

*Mr Gordon Kerr QC  
read this on 10/12/97  
and was utterly  
content.*

10.12.97

Ms [REDACTED]  
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DPP Ref: 2209/97CL

10 December 1997

**ROBERT HAMILL**

1. I refer to your letter and enclosure dated 3 December which was received in Belfast on 4 December. You seek a response by 10 December.
2. I note that you ask for a report on the matters raised by the Secretary of State in her letter to the Attorney General dated 28 November 1997 and in paragraph 3 and additional point 1 of Diane Hamill's letter to the Secretary of State dated 21 November 1997.
3. On 27 April 1997, at approximately 1.50 am, Robert Hamill left a dance hall at Thomas Street, Portadown. He was accompanied by [REDACTED] and two females. All were Roman Catholics. As this group reached the junction of Mark Street, the two males were attacked by a group of protestants who chanted sectarian slogans. As a result, both Robert Hamill and [REDACTED] were beaten unconscious and taken to Craigavon Area Hospital. [REDACTED] was released, having received relatively minor injuries. Robert Hamill was transferred to the Royal Victoria Hospital, Belfast. He remained unconscious. He died on 8 May 1997.

4. A police investigation file in relation to his death was received in this office on 7 August 1997.

Eight persons in total were reported.

Of those eight, six had been charged by police with the murder of Robert Hamill.

These persons were Dean Forbes, Allister Hanvey, Rory Randolph Arthur Robinson, Wayne David Lunt, Stacey Bridgett and Paul Rodney Marc Hobson.

There was wholly insufficient evidence in respect of the other two persons reported in relation to their involvement in the death of Robert Hamill. Police did not recommend their prosecution.

5. The evidence and information reported was given preliminary consideration by Mr Kitson, Assistant Director.

It was noted that forensic reports relating to biology (body fluids) and physical methods (fibres etc), the post-mortem report and other medical reports were not available.

These reports were essential for a proper consideration of the case.

Accordingly, on 12 August 1997, an interim direction issued to police indicating that directions as to prosecution would pend the receipt and consideration of forensic, post-mortem and medical reports.

6. By the beginning of October 1997, the forensic, post-mortem and medical reports were still not available. Concern was expressed at the Remand Court at HM Prison at the Maze in regard to the delay in obtaining these reports. In the light of this continuing pressure the

file was re-allocated to another professional member of staff who was instructed to proceed with the case, insofar as it was possible, bearing in mind the absence of the aforementioned reports.

7. On 10 October 1997, the professional member of staff spoke to the investigating police officer by telephone. He was informed that, having regard to the events at Drumcree during the summer of 1997, certain crucial witnesses in the case might not now be willing to give evidence. Further, he indicated that a witness, named Colin Prunty, a Roman Catholic, and crucial in the case against one of the defendants, (Lunt), could only be contacted via [REDACTED] a solicitor, in Lurgan. Furthermore, at that time, Miss [REDACTED] had not answered any police correspondence in relation to making Mr Prunty available.
8. In the light of this information, a further interim direction issued on 14 October 1997. This indicated that consultations were to be held with four principal witnesses in the case, that is witness A, witness B, Colin Prunty and Jonathan Wright. My office spoke and wrote to Miss [REDACTED] in this regard to facilitate interview of Mr Prunty.

Senior Counsel, Mr Gordon Kerr QC, was briefed and instructed to consult with the witnesses and advise as appropriate.

A consultation took place on 17 October 1997 with witness A and Jonathan Wright. A further consultation took place on 21 October 1997 with witness B.

9. Witness A indicated that she would not give evidence against any of the accused. Not only did she know a

number of the accused, having been brought up in the same area as them, she was having a romantic relationship with one, named Hanvey.

Witness B during consultation, claimed that he could not now recollect anything. When the contents of his witness statement were put to him, he said he was only agreeing with what police had suggested to him. He indicated that he was not scared to give evidence, although he admitted that he did not wish to do so. He indicated that his desire not to give evidence did not affect his inability to remember what had occurred.

10. Jonathan Wright's evidence remained intact and he presented as a witness capable of giving credible evidence. The height of Wright's evidence was that he saw Bridgett engaged in a fight to the left of the main fight with an unidentifiable person. In addition, he provided evidence that Robinson was in the crowd running about "like a headless chicken". He stated that Hobson ran down into a crowd fighting in the middle of the road.
11. Senior Counsel provided oral advices, which were subsequently confirmed in writing, in relation to the evidence of witnesses A and B. He advised that he was satisfied that witness B could not be put forward as a reliable witness. Senior Counsel advised that without the evidence of witnesses A and B, there was insufficient evidence to sustain a prosecution against two of the accused, Forbes and Hanvey for any offence relating to the death of Robert Hamill. He further advised that without the evidence of witnesses A and B, there was insufficient evidence to sustain a prosecution against the third accused, Robinson for any "offences of direct violence against" the injured parties or other charge "such as affray". The advice of Senior Counsel was in accord with the opinion of professional staff.

12. The issue of summoning and compelling witness A to give evidence at court was considered. Investigating police were asked to advise. Witness A was a compellable witness. Investigating police advised that there was no reasonable prospect, no matter what sanction was applied to witness A, of that person giving evidence in court. This opinion was confirmed by Detective Superintendent Cooke on behalf of the Chief Constable. Investigating police also confirmed that there was or would be no other evidence available in respect of the three accused, Forbes, Hanvey and Robinson which would implicate them directly in the attack on Robert Hamill.

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

13. In the absence of evidence from witnesses A and B, and without sufficient other evidence being available, it was concluded that there was no reasonable prospect of obtaining a conviction of Forbes, Hanvey and Robinson for any offence relating to the death of Robert Hamill. Accordingly, on 29 October 1997, a direction issued for no prosecution of these persons for the murder of Robert Hamill. The holding charge (of murder) was withdrawn at the first available court at Lisburn on 31 October 1997.
14. A consultation took place with the witness, Colin Prunty on 30 October 1997.

Mr Prunty presented himself to Senior Counsel and professional staff as an impressive and reliable witness. His evidence was to the effect that he was identifying a person, whom he did not know, as being one of the persons in the group that had been kicking Robert Hamill. Mr Prunty's evidence related specifically to a person wearing a Ranger's scarf, who was taken away by police and put in the back of a landrover. Furthermore, he related that this person with the Ranger's scarf was then let out of the landrover. He recalled going over to a police officer who was in charge of releasing this person from the landrover and remonstrating with him as to why this person was let go.

Evidence from police indicated that this person was the accused, Lunt.

On the basis of this consultation, Senior Counsel 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, would depend on the pathologist's report which at that stage was still unavailable.

15. On 3 November 1997, Diane Hamill and Fiona Ryan, sisters of Robert Hamill, called, by arrangement, to see Mr Kitson, Assistant Director, at his office.
16. Fiona Ryan asked why the charges against the three accused, Forbes, Hanvey and Robinson had been withdrawn. Mr Kitson informed her, in general terms, of the reasons for this. He indicated to her that evidence which had formed the basis of the police charges was no longer available. In this regard, he was referring to the evidence of witnesses A and B.

17. Fiona Ryan then informed Mr Kitson that not all witnesses had been spoken to. He enquired as to what she meant by this. She then referred to a Roman Catholic male person who had identified one of the accused against whom the charges had been withdrawn on 31 October 1997 as being the person he had seen kicking at Robert Hamill and who had been in the back of the police landrover. It became immediately apparent that the witness that Fiona Ryan was referring to was Colin Prunty.
18. Fiona Ryan was informed that it was not Mr Kitson's understanding of the evidence that Mr Prunty had identified one of the accused who had been released. He told Fiona Ryan and her sister that this was a matter of importance which he would need to consider and refer to police.
19. In the light of this information, Mr Kitson telephoned the investigating police officer and requested that a further statement be taken from Mr Prunty, as a matter of urgency, in relation to the matters raised by Fiona Ryan.
20. A further statement was taken from Mr Prunty on 3 November 1997.

Mr Prunty stated that he had been shown a video of three persons, who had been released on 31 October 1997 leaving the courthouse, by members of the Hamill family. He recognised one of the three persons shown on the video as the person he had seen in the back of the landrover, who had been put there by police and at that time had been wearing a Ranger's scarf. He indicated that he was certain that this was the person he had seen on the night of the murder of Robert Hamill.

21. As a consequence of this additional statement, a further consultation was arranged with Mr Prunty.

Senior Counsel and professional staff were present. During consultation, Mr Prunty was adamant that the person he was referring to was not Lunt but Forbes, that is one of the persons who had been released from custody.

Furthermore, Mr Prunty, who was shown a photograph of Lunt and Forbes, stated unequivocally that if he was asked if Lunt was the person he was referring to and whom he had seen kicking at Robert Hamill, he would say no.

Having regard to Mr Prunty's evidence, Senior Counsel advised orally, and subsequently confirmed in his written advices, that there was no reasonable prospect of obtaining a conviction of Lunt for any offence relating to the death of Robert Hamill. Whilst there was evidence from police witnesses which indicated that Lunt was in or around the area, and, indeed, he had been taken away and put into the back of a landrover, it was not considered that the evidence, on its own, was sufficient to prosecute him for any offence relating to the death of Robert Hamill. Further, it was considered that a lesser offence of affray would even be difficult to sustain on the available evidence.

22. As I have indicated, Senior Counsel's written advices were subsequently received in relation to the case of Lunt (and the others charged by police).

Senior Counsel confirmed that there was no reasonable prospect of obtaining a conviction of Lunt for murder and further advised that "even affray might be difficult".

In a consultation with Senior Counsel held on 18 November 1997, Senior Counsel concluded that the evidence was insufficient to prosecute Lunt for affray. The advice of Senior Counsel was in accord with the opinion of professional staff.

On 19 November 1997, a further direction issued that the police holding charge of murder preferred against Lunt be withdrawn at the earliest opportunity. The holding charge was withdrawn at the Remand Court at H.M. Prison at the Maze on that date.

23. On 3 November 1997 the forensic report of Mr Lawrence Marshall of the Forensic Science Agency of Northern Ireland was received in this office. A professional member of staff spoke to the forensic scientist on 12 November 1997.

The forensic examination indicated that there was one small spot of blood from one of the person's charged by police, Bridgett, which had been found on the right trouser leg of Robert Hamill. This spot of blood was about the size of a one pence coin, and, was positioned about an inch from the bottom of the trouser. No blood from Robert Hamill was found on Bridgett's clothing.

Bridgett had originally been referred to by witnesses A and B. (It will be recalled that that evidence was no longer available). Certain other evidence placed Bridgett in and around the scene at the relevant time. One police officer had observed Bridgett as being in the crowd and having blood coming from his nose.

The available evidence showed that Bridgett was in or around the scene but the extent of his involvement could

not be established. The evidence, at its height, indicated that, at some stage, Bridgett was sufficiently close to Robert Hamill that his blood dripped directly onto his trousers. There was no evidence available to show what Bridgett had done.

During interview by police, Bridgett denied being near Robert Hamill. If the forensic evidence was correct, this was not truthful.

However, it was concluded that this denial, taken together with the forensic evidence, was not sufficient to provide a reasonable prospect of obtaining his conviction for any offence relating to the death of Robert Hamill. Senior Counsel gave consideration to the case against Bridgett and advised orally to this effect. This was subsequently confirmed in his written advices.

In consultation with Senior Counsel held on 18 November 1997, Senior Counsel advised that it was doubtful whether there was sufficient evidence to sustain "a charge of affray". The advice of Senior Counsel was in accord with the opinion of professional staff who concluded that there was insufficient evidence to provide a reasonable prospect of obtaining a conviction.

A further direction that the police holding charge against him be withdrawn at the earliest opportunity issued on 19 November 1997.

24. One of those persons initially charged by police, Hobson, remains on remand. No final decision as to prosecution has yet been taken. Hobson was identified by witness A as one of the group who was kicking Robert Hamill when he was on the ground. He had also been observed by witness B as being involved in fighting with two other people. (That evidence is no longer available).

There is, however, evidence from a Constable Neill, who has made a witness statement, indicating that he observed Hobson kicking at Robert Hamill. Clarification has been sought from police as to whether Constable Neill can say that he saw a kick, or, an attempted kick by Hobson on Mr Hamill. A further statement has been taken from Constable Neill.

Senior Counsel is presently considering that statement, together with the pathologist's report which is now available.

While no final decision has been made as to prosecution of Hobson, it is clear that the available evidence is such that he will be prosecuted for an offence relating to the death of Robert Hamill. While it is likely that the offence will be murder, I should observe, that Senior Counsel's final advices, on this point, have not yet been obtained and considered by professional staff.

25. Further police enquiries have also been requested in relation to Forbes. (See para 21 above). Colin Prunty has alleged that the person he saw kicking Robert Hamill was, in fact, Forbes. Police have been asked to make enquiries and report, as soon as possible, as to whether there is any evidence that the person identified by Colin Prunty as Forbes was, in fact, a person who had been brought by police to a landrover, who was wearing a Ranger's scarf and who was subsequently released by police from the landrover. Police enquiries continue in this regard.
26. In regard to those five persons charged by police, but in respect of whom the police holding charge of murder has been withdrawn, it was noted that there is or may be

evidence of the commission of minor public order offences. However, regard was given by professional staff to the length of time that these persons had spent in custody on remand on the police holding charge. It was not considered that, in the circumstances, prosecution in the Magistrates' Court for such minor public order offences which, in general, carry a maximum sentence, of six months' imprisonment, was required. Summary offences became statute barred on 8 November 1997. No formal direction has issued in this regard.

27. I am informed that a further police investigation, supervised by the Independent Commission for Police Complaints, is ongoing. I understand that this relates to allegations in respect of the conduct of the police officers present at the scene of the attack. I further understand that it is suggested, inter alia, that police did not take any or sufficient steps to intervene in the attack carried out on Robert Hamill.

I await receipt of this file. In due course, directions as to prosecution will issue.

28. Responsibility for the prosecution of offences in Northern Ireland rests with the Director of Public Prosecutions and the Attorney General. As you are aware, under the Prosecution of Offences (Northern Ireland) Order 1972, the Director is subject to the direction of the Attorney General who superintends him in the due performance of his functions.

While I entirely recognize the general responsibilities which the Secretary of State bears, and, her particular responsibility for aspects of the criminal justice system,

I am concerned, having regard to the nature of the enquiries which have been raised, whether it would be appropriate, in the circumstances, for either officials in the Northern Ireland Office, or indeed, the Secretary of State to comment or otherwise respond to or upon the matters for which I am directly responsible to the Attorney General. I note in this regard that BBC Television (Northern Ireland) broadcast on 8 December 1997 a report that two of the Hamill family had met with Mr [REDACTED] the Taoiseach of Ireland, and, that he had asked Mr [REDACTED] the Minister responsible for the Department of Foreign Affairs to look into the matter.

If this is correct, it heightens my concern both in connection with what is presently an ongoing prosecution in respect of one person, and, such future decisions as to prosecution which will have to be taken into the further police investigation supervised by the Independent Commission for Police Complaints. I also note in this regard reports that the Hamill family are giving consideration to a private prosecution in relation to Robert Hamill's death.

29. I have received correspondence from the Committee on the Administration of Justice.

I attach a copy of their letter dated 27 November 1997 for your consideration. While an acknowledgement has issued, I wish to ensure that the final substantive reply is consistent with the response which the Attorney General considers appropriate.

30. I also attach for your information a copy of a fax received from [REDACTED] of Ulster Television dated 31 November 1997 (but received 30 November 1997), and a copy of a reply which issued on 4 December 1997.

31. An Ulster Television programme on these matters, broadcast on 4 December 1997, indicated that a "statement" had been issued by the Director of Public Prosecutions to the effect that in respect of 5 persons, the evidence was insufficient to provide a reasonable prospect of obtaining a conviction. It continued that "police enquiries" were ongoing in respect of certain matters, but, commented that the matters in question had not been identified. A video copy of this broadcast can be obtained from police.
32. If there is any further information you require, please let me know. As you are aware, I will be in London on 15 and 16 December, if this is of assistance.