest, is that he was an agitated individual within the crowd; made policing the incident more difficult and shouted, together with others, "I hope they die" when order had been restored. There was no evidence of Robinson's involvement in any violence against Robert Hamill or **D***

9.20 *In these circumstances, the decision of the Director to discontinue the proceedings for murder and not proceed with a prosecution for any lesser offence appears to have been reasonable."*

Stacey Bridgett

"9.21 *To recap, Stacey Bridgett was charged with murder on 10th May 1997. The principal evidence against Bridgett was contained in the statement provided by Miss A. She described how Bridgett and others assaulted Robert Hamill as he lay on the ground. In addition, there was the evidence that a spot of Bridgett's blood was found on Robert Hamill's*

trousers. There was some other evidence concerning his movements in the vicinity of the disturbance.

9.22 By 29th October 1997, the position confronting the Director was that Miss A's evidence was no longer available.

9.23 Senior Counsel advised that the blood evidence was not strong enough to implicate Bridgett in the unlawful violence directed against Robert Hamill and the Director agreed.

9.24 It seems to me that his decision was reasonable. In the absence of any evidence that Bridgett had actually assaulted Robert Hamill, the evidence merely showed that he was at some stage close enough to the deceased for some blood to have dripped onto his trousers. At any trial, the difficulty for the prosecution would have been the inability to say precisely when and in what circumstances the blood came into contact with Mr. Hamill. This difficulty would have been compounded by the fact that it was impossible to say who had inflicted the fatal injury and when it had been inflicted. In this connection it is necessary to deal with evidence contained in a statement made by Constable Silcock, dated 27th April 1997. Constable Silcock was one of the officers who arrived at the scene following Reserve Constable Cornett's call for assistance at 1.47 a.m.. He described how he went to the assistance of the two injured men who were lying on the ground. His statement then contains the following:

"A large group 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 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 ... had blood coming from his nose. A member of the crowd called to this person, calling him Stacey. He responded to this name."

- 9.25 *It could be argued that the statement of the woman wearing the white top was so spontaneous that it formed part of the transaction under consideration and was thus admissible as an exception to the hearsay rule (the res gestae exception). The law relating to spontaneous statements was authoritatively clarified by the House of Lords in R v Andrews [1987] AC 281. In the course of his opinion Lord Ackner stated that the primary question for the judge is whether the possibility of distortion or concoction can be disregarded. In this case the difficulties confronting the prosecution were: (i) that the woman's identity was not known; (ii) the incident was confusing; and (iii) the statement made by the woman purported to identify one of the attackers but this evidence could not have been tested by cross-examination so as to establish its reliability.*
- 9.26 *It was the view of Senior Counsel that the evidence of Constable Silcock was "clearly" not admissible against Bridgett, and while no reasons were given for this view it appears to reflect a realistic assessment of the likelihood of this evidence being used against Bridgett at any trial. The danger of admitting this evidence to the disadvantage of Bridgett is obvious and I agree with Senior Counsel's conclusion. This conclusion was accepted by the Director and it was reasonable of the Director to reach the same view.*
- 9.27 *The only remaining issue in Bridgett's case is whether there was any evidence of the commission by him of any lesser offence, such as affray. There was no evidence to show that Bridgett committed any specific act of violence and although the evidence showed that he was part of the crowd and suffered a bloody nose, this would not in itself be sufficient to prove the commission by him of any offence.*
- 9.28 *For the reasons set out above, the Director's decision to issue a Direction on 19th November 1997, that the Police holding charge against Bridgett be withdrawn at the earliest opportunity, was reasonable."*

Wayne Lunt

9.29 *To recap, Lunt was charged on 10th May 1997. The sole evidence implicating him in the killing was the statement of Colin Prunty. He described a person kicking Robert Hamill as he lay on the ground. He then observed the same person being placed in the rear of the Police Land Rover and stated that he was wearing a Glasgow Rangers football scarf. Lunt admitted in interview that he was wearing such a scarf but denied assaulting any person.*

9.30 *At the consultation with Senior Counsel held on 3rd November 1997, Mr. Prunty stated that the person he referred to in his statement was not Lunt. He stated unequivocally that if asked whether Lunt was the person to whom he was referring and whom he had seen kicking Robert Hamill, he would say no. Senior Counsel then advised that there was no reasonable prospect of obtaining a conviction of Lunt for any offence relating to the death of Robert Hamill. The Director agreed.*

9.31 *It appears to me that this conclusion was inevitable and the decision of the Director not to proceed with the murder charge against Lunt was reasonable.*

9.32 *The question that then arose was whether or not Lunt could be prosecuted for any lesser offence such as affray. In his written advice (received by the Director on 13th November 1997) Senior Counsel advised that "even affray might be difficult". The other evidence against Lunt was:*

(i) *He was seen with a scarf over his face carrying a bottle and running at a crowd at the junction of Thomas Street. As police stopped alongside him he ran off towards Church Street (Constable **A**).*

(ii) *At 1.57 a.m. he was taken to the Police Land Rover by Constable **A** where he remained until 2.05 a.m. (Constable **A**).*

(iii) *He kicked Constable A once on the left shin and once on the left ankle (Constable A).*

9.33 *At a consultation with Senior Counsel held on 18th November 1997, Senior Counsel concluded that the evidence was insufficient to prosecute Lunt for affray. This was also the view of the Director. In my opinion this conclusion was reasonable. The difficulty facing the Director was that there was no evidence of his precise involvement in the incident and there was no reasonable prospect of conviction.*

9.34 *On the basis of the facts set out above, the Direction issued by the Director on 19th November 1997, that the charge against Lunt be withdrawn at the earliest opportunity, was reasonable."*

4.5 The difficulty of proving liability for murder (or for that matter manslaughter) in a case such as the present may be illustrated by the events at Hobson's trial. Hobson was acquitted of murder and McCollum L.J. stated, "*proof of his involvement in the murder falls far short of the required standard*". This was because it could not be said that Hobson, "*aided, abetted, counselled or procured the attack or that he participated in it jointly with those who inflicted the fatal injuries on Mr. Hamill*".

4.6 In conclusion, I do not agree that the matter raised by counsel to the Inquiry gives rise to any concern. The decisions taken by prosecution counsel and the Director reflect a realistic appraisal of the available evidence.

Witness Consultations

4.7 The second point raised by counsel to the Inquiry concerns the consultations held with Witnesses A and B. Two points are made:

(i) Counsel for the Director took the view that the witnesses should not be compelled to give evidence.

(ii) The practice of holding such consultations ought to be justified.

4.8 So far as the first point is concerned, the position is as follows. Miss A made it clear that whatever the sanction she would not give evidence. Witness B stated that the information contained in his witness statement was incorrect and claimed that the information had been gleaned from gossip and talk around the town. In these circumstances there was no basis for compelling either Miss A or Witness B to give evidence. In the case of Miss A, it would have been futile and in the case of Witness B, he could no longer be regarded as a credible or reliable witness.

4.9 Turning to the second point, the practice of interviewing witnesses is a common practice in Northern Ireland and has been so for many years. The practice has recently been introduced in England and Wales. It is obviously sensible and does not (or should not) require justification.

4.10 In conclusion, I do not agree that the matter raised by counsel to the Inquiry gives rise to any concern.

Stacey Bridgett

4.11 The third point raised by counsel to the Inquiry is that the decision not to prosecute Stacey Bridgett needs to be explained, particularly as: (i) there was evidence to place him at the scene; (ii) *res gestae* evidence implicated him in the attack; (iii) blood from Bridgett was found on Mr. Hamill's trousers and (iv) he lied in interview about being near to Mr. Hamill.

4.12 The position in relation to Stacey Bridgett was dealt with in my first Advice and is set out above.

4.13 I do not agree that the decision not to prosecute Stacey Bridgett gives rise to any concern arising from the decision-making process.

Witness B

4.14 The fourth matter raised by counsel to the Inquiry concerns Witness B. It is asserted that Witness B was eventually charged with murder but the charge was not proceeded

with, at the Director's instigation. It is not correct that B was ever charged. Although I have not seen the papers in relation to this matter, it appears that in 2003 a file was submitted by the police to the Director in relation to Witness B's possible involvement in the incident leading to Mr. Hamill's death. The circumstances surrounding this file were summarised by Mr. [REDACTED], Senior Assistant Director, in a report dated 23rd June 2005. The relevant section of Mr. [REDACTED]'s report is set out below.

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

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

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

- (a) Neither Reserve Constable **G** or Reserve Constable McCaw made any contemporaneous notes at the time.*
- (b) When first spoken to by police, Reserve Constable **G** had stated that he had heard that Timothy Jameson (Witness B) had been in town and had heard and seen a lot. Subsequently Reserve Constable **G** stated that he had given the matter a lot of thought. He then stated that Timothy Jameson (Witness B) told them that he was in town that night and saw a lot going on and ran past and put the boot in.*
- (c) Reserve Constable McCaw could not corroborate Reserve Constable **G**'s evidence.*

- (d) Jameson denied making any such remarks.
- (e) Reserve Constable **G** asserted that he had reported what Jameson had said to investigating police at the time (Detective Chief Superintendent McBurney and Detective Inspector Irwin). The Police Ombudsman for Northern Ireland conducted a separate inquiry into actions carried out by the aforementioned police officers on foot of receipt of information from Reserve Constable **G**. The police Ombudsman did not submit to the Director any file in relation to that inquiry. This may indicate that the Police Ombudsman did not consider that any criminal offence had been committed by either police officer."

4.15 I have no reason to doubt the account provided by Mr. [REDACTED]

The Atkinson Conspiracy

- 4.16 The fifth point made by counsel to the Inquiry is that the decision not to proceed against Atkinson and others was questionable and calls for explanation.
- 4.17 The position in relation to the Atkinson proceedings was set out in my first Advice. For ease of reference the relevant paragraphs are set out below.

"9.35 *The Atkinson prosecution was discontinued after it was concluded that Mrs. McKee could not be put forward as a witness capable of belief. This was the view of both Gerry Simpson Q.C. and Ivor Morrison, reached after they had seen Mrs. McKee in consultation on 2nd March 2004. Leading Counsel recorded his views in a written advice dated 15th March 2004. The problem arose because Mrs. McKee failed to attend the committal hearing and gave an explanation for her failure that proved to be untrue. When confronted with the proof that it was untrue, she gave an elaborate explanation which was incredible.*

9.36 *It is possible, of course, that Mrs. McKee was untruthful about her reasons for not attending the committal but truthful in her account of the events in April 1997, particularly as she had pleaded guilty to her part in the conspiracy to pervert the course of public justice. However, it was for the prosecution to make the assessment of whether she could be relied upon as a credible witness and whether it would be right for the prosecution to call her as a witness worthy of belief.*

9.37 *In my opinion, the decision of Leading Counsel was one reasonably open to him as Counsel in the case, particularly as he had himself seen and heard the witness in consultation. Moreover, it was reasonable of the Director to reach the same conclusion. It follows that the decision not to continue with the prosecution was reasonable."*

4.18 In conclusion, I do not agree that the matter raised by counsel to the Inquiry gives rise to any concern.

Wayne Lunt

4.19 The sixth point made by counsel to the Inquiry concerns the decision not to proceed with the murder charge against Wayne Lunt. It is suggested that a reasonable prosecutor could properly have carried on with the charge on the basis of Colin Prunty's evidence.

4.20 The position in relation to Wayne Lunt is set out above. As noted in my first Advice, any case against Wayne Lunt would have been presented on the basis that Prunty was reliable when he stated that the person he saw in the Police Land Rover wearing the Glasgow Rangers football scarf was responsible for kicking Robert Hamill, but unreliable when he stated that the person was Forbes. Such a case would have been untenable, particularly as Prunty made it clear that if asked he would say that the person responsible for kicking Robert Hamill was Forbes (based on his identification). In this connection, it is significant to note that the logic of the argument advanced by counsel to the Inquiry is that both Lunt and Forbes should

have been prosecuted, but this demonstrates the unsoundness of the argument: if both had been prosecuted it would have been impossible to say with any sufficient degree of certainty which of them was guilty and the case against both would have collapsed. This is a familiar problem in the criminal law. Where there are co-accused and the evidence establishes that one or other committed the offence charged but it is not possible to say which, then both must be acquitted: *R v. Lane* (1985) 82 Cr App R 5.

- 4.21 In conclusion I do not agree that the matter raised by counsel to the Inquiry gives rise to any concern.

The Scientific Evidence

- 4.22 The final point raised by counsel concerns the scientific evidence. Counsel state that while the extent to which the Director oversees the obtaining of forensic evidence is not clear to them, to the extent that such evidence was insufficiently comprehensive, the Director ought to explain why.

- 4.23 The first point to note in relation to this matter is that the carrying out of forensic tests is a matter for the investigating officers and the Forensic Science Agency (although the Director has power to request further information).

- 4.24 The second point to note is that counsel do not explain the basis for the assertion that the evidence was insufficiently comprehensive. There appears to be no substance to this assertion and the matter raised by counsel does not, in my opinion, give rise to any concern.

Counsel's Second Advice

Wayne Lunt

- 4.25 The first point raised in counsel's second advice is a repetition of the point, made in the first advice, that Lunt should have been prosecuted.
- 4.26 This point is dealt with above and the analysis need not be repeated.

Stacey Bridgett

- 4.27 The second point raised in counsel's second advice is that Bridgett was not prosecuted even though there was sufficient evidence against him and nor was he re-interviewed when the scientific evidence linking him to Robert Hamill came to light.
- 4.28 So far as the evidence against Stacey Bridgett is concerned, this is set out above.
- 4.29 In relation to the 're-interview point', a basic principle of the criminal justice system is that, subject to some exceptions, when a person has been charged, questioning about the offence should cease. This principle, originally found in the Judges' Rules, is now reflected in the Police and Criminal Evidence Act 1984, Code of Practice C, paragraphs 11.6 and 16.5. Paragraph 11.6 provides that questioning before charge must cease when the officer in charge of the investigation is satisfied that all relevant questions have been put to the suspect and the police reasonably believe that there is sufficient evidence to charge. Questions may be put exceptionally after charge where it is necessary to prevent or minimise harm or loss to some other person or the public, to clear up an ambiguity or where it is in the interests of justice for the detainee to have put to them and have an opportunity to comment on, information concerning the offence which has come to light since the suspect was charged.
- 4.30 The significant point to note is that questioning a suspect after charge is an exceptional course to take. In a case such as the present it would be highly unusual, particularly as the prosecutor had all that he could reasonably have hoped for, namely a demonstrable lie made by Bridgett in the course of his interview. Assuming that an interview could properly have been conducted with Bridgett, it would have been unwise to follow such a course for the simple reason that it would have given Bridgett the opportunity to explain away his earlier answers. This would have diluted the case against him even more.
- 4.31 For the reasons set out above, the re-interview point is without substance. The practical reality is that interviews after charge are exceptional and even where they are carried out they usually do the prosecution case more harm than good.

The Lesser Charge of Affray

- 4.32 The third point raised by counsel to the Inquiry in their second advice is that it is difficult to discern any proper analysis of the possibility of prosecuting Robinson, as well as others, for at least affray.
- 4.33 The starting point in the analysis of this point is that without the evidence of Miss A and Witness B there was no evidence whatsoever against Hanvey and Forbes. (I have not overlooked the fact that Prunty purported to identify Forbes as one of Robert Hamill's assailants, but this was unsatisfactory for the reasons set out above.) The position in relation to Robinson is set out in my first Advice (at paragraphs 9.18-9.20). The position in relation to Stacey Bridgett is set out in my first Advice (at paragraph 9.27). The position in relation to Lunt is set out in my first Advice (at paragraph 9.32). The essential point is that the possibility of prosecuting the suspects for the offence of affray was considered by counsel, but the evidence was not sufficient to support such a charge.
- 4.34 In conclusion, the point made by counsel to the Inquiry appears to be without substance.

The Evidence as a Whole

- 4.35 The fourth point made by counsel to the Inquiry is that there appears to have been no attempt to analyse the evidence against the Defendants as a whole.
- 4.36 It is not clear to me what point is being made here. As a matter of principle, the case of each suspect had to be considered separately. This is because the decision to prosecute an individual is a serious step and it is the prosecutor's duty to ensure that the right person is prosecuted for the right offence. In the case of public disorder, it would be wholly wrong to consider the case against several suspects without giving consideration to evidence against each individual. This is not to say that a prosecutor should not consider the individual cases in context, but where a case cannot be made out on the evidence it would be improper to decide to prosecute on the basis that all those involved in or present at the incident must have been involved in some offence.

This is really the joint enterprise point expressed in a different way, and, for the reasons set out above, the point is without substance.

The Atkinson Conspiracy

4.37 The final point made by counsel to the Inquiry relates to the Atkinson conspiracy and the complaint concerning the abortive prosecution has been dealt with above.

5. Lesser Offences Other Than Affray

5.1 When Senior Counsel (Gordon Kerr Q.C.) provided his written advice he concluded:

- (i) There was no admissible evidence sufficient to prove any offence against Forbes.
- (ii) There was no admissible evidence sufficient to prove any offence against Hanvey.
- (iii) That the totality of the evidence against Robinson would lead to no offences of direct violence against Robert Hamill or **D** and at its height might support a charge of affray.
- (iv) That there was no reasonable prospect of convicting Lunt of murder and even affray might be difficult.
- (v) That the case against Bridgett would be reconsidered when all the evidence was to hand.

5.2 For the reasons set out above, no prosecution was instituted for affray.

5.3 There was some evidence of disorderly conduct by Lunt (which led to his detention by Constable **A**), but the view was taken that this could not be shown to be related to the attack on Mr. Hamill and having regard to the minor nature of the

conduct no prosecution was directed for any offence. A file note prepared by Mr. Kitson dated 20th November 1997 contains the following explanation:

“Minor offences of disorderly behaviour and even resisting a police officer were considered and rejected on the basis that, even if there was evidence of such offences, Lunt had been in custody for 6 months.”

5.4 So far as Bridgett was concerned, Senior Counsel advised that the real difficulty was that it could not be proved or shown what he had done or had been doing at and around the time of the incident.

5.5 So far as Robinson is concerned, the evidence against him taken at its highest was that he was an agitated individual within the crowd and made policing the incident more difficult.

5.6 The essential issue is whether the decision not to proceed against Lunt for minor offences of disorderly behaviour was properly reached on the basis that he had been in custody for six months. In my opinion this was an entirely proper decision arrived at for good and sufficient reasons. The general principles on which a prosecutor should act are not controversial. In the Code of Crown Prosecutors which applies to England and Wales they are expressed in the following way:

Prosecutors must be fair independent and objective. They must not let any personal views about ethnic or national origin, religious beliefs or political views of the suspect, victim or witness influence their decisions. They must not be affected by improper or undue pressure from any source.

It is the duty of prosecutors to make sure that the right person is prosecuted for the right offence. In doing so they must always act in the interests of justice and not solely for the purpose of obtaining a conviction.

5.7 Even where sufficient evidence is available to embark on a prosecution, public interest considerations might militate against such a course. An important public interest consideration is where conviction is unlikely to result in the imposition of a

sentence (because, for example, the accused has been in custody in relation to another matter that did not lead to a prosecution).

- 5.8 In this case the decision not to prosecute Lunt for any minor offence of disorderly conduct represents a conventional approach to prosecuting where to proceed with a minor offence would serve no useful purpose. It might, of course, be argued that there ought to be a policy of prosecuting all offences arising from disturbances involving sectarian motivated violence or incidents of a similar nature. The difficulty with this argument is that it would be inconsistent with the general principles set out above. Moreover, such a policy would be objectionable on public law grounds in that it would be seen as a fetter on the prosecutor's independence.

6. **The Scientific Evidence**

- 6.1 Two issues arise in relation to the scientific evidence. First, whether there was any delay in obtaining the evidence. Secondly, if there was delay, whether this was attributable to the fault of any person.
- 6.2 The only significant scientific evidence in the case was the evidence concerning the blood found on Robert Hamill's trousers. The result of the scientific examination was made known to the Director's staff in November 1997. The carrying out of scientific tests and providing evidence as a result of any such tests was a matter for the Forensic Agency and not the Director. It is not uncommon for scientific evidence to be provided several months after the incident to which it relates. This is attributable both to the nature of the evidence itself and the workload of the experts who provide the evidence.
- 6.3 In this case such delay as there was does not appear to have been attributable to fault on the part of any person and it is certainly not attributable to fault on the part of the Director.

7. Conclusions

- 7.1 In my opinion the concerns expressed by counsel to the Inquiry are, on analysis, without substance.
- 7.2 The decision not to proceed against any of the suspects for a lesser offence (other than affray) was reasonable.
- 7.3 Such delay as there was in obtaining the scientific evidence is consistent with the delay that ordinarily occurs in obtaining expert evidence of a scientific nature and, in any event, the delay was not attributable to the Director or his staff.
- 7.4 I hope that what I have written is clear. If I can assist further, please do not hesitate to contact me.

6 King's Bench Walk,
Temple, EC4Y 7DR

DAVID PERRY Q.C.
4th January 2008

RE THE DIRECTOR OF PUBLIC
PROSECUTIONS FOR NORTHERN IRELAND
AND THE DEATH OF ROBERT HAMILL

SECOND ADVICE

Attn: Kevin McGinty Esq.

ATTORNEY GENERAL'S OFFICE
20 Victoria Street
London
SW1H 0NF

82207

EXHIBIT RAK10

RAK 10

RE THE DIRECTOR OF PUBLIC PROSECUTIONS FOR NORTHERN IRELAND
AND THE DEATH OF ROBERT HAMILL

(DRAFT)
THIRD ADVICE

1. Introduction
 - 1.1 In this matter I have previously provided two advices. In my First Advice, I considered two issues, namely (1) whether the decisions taken by the Director of Public Prosecutions for Northern Ireland ('the Director') and his staff were reasonable, and (2) whether there were steps which the Director should have taken which would have provided a reasonable expectation that evidence sufficient to meet the test for prosecution would be obtained. I concluded that the first issue was to be answered in the affirmative and the second issue in the negative. In my Second Advice, I considered various matters which had been raised by counsel to the Hamill Inquiry.
 - 1.2 The relevant background is set out in my First Advice.
 - 1.3 I have now been asked to advise on a number of general matters in respect of the prosecution of offences in Northern Ireland, and to summarise the prosecution process from arrest to conviction.

2. Prosecution Process

Introduction

2.1. Since the time of the investigation into the death of Robert Hamill, the prosecution process in Northern Ireland has undergone a number of changes, most notably with the enactment of the Justice (Northern Ireland) Act 2002. That Act established an independent prosecution authority, the Public Prosecution Service for Northern Ireland ('the PPSNI'), headed by the Director. The PPSNI is responsible for conducting most prosecutions in Northern Ireland, and essentially performs the same role as the Crown Prosecution Service in England and Wales. Prior to the 2002 Act, serious offences were referred to the Director, whilst the police themselves prosecuted less serious offences.

2.2. However, the changes introduced by the 2002 Act would not have altered in any material respect the way in which the decisions whether or not to prosecute were taken in the case of Mr Hamill's death. The essential structure and basis of decision-making would have been the same: that is, the police, after investigation, decide whether to charge any individuals and thereafter, in the case of any individual who has been charged, the Director decides in accordance with established principles whether or not to prosecute (or to continue with a prosecution).

Arrest, Interview and Charge

2.3. The general powers of a constable to arrest a person suspected of having committed an offence, and the procedure governing the treatment of persons in police custody (including the conducting of interviews), are derived from the Police and Criminal Evidence Act 1984 and the Codes of Practice issued under that Act. The Act and the Codes of Practice, with some modifications, are applied to Northern Ireland by a number of statutory instruments. Although not identical, for the purposes of the present case these statutory provisions may be regarded as in substance the same as the corresponding provisions in force in England and Wales.

- 2.4. In summary, a constable may arrest a person where the constable has (1) reasonable grounds to suspect that an offence has been committed and (2) reasonable grounds to suspect that the person in question is guilty of the offence.
- 2.5. The police may interview a person in police custody about the offence for which he has been arrested. However, paragraph 11.6 of the Codes of Practice provide that questioning before charge must cease when the officer in charge of the investigation is satisfied that all relevant questions have been put and the police believe there is sufficient evidence to charge.
- 2.6. If the police decide that there is sufficient evidence, the suspect will be charged.
- 2.7. Paragraph 16.5 of the Codes of Practice provides that questions may not be put to a person after charge save in certain exceptional circumstances, namely where it is necessary to prevent or minimise harm or loss to some other person or the public, to clear up an ambiguity or where it is in the interests of justice for the detainee to have put to them and have an opportunity to comment on information concerning the offence which has come to light since the suspect was charged.

The Decision to Prosecute

- 2.8. The decision whether or not to prosecute a person charged with an offence is a matter for the Director.
- 2.9. In deciding whether or not to prosecute, the Director must apply the Code for Prosecutors ('the Code'), which closely resembles the Code for Crown Prosecutors in England and Wales.
- 2.10. The Code was introduced under the provisions of the 2002 Act, and therefore was not in force at the time of the Hamill investigation in 1997. However, in all material respects the Code formalised the existing principles on which prosecutorial decisions were previously made. There is therefore no material difference between the approach which must be taken under the Code, and the approach which the Director was required to take in the case of Mr Hamill's death.

- 2.11. The decision whether or not to prosecute is a two stage test (set out at paragraph 4 of the Code). First, the prosecutor must be satisfied that the evidence which can be adduced in court is sufficient to provide a reasonable prospect of conviction ('the evidential test'). The test involves an assessment of the strength, quality and credibility of the available evidence, and a judgment as to how the evidence is likely to fare during the course of adversarial proceedings. If the evidence is not sufficient to provide a reasonable prospect of conviction, the Director will not prosecute. However, the evidence is sufficient, the prosecutor must then consider the second stage, namely, whether a prosecution is required in the public interest ('the public interest test'). Broadly, the presumption is that where the evidential test is passed, a prosecution will be in the public interest. However, there may be a factor, or a combination of factors, which leads to a contrary conclusion. Factors which may mitigate against prosecution include, for example, the fact that the court would impose only a nominal sentence on conviction, or the fact that the defendant is gravely ill.
- 2.12. If the prosecutor decides that a person is to be prosecuted, he is required to keep the Code test under review. For example, if circumstances change so that the available evidence no longer provides a reasonable prospect of conviction, the prosecutor is obliged to act and discontinue the prosecution.

Court Proceedings

- 2.13. Once the prosecutor has decided to prosecute, proceedings are commenced with a view to bring the case to trial. In the case of a serious offence such as murder, the first step is the committal proceedings in the magistrates' court. If the court decides there is sufficient evidence, the case will be committed to the Crown Court of Northern Ireland for trial.
- 2.14. The trial itself may take place before a judge and jury, or before a judge alone. The proceedings are adversarial. If, at the conclusion of the trial, the jury (or, as the case may be, a judge trying the case alone) are satisfied beyond reasonable doubt that the defendant is guilty, the defendant will be convicted. If the court is not so satisfied, the defendant will be acquitted.

2.15. In the event of a conviction, the court will proceed to sentence.

3. Public Interest Considerations

Introduction

3.1. I have been asked to advise in relation to a number of matters relating to public interest considerations in the case of the Hamill investigation, namely:

- (a) Whether there were any considerations specific to the Northern Ireland context which would have influenced the balance of public interest in favour of prosecution.
- (b) Whether there was public interest, in the sense of securing increased public confidence in the prosecution service, in pursuing prosecutions for lesser offences, even though no custodial sentence was likely to result.
- (c) Whether such factors could properly have been taken into account as part of the public interest test.
- (d) Whether it appears from the papers that such factors were taken into account.
- (e) Whether the various public interest considerations were given appropriate weight.
- (f) The extent to which the sectarian nature of an offence may be taken into account in the public interest test.
- (g) Whether the Code for Prosecutors (Northern Ireland) has a provision equivalent to paragraph 2.2 of the Code for Crown Prosecutors (England and Wales).

Overview

- 3.2. The purpose of the two-stage Code test is to ensure that decisions whether or not to prosecute are taken in accordance with law, rather than on an arbitrary basis. The test is framed, together with the guidance given in the Code, with a view to providing consistency of approach, and to ensure that all relevant matters – but only relevant matters – are taken into account in the decision making process.
- 3.3. Although the approach will be the same, in every case the decision whether or not to prosecute ultimately depends on the exercise of independent judgment by the prosecutor. In many serious cases, including the present case, this judgment will be informed by advice from independent counsel. The courts will not readily interfere with a prosecutorial decision. That is because it is recognised that Parliament has entrusted such decisions to the independent prosecutor. It is recognised that some decisions will be acutely difficult, but that prosecutors, exercising independent professional judgment, are best placed to make them. It will often be impossible to stigmatise such judgment as wrong, even if another prosecutor may have reached a different conclusion. (See *R. v. DPP, ex parte Manning* [2001] Q.B. 330, per Lord Bingham of Cornhill C.J. at para.23.) The essential question when reviewing the decision whether or to prosecute is not whether the decision was correct, but whether it was a decision open to a reasonable prosecutor.

The Northern Ireland Context

- 3.4. In Northern Ireland, there is particular public interest in securing increased public confidence in the prosecution service, and in reducing sectarian conflict. The question arises as to whether these are matters which can properly be taken into account when deciding whether or not to prosecute.
- 3.5. The first point to make is that, regardless of whether those factors may be taken into account in the public interest test, if a case fails the evidential test, they simply do not arise for consideration. A case which fails the evidential test will not be prosecuted.
- 3.6. Secondly, when the public interest test is considered, it must be considered in accordance with the Code. There is no scope to for a prosecutor to make decisions

otherwise than in accordance with the Code: to do so would be arbitrary and unlawful.

3.7. The Code itself sets out a number of matters relevant to the public interest test. When deciding where the public interest lies in any particular case, the prosecutor is entitled to take into account the fact that the offence under consideration was motivated by hostility against a person because of his religion, political beliefs or the like: see paragraph 4.3.4 vii. This is a factor which tends to militate in favour of prosecution, as it aggravates the seriousness of the offence.

3.8. However, in any given case, the presence of sectarian hostility could only ever be one of a number of factors which a prosecutor will inevitably have to balance. Moreover, by virtue of paragraph 4.1.3, the public interest test must be considered in accordance with the Code of Ethics of the Prosecution Service for Northern Ireland (incorporated into the Code in Section 7). Paragraph 7.3.6 of the Code of Ethics (the provision of the Code which most closely resembles paragraph 2.2 of the Code for Crown Prosecutors) provides:

'The use of prosecutorial discretion should be exercised independently and be free from any interference. Prosecutors will maintain absolute fairness and impartiality at all times. Prosecutors shall perform their duties without fear, favour or prejudice. In particular they shall:

- a) *carry out their functions impartially;*
- b) *remain unaffected by individual or sectional interests and public or media pressure and shall have regard only to the public interest...'*

3.9. The Code therefore expressly prohibits discrimination based on sectional interest. This approach accords with basic principles of public law, which prohibit the state from discriminating on various grounds, including on a person's religion, political opinion, social origin or other status.

3.10. Having regard to the matters set out above, my observations are as follows:

- (a) All decisions whether or not to prosecute must be taken by the prosecutor in accordance with the Code. A decision which is not taken in accordance with the Code will be unlawful, and liable to challenge.
- (b) The approach set out in the Code accords with the basic principles of public law, which prohibit discrimination.
- (c) If a policy on the application of the public interest test resulted in decisions to prosecute loyalists in situations in which republicans would not have been prosecuted, or vice versa, that policy would be unlawful on the basis that it (1) was manifestly discriminatory and (2) did not accord with the Code.
- (d) Whilst a prosecutor may have regard to the sectarian nature of an offence so far as it may be said to aggravate the seriousness of the offence, a decision that a prosecution is in the public interest based solely, or even predominantly, on that factor is unlikely to be a decision which properly balances the competing considerations under the Code test.
- (e) Whilst an undoubted purpose of the Code is to maintain public confidence in the prosecution process, it would or might be improper to use a decision in a particular case merely as an instrument to increase public confidence. Such an approach would be arbitrary, and inconsistent with the approach set out in the Code.

The Decision in the Present Case

3.11. I have set out my detailed opinion in relation to the application of the evidential and public interest tests in Mr Hamill's case in paragraph 9 of my First Advice, and paragraph 5 of my Second Advice.

3.12. So far as the question of prosecution for lesser offences is concerned, the prosecutor was required to consider a number of public interest considerations, and make a balanced judgment. In my view is that the approach taken by the prosecutor was entirely conventional, and consistent with the approach subsequently formalised in the Code.

- 3.13. I am of the view that each of the prosecutor's decisions whether or not to prosecute was reasonable. It is significant to note that the prosecutor's decisions accorded with views of Senior Counsel who, in each case, had been asked to advise.

4. Post-charge Questioning

- 4.1. As stated above, paragraph 16.5 of the Codes of Practice to the Police and Criminal Evidence Act 1984 provides that after a person has been charged with a criminal offence, the police may only interview him about the offence in certain exceptional circumstances. The rationale for this provision is that such questioning may interfere with the right against self-incrimination and the presumption of innocence. The power to interview a person the state has *accused* of a crime, as opposed to a person the state *suspects* of committing a crime, is therefore limited.
- 4.2. In the case of Stacey Bridgett, post-charge forensic evidence was obtained which showed the presence of Mr Hamill's blood on Bridgett's trousers. This evidence appeared to undermine the account given by Bridgett in his pre-charge interview, namely that he had not been near Mr Hamill during the incident.
- 4.3. At paragraphs 4.27 – 4.31 of my Second Advice, I set out a number of observations on the fact that Bridgett was not re-interviewed in the light of this further evidence. In summary, re-interviewing a person after charge is unusual, and to have re-interviewed Bridgett in these circumstances would have been highly unusual. It may have been possible to justify such a course by reference to the terms of the Codes of Practice. However, the material point is that, from the view of a prosecutor, there was simply nothing to be gained by re-interviewing Bridgett. As things stood, the scientific evidence appeared to demonstrate that he had given an untruthful account. It is difficult to see how by re-interviewing Bridgett the prosecution would have obtained any further evidence against him. To the contrary, it would have given him the opportunity to explain away his earlier answers, thereby weakening the prosecution case further. In short, it is likely that it would have done more harm than good.

- 4.4. In my view, therefore, the fact that Bridgett was not interviewed after charge accorded with normal practice, and cannot sensibly be said to give rise to any concern about the conduct of the prosecution.

5. Questioning Witnesses

- 5.1. In Northern Ireland it has been, and is, the practice for prosecutors and counsel to interview witnesses before trial in order to inform the decision-making process.
- 5.2. This contrasts with the historic position in England and Wales, where prosecutors have been prohibited from discussing with witnesses the details of their evidence. The reason for the rule was that it was thought that this kind of contact between witness and prosecutor may 'contaminate' the witness's evidence.
- 5.3. However, a practice similar to that which exists in Northern Ireland has been recently piloted in certain areas of England and Wales. The practice of prosecutors interviewing witnesses appears to me to be entirely sensible. It affords the prosecution an important opportunity to assess the quality and credibility of witnesses. This is likely to assist the prosecution in making important pre-trial decision, both in respect of the sufficiency of evidence, and also in respect of the obtaining of further evidence and other such matters. Moreover, any concerns about contamination may be dealt with by the implementation of appropriate safeguards, such as the recording and subsequent disclosure of the interviews.
- 5.4. In the present case, it is significant that the views of counsel were informed by their own contact with important witnesses in the case. It is a stark demonstration of why it is well-recognised that prosecutors are best placed to make the decisions with which they have been entrusted by Parliament.

6. Conclusion

- 6.1. I hope that the advice I have given is clear, but please do not hesitate to contact me in Chambers if I can assist further.

6 King's Bench Walk,
Temple, EC4Y 7DR

DAVID PERRY Q.C.
22nd January 2008

RE THE DIRECTOR OF PUBLIC
PROSECUTIONS FOR NORTHERN IRELAND
AND THE DEATH OF ROBERT HAMILL

(Draft)

THIRD ADVICE

Attn: Kevin McGinty Esq.

ATTORNEY GENERAL'S OFFICE
20 Victoria Street
London
SW1H 0NF

82220

242

EXHIBIT RAK11

RAK 11

From [REDACTED]
Deputy Director, Rights & International Relations
10th December 2007

Cc. (see end of document)

Secretary of State

HAMILL INQUIRY: TERMS OF REFERENCE

Issue: Briefing for your conference with the Attorney General and David Perry QC. The Attorney engaged Perry to provide independent advice on the steps taken by the Director of Public Prosecutions (DPP) in the Hamill case, to assist you in deciding whether to extend the Hamill Inquiry's terms of reference.

Timing: The conference is on Wednesday 12th December.

FOI: This submission may be exempt under s.42 (legal professional privilege) subject to a public interest test.

Presentation: No immediate presentational issues. Whatever you eventually decide on terms of reference, you may face a legal challenge in which the decision-making process is scrutinised carefully. It is important to be clear about the purpose of this conference: you are the decision-maker on the terms of reference and this conference is an opportunity for you to take expert advice on whether the actions of the prosecuting authorities might be regarded as giving cause for concern from a legal and prosecutorial standpoint.

Recommendation: That you note the advice provided by David Perry and that you use the conference as an opportunity to ask him the questions set out in paras 9, 11 and 12.

Detail

Robert Hamill's family have asked you to extend the terms of reference of the Hamill Inquiry to encompass the actions of the DPP, including prosecutorial decisions; this conference is the final stage in the process of considering their request. You wrote to the Attorney General on 8th November, explaining that before you reach a decision on the request you need to be in a position to form as full and fair a view as possible about whether the actions of the prosecutorial authorities might be regarded as giving cause for concern. You asked her to consider what steps might be taken to provide you with expert advice from a legal and prosecutorial standpoint.

2 The Attorney engaged an independent QC called David Perry to provide advice on the case. Mr Perry has extensive experience of prosecutorial practice and has advised the Government on many high profile cases in the past. The Attorney asked him to consider two questions:

- (i) Whether the decisions taken by the DPP and his staff were reasonable; and
- (ii) Whether, having regard to the respective functions of the prosecuting authorities on the one hand and the investigating authorities on the other, there were steps which the DPP should have taken which would have provided a reasonable expectation that evidence sufficient to meet the test of prosecution would be obtained.

David Perry's advice

3 Mr Perry has reviewed all of the DPP's files and has provided written advice, attached at **Annex A**. In his advice, he sets out very clearly the factual background to the case, the statutory position and the sequence of decisions taken by the DPP and his staff. In particular, he conducts what appears to be a very thorough analysis of the events leading to some of the key decisions; this is summarised below for ease of reference, but you will of course wish to read his opinion in full. He concludes that all the decisions taken by the DPP and his staff were reasonable and that there were no further steps that the DPP should have taken.

4. The concerns raised with you by the Inquiry and the Hamill family fall into two main areas: the original attempts at prosecutions for murder (in one individual was acquitted of murder but convicted of affray and proceedings against five others were dropped when two prosecution witnesses refused to give evidence); and the subsequent attempt to prosecute a police officer, who had allegedly warned one of the suspects to destroy his clothes and then lied about it, for conspiracy to pervert the course of justice (the prosecution was dropped because the key witness was not considered credible). I attach for reference, at **Annex B**, an opinion provided to us by Counsel to the Inquiry last year and, at **Annex C**, the additional representations set to you by the Hamill family's solicitors this September. These documents give a clear indication of the areas of concern.

Handling the conference

5. Mr Perry's advice is still in draft, because the conference is an opportunity for you to put to him any further questions that you would like him to answer and to seek any clarification. We recommend, firstly, that you **ask** him about any points raised by the Inquiry or solicitors which are not directly covered by his advice. Points that you might wish to raise are identified in paragraphs 9 and 11 below.

6. Secondly, you might use this as an opportunity to seek his general views, as an expert in prosecutorial practice, about the way in which the

case was handled. Questions that you might ask are set out in paragraph 12 below.

David Perry's advice

7. Mr Perry has provided a very detailed analysis of the cases of the **six individuals charged with murder**. He sets out evidence against each and the sources for it. He explains that two key witnesses, Miss A and witness B, refused to testify at the trial. Miss A refused outright to testify, and witness B claimed he no longer remembered anything. The DPP's office consulted the police officers who had been dealing with Miss A and independent Counsel. They concluded that the Miss A would not give evidence, even if the court attempted to compel her to do so. They were advised by Counsel that Miss A and witness B's original statements could not be used in court. Subsequently, another witness, Colin Prunty, saw a video of the suspects and made an identification which was irreconcilable with his original evidence. Cumulatively, these events led the DPP's office to conclude that there was now insufficient evidence for a prosecution to be brought against four of the individuals.

8. The evidence against a fifth individual, Stacey Bridgett, consisted of a spot of Bridgett's blood on Robert Hamill's trousers and the evidence of a police officer that a woman at the scene had told him that she had seen Bridgett jumping on Robert Hamill's head. The latter could not be corroborated by testimony from the woman and so was inadmissible in court. The presence of Bridgett's blood on Robert Hamill's trousers proved only that he had been near Hamill during the incident; it would have been difficult for the prosecution to prove from that alone that he had been involved. The DPP's office discontinued the prosecution against Bridgett. The only individual left to prosecute was Paul Hobson, who was seen kicking Robert Hamill by one of the police officers. He was acquitted of murder but convicted of affray.

9. Mr Perry's analysis deals with many of the detailed points raised with you by the Inquiry. However, you may wish to ask the following additional questions:

- (i) The Inquiry's police adviser seems to think that it was odd that Stacey Bridgett was not re-interviewed once the forensic evidence had come in. Is this something that the DPP might have directed the police to do? *See Michael Irwin's Inquiry statement*
- (ii) One of the concerns raised by the Inquiry is that there does not seem to have been consideration given to prosecuting Robinson and others for affray. You have set out in your advice the reasons why you do not think such a prosecution would have succeeded – but are you satisfied that sufficient consideration was given to this question at the time?

- (iii) The Inquiry's Counsel noted that there appears to have been no attempt to "analyse the evidence against the defendants as a whole" rather than individually. Is this a reasonable concern in your view?

10 Mr Perry also examined in detail the decision to discontinue a prosecution against the RUC officer who had allegedly telephoned one of the suspects and warned him to destroy his clothing. Miss A originally made this allegation at the time of the murder, but the officer, Reserve Constable Atkinson, denied making the call. His account of events was corroborated by his wife and two other witnesses, Mr and Mrs McKee. Subsequently, it emerged that the McKee's had lied and they were both convicted of attempting to pervert the course of justice. Prosecutions were brought against Atkinson and his wife, for conspiracy to pervert the course of justice. Proceedings were also brought against the father of the suspect who had received the call for obstructing the police. However, Mrs McKee, the key prosecution witness, failed to turn up for the trial and was found to have lied to the police and the prosecution lawyers about her reasons for doing so (she claimed that her son was ill and she had to take him to a doctor). The DPP's office concluded, on the advice of prosecuting Counsel, that she was not a credible witness and proceedings were discontinued. Mr Perry considers that it was reasonable for both the Counsel and the DPP to have reached this conclusion.

11. Mr Perry has covered the issues of concern that the Inquiry raised about this decision. However, this is a decision which the Inquiry seems to find entirely inexplicable, and the way in which Mr Perry expresses his view on this point seems a little less decisive than on other points in his opinion. You may wish to test his advice further on this point by asking:

- (i) The Inquiry seems to take the view that Mrs McKee lied only about a relatively small detail; her son was in fact ill although he did not visit the doctor. Do you think there was a clear justification for withdrawing the prosecution, or is there room for doubt?

12. In addition, you might wish to ask Mr Perry the following general questions:

- (i) Have you, as an experience prosecutor, seen anything whatsoever in the papers which gives you cause for unease about the actions of the DPP's office?
- (ii) Is there anything that strikes you as odd or unusual about the way in which the DPP's office interacted with the police?
- (iii) Have you seen any evidence to indicate that anyone involved acted improperly?

13

[REDACTED]

and I will support you at the meeting.

(signed)

[REDACTED]

Cc:

[REDACTED]

Message: 1300759

From: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Sent: 21/12/2007 at 11:43
Received: 21/12/2007 at 11:43
Subject: HAMILL: CONFERENCE WITH ATTORNEY GENERAL AND DAVID PERRY QC

To: Katie Pettifer

Subject: Hamill: conference with Attorney General and David Perry QC

1. The Secretary of State very was grateful for your submission of 10 December to which was attached David Perry's draft advice.

2. He, the Attorney General and David Perry discussed the draft advice on 12 December. Also present were [REDACTED] you and I; and [REDACTED] Kevin McGinty and [REDACTED]. This is a summary note.

3. The Attorney said that she took this extremely seriously. If there was any merit in the assertions that the DPP's office had behaved improperly she would deal with them vigorously and robustly. That was why she had commissioned David Perry's advice.

4. Perry said that the Inquiry had raised concerns about prosecutorial decisions made by the DPP with the assistance of independent Counsel. He had reviewed these decisions and had reached the view that they were all reasonable. He would have reached the same decisions on the basis of the evidence presented. In his view they were understandable. It was extremely difficult to prosecute on a joint enterprise basis, especially for murder. There had been insufficient evidence of the lesser offence of affray. The only offence for which there might have been evidence was obstructing or assaulting a police officer; in that case, a decision not to prosecute was understandable because the accused had already served more time on remand than the penalty for the offence.

5. [REDACTED] pressed him on whether the decisions had been reasonable as well as understandable. There might, for example, have been a strong public interest in proceeding in order to establish a climate in which people would respect the rule of law. Had Perry been looking at the issue through a London prism rather than from the perspective of Northern Ireland in 1997? Perry accepted [REDACTED]'s points but maintained that the decisions had been reasonable. He believed that he would have reached them himself.

6. ██████ said that he wasn't being asked to decide whether the prosecution system had been bad, but whether there were reasonable grounds for including it in the Inquiry. He would need to look at the public interest point in more detail before making his decision on extension, and asked Perry to address it in further advice. He would set out his reasons for his decision once it had been made.

7. The Attorney said that for her part she wished to be assured that the prosecutorial system had been robust and fair and had taken appropriate decisions. She pointed out that the original Cory investigation had chosen to concentrate on the RUC and not to look at the prosecutors. She also noted that the approach to prosecutions in NI was the same as in England and Wales: it was important to apply the same standards across the UK. Independent senior Counsel were involved. There had never been allegations of collusion and bias with respect to the Bar and the judiciary.

8. Perry said that he had seen no evidence of inertia or obstructiveness on the part of the DPP. After all he had decided to prosecute Hobson in difficult circumstances.

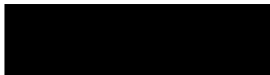
9. ██████ asked why Bridgett had not been re-interviewed on the basis of the forensic evidence. Perry replied that he'd already been charged: usual practice was not to conduct interviews after charge. Moreover it would have added nothing to the strength of the case. There was nothing more the prosecutors could have done. The forensics had taken from August to October, but that was normal and the DPP had been in contact with them throughout.

10. ██████ asked whether there was room for doubt about withdrawing the RUC officer's prosecution. Perry didn't think so. Senior Counsel, having seen the witness, had formed the professional judgement that she was unreliable.

11. ██████ returned to the public interest point. Would it have been in the public interest to charge the suspects with lesser offences? Perry replied that in his view the evidence in each case wouldn't have supported it. He believed that the decisions not to do so were correct and in accordance with practice in England and Wales.

12. ██████ thanked Perry for his work so far and invited him to prepare further advice covering the points raised during the conference. He repeated that he was approaching the decision very seriously. He understood the consequences of extending the Inquiry, but he wouldn't hesitate to do so if that was the right course.

[Signed]



Principal Private Secretary

(22704

All e-mails and attachments sent by a Private Secretary to an official on behalf of a Minister or the Secretary of State relating to a decision, request or comment made by a Minister or the Secretary of State, or a note of a Ministerial Meeting, must be filed appropriately by the main recipient. The Private Offices do not keep official records of such e-mails or attachments.