

that earlier decision now to compel her to give evidence in what is a less serious set of circumstances.

7. Michael McKee has refused to make any further statement or to testify in the present case. He is also likely to be a hostile witness.

### Charges

8. The evidence, if accepted, of Andrea McKee is capable of implicating -
  - (a) Robert and Eleanor Atkinson: each in an offence of conspiracy to pervert the course of public justice, arising out of the meeting of the McKees with Robert and Eleanor Atkinson in the home of the Atkinsons.
  - (b) Robert and Eleanor Atkinson: each in an offence of doing an act tending or intended to pervert the course of public justice, by giving false information about the identity of the person who made the telephone call.
  - (c) Kenneth Hanvey: for an offence of doing an act tending or intended to pervert the course of public justice, by giving false information about the identity of the person who made the telephone to his house which he claims to have answered.
9. The evidence of persons present at the scene of the incident and persons in the presence of Allister Hanvey for the remainder of the night, if accepted, is capable of implicating -
  - (a) Thomas Hanvey: for an offence of doing an act tending or intended to pervert the course of public justice, by giving false information about the movements and clothing of Allister Hanvey.
  - (b) Allister Hanvey: for an offence of doing an act tending or intended to pervert the course of public justice, by giving false information about his movements in the early hours of 27th April and the clothing he was wearing at the relevant time.
10. As presently advised I do not see the basis for a prosecution of Elizabeth Hanvey. I have looked at the Message Form (given the identification mark MI 5) which is the contemporaneous account of the interview of her and her husband on 15th November 1997 by D/I Irwin. The information which was given to D/I Irwin and recorded on the form clearly, on the face of the document, came from Kenneth Hanvey. There is nothing on the face of that document to suggest that Elizabeth Hanvey said anything in relation to the 27th April telephone call. R v Headley [1995] Crim. LR 737 establishes that there must be some positive act on the part of an accused person to amount to the offence of 'doing and act'. No such act appears on the face of the document. Her apparent silence would not justify a prosecution for conspiracy in my opinion. In the circumstances I do not recommend any prosecution of her.

### Defence application to stay proceedings

11. It seems to me that the defence may seek to stop the prosecution on one, or other, or both, of two bases - that the continuation of the proceedings amounts to an abuse of the process of the court and/or Article 6 (of the Convention) delay.