

## GENERAL CASE PREPARATION

- 1 The Panel may wish to consider whether press releases issued by the RUC in the aftermath of the assault demonstrated a conscious or unconscious desire to put out a version of events which portrayed police or Protestants in a false light, and which may have deterred Catholics from coming forward with evidence.

### Submissions by British Irish Rights Watch and Committee on the Administration of Justice

Please see section 5 below.

### Submissions by the Police Service of Northern Ireland

See sections to follow.

- 2 That leads into consideration of whether an adequate investigative structure was put in place for the assault and, subsequently, murder investigation. That will entail considering a number of matters including :
  - 2.1 The appointment of a Senior Investigating Officer;
  - 2.2 HOLMES implementation;
  - 2.3 The use of a policy book;
  - 2.4 Witness strategy;
  - 2.5 Search and arrest strategy;
  - 2.6 Forensic Strategy;
  - 2.7 Use of witness evidence;
  - 2.8 Whether the murder investigation was hampered by the interplay between it and the neglect investigation. If it was, was that designed?
  - 2.9 Was the investigation hampered by non-cooperation?
  - 2.10 What roles the various detectives had in the investigation. In particular it will be important to determine whether DI Irwin had any substantive responsibility or whether he was merely acting in a support role in his capacity as office manager?

### Submissions by the Police Service of Northern Ireland

See sections to follow.

## **THE FIRST ISSUE: THE PRESS RELEASES**

- 3 There is limited material on this issue:
  - 3.1 0600 First Press Release (15068)
  - 3.2 2100 Press release number two is issued (15068)
  - 3.3 7/5/97 Press release four is issued (15068)
  - 3.4 8/5/97 Press release five is issued (15068)
  - 3.5 15/12/97 Superintendent XXXXXXXXX made a note explaining the press statements issued by the RUC (15383)

### **Submissions by the Police Service of Northern Ireland**

See section 5 below.

4. The witnesses dealt with the matter briefly:

Fred Hall

*Statement*

- 4.1 Para 49: He was not involved in the press release about the “rival factions”.

Alan McCrum

*Statement*

- 4.2 Para 25: When he issued the press statement, he had talked to several officers and there was nothing to contradict the impression of rival factions.

*Oral Evidence*

- 4.3 The Inspector on duty is responsible for putting press releases together. The messages would go to the press office at headquarters (p55). 15068 shows “rival factions” were involved. He put out a message to the press office explaining what he understood were the circumstances. His message and the one put out may be the same (p56). He agrees now that the message is misleading. The recurring theme from officers and his own observations were that rival factions were involved (p57)

### **Submissions by the Police Service of Northern Ireland**

See section 5 below.

## Comment

5. The initial press release assumed that there had been a contest between rival factions. The Panel will have reached its own conclusion about the way in which the violence developed, and whether that was a fair assumption. If it was not, the Panel may wish to consider whether the assumption was reached negligently, and whether it had the tendency of discouraging Catholic witnesses from coming forward.

### Submissions by British Irish Rights Watch and Committee on the Administration of Justice

The initial press release said (in full):

"Two youths have been detained in hospital with head injuries following a clash between rival factions in Portadown around 1.45am this morning. Police moved in to separate the groups who encountered each other at the junction of Thomas Street and Market Street. Bottles were thrown during the hostilities and police themselves came under attack by a section of the crowd. Order was restored around 3am."

The corrective press release, which said that two couples had been set upon by a large crowd, was not issued until the 7<sup>th</sup> of May.

It has been suggested (paragraphs 15 and 16, module 5), that Robert Hamill and/or his companions started the trouble, but we have argued that there is no credible evidence to sustain such a proposition. We hope that the Inquiry's view of the press releases will not be tainted by it.

The initial press release not only stated that there had been a clash between rival factions, but that the police had come under attack. As we have argued in our response to module 5, there is no evidence of a faction fight, or even a one-sided fight between four Catholics (D, E, F and Robert Hamill) and some 40 to 50 loyalists. Nor is it accurate to say that the police came under attack. The police used physical force against some members of the crowd, and no doubt some of those who came into physical contact with the police retaliated, but the police rapidly brought the situation under control. To the best of our knowledge, no police officer claimed afterwards to have been injured that night.

The press release was, therefore, thoroughly misleading. That it was so is hardly surprising, given that no witness statements were taken before it was released, and the Land Rover crew did not give a full account in their own initial statements. Inspector McCrum clearly had very little idea of what had actually happened, nor had he taken any trouble to find out.

Although the press release gives no clue as to the identity of the two victims, it would have rapidly become common knowledge that they were Catholics. There was a large number of people in the crowd and the incident would have been the talk of the town. Within the Catholic community, E and F's version of events, which was that D and Robert Hamill had been attacked without

provocation while the occupants of a police Land Rover sat idly by, would have rapidly gained currency. Catholics reading the press release would have regarded it as misleading, and this would have added to the reluctance that already existed among the Catholic community to volunteer information to the RUC. However, as Professor McEvoy's report points out, that reluctance was already present. In our view, the misleading press release was not helpful, but it would only have been one factor inhibiting Catholic witnesses from coming forward. In reality, the majority of the Catholic community would have had very little faith in the RUC's willingness or ability to bring anyone to book for the assaults. Sadly, the RUC were to live up to that lack of expectation in Robert Hamill's case.

### **Submissions by Edwards & Co Solicitors (Serving and Retired Police Officers)**

Having heard all the evidence, and with hindsight, it may well be that the use of the words "rival factions" was in fact appropriate.

The suggestion that the Press Releases had the tendency of discouraging Catholics from coming forward seems unrealistic.

- (a) No Catholic witness has told this Inquiry that that was the reason for not coming forward.
- (b) It could be argued that if the use of the words "rival factions" was a false description, it should have encouraged Catholics to come forward to dispel that falsehood.
- (c) The Panel may feel that there was a clear policy of non-cooperation by some Catholics (for their own reasons) with the police investigation and which clearly hindered that investigation, and this was totally unconnected with the contents of the Press Releases.

### **Submissions by the Police Service of Northern Ireland**

The family and friends of the victims of violence are naturally and understandably sensitive to how the events which precipitated the violence are portrayed in the media.

Much attention has been given to how the RUC described the events of the 27 April 1997 in their dealings with the media. In particular the first press release (15068) where it referred to a "clash between rival factions" has been criticised as being a misrepresentation of what actually occurred.

Inspector McCrum has explained his role in the process and how he gained his understanding of the events which had occurred (see particularly pages 55 and 56). He has explained that the words which were used in the press release accurately reflected what he had been told before he went to the scene and when he reached the scene. He has commented that the "recurring theme was that there were rival factions (page 55)."

The notion of rival factions clashing was also borne out by his observations at the scene where police had to organise themselves in order to move the

Protestant crowd up the town towards West Street, and to prevent Catholics from leaving Woodhouse Street.

The Inquiry is also aware of a version of events which would tend to suggest that the commencement of the violence was not wholly unprovoked in that a group of Catholics which may have included Mr. Hamill appeared to some witnesses (eg. P42) to be spoiling for a fight.

The Inquiry has also heard the evidence of Con. Neill. When he got out of the land rover the impression was of two rival groups (page 12): "There was no fighting. There just seemed to be standing shouting at each other." In an earlier account Con. Neill described his initial observations in the following terms: "There was general cat calling with words like Fenians and Prods being used (00686)."

Against all of this of course is an assertion on the part of those who were with Mr. Hamill on the night that the attack on him was wholly unprovoked.

The point of this submission is not to reopen old wounds but merely to highlight that the initial RUC press release was accurate to the best of Inspector McCrum's understanding at the time. His composition of the press release was far from negligent but like many people in the initial stages of the investigation he was not in possession of all of the facts.

Of course a forensic analysis of the facts would show that regardless of how tensions started to build, Mr. Hamill was set upon by a mob which overwhelmed and viciously attacked him leaving with no opportunity of defending himself. Unfortunately, this information was not known to Inspector McCrum at the time and he accepts that the message that went out was misleading.

It is submitted that it is quite a different matter to suggest that the effect of the press release was to discourage Catholic witnesses from coming forward. It is unclear how or why this should be so. There is no evidence before the Inquiry tending to show that any person heard or read the press release and was thereby disinclined to provide the police with information.

It is also clear that the RUC made many attempts through the Hamill family, the press and with community and pastoral representatives to encourage witnesses to come forward.

That witnesses from the Catholic community refused to come forward in sufficient numbers is more likely to be tied up with wider cultural and political issues than with any annoyance or concern about the contents of a press release.

## **THE SECOND ISSUE: APPOINTMENT OF A SENIOR INVESTIGATING OFFICER**

6. The materials show this:
  - 6.1 8/5/97 DCS McBurney is appointed Senior Investigating Officer (SIO) with responsibility for the murder investigation. DCI P39 is appointed as the Deputy and DI Irwin as the office manager 913
  - 6.2 9/5/97 DCS McBurney is appointed SIO for the complaint. His assistants are Supt Robert Anderson and CI Richard Bradley 8089
  - 6.3 9/5/97 A conference is held with DC Donald Keys, DI Michael Irwin, DCI P39 and DCS Maynard McBurney 11102
  - 6.4 23/2/98 DCI P39 retires 10124
  - 6.5 28/2/01 A meeting with is held with PONI, DCI K and DCI P39, at the home of DCI P39. DCI P39 refers to a meeting on 9 May 1997 which set ground rules for three separate investigations: (1) murder (2) inactivity (3) telephones. The murder investigation was ongoing, DCI P39 was involved in that as assistant SIO to DCS McBurney (14622)
  - 6.6 11/4/01 Supt Karen Kennedy, who joined C&D in April 2001, takes over the C&D investigation from xxxxxxxxxxxx. This was confirmed formally on 11 May 2001
  - 6.7 11/5/01 Supt Karen Kennedy takes over from Supt xxxxxxxxxxxx on the internal investigation into the inactivity of the police at scene 10120 at 10124.

### **Submissions by the Police Service of Northern Ireland**

See section 8 below.

7. The witnesses said as follows:

#### **Greg Mullan**

##### *Statement*

- 7.1 Para 13: There was confusion about whether DCS McBurney or Supt Anderson had been appointed as SIO for the neglect complaint.

#### **Henry McMullen**

##### *Statement*

- 7.2 Para 11-13: CI McMullen was briefed by DCI **P39** at about 0830 27/4/97. His main area of concern was to ensure she had sufficient resources

## Maynard McBurney

### *Statement*

- 7.3 Para 5: As head of CID Southern Region he would normally be informed of any murders that occurred in the region and he generally would decide the SIO. There were very, very few resources to deal with the investigations.
- 7.4 Para 6: Made sure that a person in charge of (sub)division was in charge of murder so that if DCS McBurney was taken away, they had responsibility for the murder.
- 7.5 Para 7: Had training on the Intermediate Command and Major Serious Crime courses at Bramshill.
- 7.6 Para 8: Was kept abreast of Mr Hamill's condition but he had no active involvement in the GBH investigation.
- 7.7 Para 9: SIO on GBH investigation was DCI **P39**. Deputy was DI Irwin.
- 7.8 Para 11: On the morning of 8 May he was directed by the Chief Constable's office to investigate the neglect allegation. Because the incident had political connotations, and allegations had been made against the police, the Chief Constable got involved in the appointment of the SIO for the complaint.
- 7.9 Para 13: He was appointed SIO on the complaint before Mr Hamill died. On the same day the murder investigation began. He determined it would be appropriate to him to be SIO for both as it was impossible to investigate one without the other. It meant the same team investigated the murder and the complaint.

## Michael Irwin

### *Statement*

- 7.10 81423: When a major crime occurred the DI in charge of the sub-division could be appointed as the Deputy SIO depending on the rank of the person appointed as SIO.
- 7.11 81454: It was during this conference that he was instructed. DCS McBurney was SIO and DCI **P39** was Deputy. He was appointed Office Manager. His role was to manage office personnel, actions through liaison with the HOLMES manager, provide DCI **P39** and DCS McBurney with support ensuring all directions were pursued and supervised.
- 7.12 81484: Suggested to DCS McBurney there was a requirement to review the HOLMES account. Reiterated that there was a necessity to appoint a SIO not affiliated to the Portadown sub division. On 22nd June 2000 DCS McBurney informed DI Irwin that he was appointing DCI K.

- 7.13 81485: Fully agreed with DCI **K**'s appointment to specifically review the Res Con Atkinson allegation. DI Irwin had no further role in the investigation.

### Freddie Hall

#### *Statement*

- 7.14 Para 22: Was a supply or demand situation in relation to trained SIOs and, consequently, rank and availability was usually approved by the Head of CID.
- 7.15 Para 23: Generally he was not involved in the appointment of an SIO.
- 7.16 Para 24: Circumstances surrounding appointment of DCS McBurney were that it followed a corporate decision following the complaint. One of his functions was to approve the appointment of the SIO in complaint matters.

### **K**

#### *Statement*

- 7.17 Para 52: Was appointed as SIO on the murder investigation following the retirement of DCS Colville Stewart on 6/4/02.

#### *Oral Evidence*

- 7.18 His objective when appointed was to investigate a tip-off allegation against Res Con Atkinson. There were no barriers about where he could take the investigation. DCI **K** believes they did a thorough investigation. They did always keep sight of the murder as well (p40). DCS Colville Stewart kept in contact with the Chief Constable, who was interested in the case. DCI **K** did not have any meetings with the Chief Constable (p41)
- 7.19 PONI and the police's objective was the same. They saw the journey as different but talked through the issues (p44). The police worked closely with Mr Mahaffey and **K** recalls that Mr Mahaffey was happy with the investigation (p44)

### Ken Armstrong

#### *1st Report*

- 7.20 Page 20, Para. 1.4.9: It was difficult to attract officers to take on role of a DI in CID due to there being heavy additional demands with little additional payment.



- 7.21 Page 32, Para 1.6.2: Investigating Officer would need to draw together all available evidence. This would be commented on by an investigating officer and was a ready reference for someone supervising to consider and discuss.
- 7.22 Page 23, Para 1.5.11: General experience was DSupt or DCI would be SIO on a murder and a DI would be Deputy SIO.
- 7.23 Page 45, Para 1.8.4: Seriousness of attack was not appreciated at the outset by police, resulting in an absence of attention.

#### **Submissions by Edwards & Co Solicitors (Serving and Retired Police Officers)**

Mr Armstrong, at page 45 is clearly referring to the immediate aftermath of the assault

#### **Submissions by John P Hagan Solicitors (Robert and Eleanor Atkinson)**

The Panel's attention is drawn to the oral evidence of K as set out at paragraph 7.18. His objective was clear, when appointed, that he was to investigate the tip-off allegation against Reserve Constable Atkinson. He stated there were no barriers about where he could take the investigation and DCI K believes he did a thorough investigation. Further Colin Murray took the view that DCI K dealt with the allegation professionally (paragraph 25.30 of his report, page 121). Accordingly the evidence is clear that in the face of a thorough investigation by DCI K the totality of any potential evidence of any wrongdoing on the part of Reserve Constable Atkinson amounted to those matters which are outlined in Section 8 and do not satisfy a consideration that at any level the allegation of the tip-off was truthful.

#### **Submissions by the Police Service of Northern Ireland**

See section 8 below.

#### **Comment**

8. Although there is some confusion about how DCS McBurney came to be in charge of the neglect investigation, it is clear that his appointment to the murder investigation is uncontroversial. His explanation for taking on the neglect as well, namely that the two were inextricably linked appears to be reasonable.

#### **Submissions by British Irish Rights Watch and Committee on the Administration of Justice**

The Inquiry Team say that he took on the murder investigation on 8<sup>th</sup> May 1997, the day Robert Hamill died (6.1), and the neglect complaint on 9<sup>th</sup> May (6.2). However, DCS McBurney says that he took on both roles on 8<sup>th</sup> May, because he was directed to do so by the Chief Constable (7.8). He is quite clear in his statement that this happened before Robert Hamill died and the

GBH investigation became a murder investigation (7.9). Having discussed this matter with the Inquiry Team it is our understanding that they are right and DCS McBurney was mistaken or wrong (62228, 8089, 14824).

What is controversial, in our submission, is DCS McBurney's decision to put himself in charge of the neglect complaint "because it was impossible to investigate one without the other". This proposition does not seem at all reasonable to us.

Andrea McKee met DI Irwin and RC McAteer on 8<sup>th</sup> May 1999 in the Seagoe cemetery, when she alleged that RC Atkinson had tipped off Allister Hanvey (Michael Irwin's evidence, 9.9.2009). By the time of this meeting, which took place after dark, it would have been known that Robert Hamill had died at 2:30 pm that same day (autopsy report). Such a sensitive allegation would without question have been reported to DCS McBurney, and DI Irwin confirmed that he did so in his evidence before the Inquiry (transcript, 9.9.2009). Thus, when he took over the handling of the neglect complaint, he did so in the knowledge that an allegation of very serious misconduct had been made against a fellow officer.

It is true that RC Atkinson's alleged conduct was relevant to both the murder investigation and the complaint, but the fact was that Robert Hamill's family, even though at this stage they did not know about the allegation, were already dissatisfied with the police investigation. It was unfortunate that the Independent Commission for Police Complaints, unlike the modern Police Ombudsman, did not have their own independent investigators and were forced to rely on RUC officers to investigate complaints against fellow officers. It was even more unfortunate that neither the ICPC, nor the Chief Constable, who was briefed about the allegation on 12<sup>th</sup> May 1997 (74231), foresaw the possibility of any conflict of interests between the murder investigation and the complaint investigation. One of the reasons that the system of police complaints was reformed and replaced by the Police Ombudsman was the lack of independence of ICPC investigations. It was bad enough that RUC officers investigated complaints against their colleagues under the ICPC system, but to conflate the obviously distinct roles of SIO of a murder investigation with that of someone investigating a complaint about that very investigation simply made a bad situation worse.

In his examination of Sir Ronnie Flanagan, Counsel to the Inquiry explained that, following Tracey Clarke's statement made on the 9/10<sup>th</sup> May 1997, RC Atkinson's telephone records were sought. These were received on 16<sup>th</sup> May 1997 and showed a call between RC Atkinson's home and Allister Hanvey's home. Nothing was done as a result until September 1997, when RC Atkinson was interviewed by DCS McBurney under the supervision of the ICPC. Towards the end of the interview, DCS McBurney asked RC Atkinson whether he minded if the RUC examined his telephone records, thus creating an opportunity for him to concoct an alibi with the McKees, which he duly disclosed in a second interview in October (Sir Ronnie Flanagan's evidence, 10.9.2009). Possibly entirely coincidentally, or possibly not, in October 1997

Tracey Clarke and Timothy Jameson withdrew their statements, leading to the DPP to dropping the majority of charges against the suspects.

Although it is very regrettable that DCS Burney is no longer alive to defend himself, there cannot be any doubt that, whether intentionally or not, by giving RC Atkinson warning of his interest in his telephone calls, DCS McBurney compromised both the police investigation and the complaint investigation.

It seems to us that DCS McBurney, whatever the motivation behind his actions, was not the appropriate person to investigate the Hamill family's complaint. No-one seems to have given any consideration to how it would appear to the Hamill family if the SIO for the murder investigation handled their complaint. If there is a legitimate explanation for DCS McBurney's handling of the Atkinson allegation, it must be that he was giving priority to the murder investigation, rather than the complaint. An independent investigator would not have sat on the apparent evidence of collusion between RC Atkinson and Allister Hanvey from May until October, still less have tipped him off.

#### **Submissions by Edwards & Co Solicitors (Serving and Retired Police Officers)**

We agree with this

#### **Submissions by the Police Service of Northern Ireland**

It is agreed that there was initially some confusion concerning the identity of the investigating officer for the neglect complaint. Mr. Mullan's minute of the 13 May 1997 reflects that confusion (14822). However, at that meeting Mr. McBurney explained that he was the investigating officer, assisted by Superintendent Anderson (14822). Mr. Murnaghan indicated that he was happy to approve this appointment.

The PSNI agree with the comment that it was entirely appropriate for DCS McBurney to occupy this dual role because of the overlapping investigative and evidential issues. It would have been a wholly unnecessary duplication of resources to have brought a different officer into the role for the neglect complaint, and it might well have caused confusion and uncertainty.

### **THE THIRD ISSUE: HOLMES IMPLEMENTATION**

9. The materials were to this effect:
  - 9.1 9/5/97 Policy file decision one is made to transfer the murder investigation from the manual MIRIAM system to HOLMES 913
  - 9.2 30/6/00 10.00 Policy file decision four is made [for conspiracy investigation]. The investigation will be managed and actioned on the HOLMES murder account. This is because the allegations of conspiracy regarding Res Con

Robert Atkinson are inextricably linked with the murder of Robert Hamill and any new evidence may benefit the murder investigation 32353

- 9.3 27/11/00 RUC discovers that exhibit PHJW1 was not forwarded to Exhibits officers or investigating officers who were unaware of its existence. The introduction of the HOLMES system, which operated from Gough Barracks, caused operational difficulties 2796

### Submissions by the Police Service of Northern Ireland

See section 11 below.

- 10 A number of witnesses dealt with the issue:

#### P39

##### *Statement*

- 10.1 Para 12: She used an index system similar to MIRIAM
- 10.2 Para 17: Investigation was transferred to HOLMES on 9 May
- 10.3 Para 25: The statements were inputted onto HOLMES at Armagh

##### *Oral Evidence*

- 10.4 Implemented a Mini-MIRIAM for GBH. At the time of the incident only murder investigations were put on HOLMES or MIRIAM. Sometime during 1998 even policy books were used for serious incidents (p69). So “they had no instructions even to use a mini-MIRIAM but because the inspector and her considered the investigation was so serious that they implemented it on their own behalf” (p70). Really all they used were the action sheets (p73). This was implemented on the Monday (p75). There was no major incident room or a substitute for one in Portadown. They did not even have interview rooms under PACE (p70). CID had one general office, one extremely small office for her and a similar office for DI (p71)

#### Karen Kennedy

##### *Oral Evidence*

- 10.5 The information that Kennedy was given was that the investigation was initially conducted under MIRIAM (p41). Cannot comment on whether a full MIRIAM or not should have been commenced (p42). She cannot pass judgement on DCI P39 as there was not full cooperation from her. She cannot comment on the implementation of non-MIRIAM as she has never been a senior detective (p43)

## Edward Honeyford

### *Oral Evidence*

- 10.6 DC Honeyford had not had formal training in PACE or HOLMES in April 1997 (p92) (from para 35 80472).

## Dereck Bradley

### *Statement*

- 10.7 Para 11: 50 or 60 actions were raised prior to Mr Hamill's death and when Robert Hamill died the information went on to HOLMES.
- 10.8 Para 14: He was appointed receiver on 8/5/97

### *Oral Evidence*

- 10.9 They would not have done something about the absence of their statements on that morning (p41) it would have been done when MIRIAM was set up as an action would be raised. On 28/5/97 DI Irwin came back from Banbridge. They sat down and started raising action sheets that morning. He thinks DI Irwin raised the actions sheets, not him. He would expect a file with the usual MIRIAM notes in. He would have expected an absence of statements to have been picked up by MIRIAM action (p42). MIRIAM works by names being put in and then cross-referencing them against statements received (p43). It was only a partial MIRIAM so not all positions under a MIRIAM were required (p77).
- 10.10 Per 10789: The object of MIRIAM is to have a central record of all information on which investigators can draw. Every officer would not know everything. It was a paper system and everything was fed back into folders, including actions (p70). MIRIAM was transferred over to HOLMES when it became a murder investigation. Everything was taken to Gough where a team did the actual HOLMES inputting (p71). The instruction to switch to HOLMES was given at 19.00 on 8th May 1997 by DCS McBurney (p72). Creating the warrants occurred on Tracey Clarke's statement and what DI Irwin knew. Other documentation was 10 miles away at Gough (p73). The only officers on duty that night of 9/5/97 were DCI P39, DC McAteer and he thinks himself. The MIRIAM records had gone at 09.00 9/5/97 (p74). The documents in the file are not returned, they are filed at Gough (p75). Documents would be typed onto HOLMES, not scanned (p117). There may have been some copies left in Portadown as MIRIAM forms were in triplicate (p118). At the time Portadown could not access the HOLMES system. A few years later they got a smaller version. In 1997 someone would have to go to Gough and ask for a print out of a document (p119). The did not have a "front-end machine" to access HOLMES at Portadown (p120). Nobody had the power to check what the actions looked like when entered onto HOLMES. After a morning conference, actions would be directed by the SIO or deputy

SIO. A member of the HOLMES team would go back to the HOLMES room, have actions made and then someone would go between Portadown and Gough to get the actions (p128). People would be sent straightaway to do the actions (p129). When briefing search team, there would have been no access to documents, everything was in DI Irwin's control, "he was aware of everything that was going on regarding investigation". There was no transfer of documents by fax (p132).

### DI Michael Irwin

#### *Statement*

- 10.11 81420: There was only 1 HOLMES Office Manager for South Region. . He was supported by six full-time staff. He believes this would not have been an acceptable level in any police service in the rest of the UK as envisaged or recommended by MIRSAP, and as adopted by RUC with some alterations.
- 10.12 81422: HOLMES rooms would be set up in stations without full access but would be subsequently located to Gough Barracks. In his experience the move was seldom beneficial and would often hamper a murder investigation. Irwin was never HOLMES trained.
- 10.13 81427: There was a stabbing murder in Obins Street and a fatal shooting of two males. Managed both these incidents on a paper based "Mini MIRIAM" as opposed to HOLMES.

#### *Oral Evidence*

- 10.14 HOLMES was run from Gough. There was one HOLMES team in south region with six full-time operators. For those officers to work the system (p47) it was better that all accounts were run from one place. The HOLMES team did in some cases work from certain stations but Portadown did not have those facilities until 1998. In the conferences the actions would be taken away by the HOLMES manager. New actions would be brought back in the evening. At some stage the SIO had to go to Gough to sign off the actions. If they wanted to interrogate the system they had to go to Gough (p48). They would also regularly be on the telephone. The remote use had a negative impact on the investigation (p49). Currently HOLMES work from Gough but the murder investigation teams are probably located at Gough as well. The disadvantages were highlighted in the Blakeley report in 2003 (p50).
- 10.15 DI Irwin managed the HOLMES team, the investigation team and the conferences. DCS McBurney and DCI **P39** were responsible for strategy, policy and decision-making. A conference involved the HOLMES office manager for the South region attending Portadown station (p40). They would go through the actions and DCS McBurney and DCI **P39** would raise further actions, suggestion or make directions. That only lasted 2 weeks as the officers attached to his team had to go back to other investigations and he was left with only Portadown staff (p22).

DCS Maynard McBurney

*Statement*

- 10.16 Para 20: One of his first decisions was to transfer the investigation from MIRIAM to HOLMES. One of the main reasons was to get it out of Portadown and on to the HOLMES computers in Armagh.
- 10.17 Para 32: Directed that neither Witness A or B should be typed or entered on HOLMES.

Ken Armstrong

*1st Report*

- 10.18 Page 22, Para 1.5.8: Were 54 HOLMES accounts opened in CID south from 1/1/95 to 31/12/1999. Seven of 19 investigations opened during past 26 months before April 1997 were still being worked on or live at time of Mr Hamill's attack.
- 10.19 Page 34, Para 1.6.6: Attack on Robert Hamill could have been considered attempted murder.
- 10.20 Page 34, Para 1.6.7: Were 10 attempted murders that were similar to initial GBH investigation during first 6 months of 1997. None used HOLMES.
- 10.21 Page 34, Para 1.6.8: Common factors in those investigations included:
- 10.22 There was minimal recording of statements from, or by, uniformed officers who first attended the scene.
- 10.23 It was very common for a CID DC to be called out during the night to deal with a major incident.
- 10.24 There was a general absence of statements provided by police staff involved in scene attendance, management or examination.
- 10.25 There was an absence of policy books
- 10.26 Where the scene was outside, they were not always cordoned off
- 10.27 Page 26, Para 1.5.19: In 1997 the use of HOLMES was limited. There were severe limits on HOLMES resources due to the level of demand.
- 10.28 Page 32, Para 1.6.3: CID supervisor was required to assess state of investigation, and where opportunities still remained, to oversee that they were properly pursued. Generally, where possible, investigation would be conducted using a mini-MIRIAM.

Colin Murray

*1st Report*

10.29 Para 12.36: Was not a clear structure to ensure a focused approach but it did not warrant being placed on HOLMES or a full blown incident room.

### **Submissions by the Police Service of Northern Ireland**

See section 11 below.

### **Comment**

11 The primary purpose of HOLMES appears to be to enable information to be sorted and to ensure that connections become apparent. The fact that access to HOLMES was not available at Portadown may have hampered that, particularly as there will have been times when information was en route to Gough. Likewise, the lack of HOLMES training must have been a disadvantage for the murder team. Against that, there was a need to keep sensitive information away from Portadown. The Panel may wish to consider whether, overall, the HOLMES implementation, although circumscribed by inadequate training and remote access, was nonetheless adequate.

### **Submissions by British Irish Rights Watch and Committee on the Administration of Justice**

The HOLMES implementation was clearly far from adequate. DI Irwin, who liaised with the HOLMES unit on behalf of the murder investigation team, was not himself trained to use HOLMES (10.12), and there was only one HOLMES team for the whole of the RUC South region (10.14). Although ostensibly using HOLMES allowed the murder team to hide sensitive information from officers at Portadown, particularly RC Atkinson, DCS McBurney directed that neither Tracey Clarke's nor Timothy Jameson's statements should be entered onto HOLMES (10.17). Also, DI Irwin only benefitted from the services of HOLMES staff for two weeks, after which he was left with only Portadown staff (10.15). Thus HOLMES did not in practice provide the security it promised, while its use hampered the investigation in a number of ways (10.10, 10.14).

### **Submissions by Edwards & Co Solicitors (Serving and Retired Police Officers)**

In relation to both the GBH and murder investigations, having regard to the limited resources and accommodation within Portadown Police Station, it is our submission that the implementation and management of the mini-Miriam and Holmes systems were well managed



### **Submissions by the Police Service of Northern Ireland**

The availability of HOLMES is an invaluable tool in the efficient and effective conduct of a murder investigation. It is submitted that DCS McBurney moved with commendable haste in transferring the investigation from a mini-MIRIAM system to HOLMES.

At that time Portadown Station did not have a HOLMES facility. This did not come on line until 1998. The only available option to DCS McBurney was to make use of the facility at nearby Gough. Of course this wasn't ideal and must have caused logistical problems on occasions and increased the workload of officers relying on the system.

However, the availability of the HOLMES suite at Gough helped to facilitate the investigation's requirement to limit the amount of sensitive information which was circulating in Portadown Station because of concerns about leaks.

The PSNI recognises that there were other problems and chief amongst them was the absence of training for key personnel such as DI Irwin. This is regrettable but will be understood by the Inquiry as being a consequence of general training and resourcing issues which Mr. Armstrong had opportunity to comment upon in his first report. It is well recognised that the heavy commitments which the "troubles" placed on the RUC and their cadre of detectives often meant that training needs could not be facilitated.

Despite the problems of location and absence of training in this particular case, it is nevertheless important to recognise that the availability of HOLMES gave it the best available basis upon which to succeed. As Mr. Armstrong's report has highlighted that demands on the HOLMES system in 1997 were such that not every significant investigation was as fortunate to access the facility: page 26. It is agreed that the HOLMES implementation was indeed adequate.

### **Submissions by Russell, Jones & Walker Solicitors (Michael Irwin)**

For a fuller understanding of what exactly it was like for a Detective Inspector in 1997 to use the Holmes system in Portadown, please refer to Michael Irwin's statement at pages 81419 – 81422.

It is submitted that in the circumstances set out on these pages, reinforced by the findings of Mr Blakey in 2003, Michael Irwin implemented the existing Holmes system not just adequately, but to the full extent to which it could be used.

In total in the Robert Hamill Inquiry, there were by early 2005 in excess of 1,507 Holmes Actions. This was a very large Holmes investigation.

## **THE FOURTH ISSUE: USE OF A POLICY BOOK**

- 12 The materials showed this:
  - 12.1 9/5/97 A policy book is opened 913
  - 12.2 9/5/97 09.30 Policy file decision one is made to transfer the murder investigation from the manual MIRIAM system to HOLMES 914
  - 12.3 09.35 Policy file decision two is made, to increase the size of the investigation team by another five officers 913
  - 12.4 11.00 Policy file decision three is made to appoint the ICPC to supervise the complaint as per ACC Hall's direction 913
  - 12.5 23.45 Policy file decision four is made. Stacey Bridgett and Dean Forbes to be arrested next day. The files record that Wayne Lunt, Allister Hanvey, Marc Hobson and Rory Robinson were arrested and premises searched 913
  - 12.6 23.50 Policy decision five is made to obtain the phone records of Elizabeth Hanvey and Robert Atkinson, to establish the authenticity of intelligence 913
  - 12.7 10/5/97 09.00 Policy file decision six is made. Two witnesses are identified and to be know as A and B. The reason is given as intimidation and it is stated that ongoing reassessment is necessary 913
  - 12.8 09.05 Police File Decision seven is made. Rory Robinson is not located at this time 913
  - 12.9 10.00 Policy file decision eight is made that DCS Maynard McBurney is to contact the ICPC (Independent Commission for Police Complaints) to brief ██████████ in relation to the arrests and interviews. The reason given is to keep ICPC appraised of developments and to give them the opportunity to be present at interviews if they so wish. By 11.30, no contact has been possible and a meeting is to be arranged with ██████████ 913 at 921
  - 12.10 15.00 Policy file decision nine is made. Cons Alan Neill is to attend the confrontation identification of Marc Hobson. It is recorded that no other officers are requested to attend as it was necessary to interview them in relation to their ability to identify suspects. Due to the ICPC not being available, the interviews were not carried out 913 at 922
  - 12.11 Policy file decision 10 (un-timed) is made to charge Stacey Bridgett, Dean Forbes, Wayne Lunt, Allister Hanvey and Marc Hobson with murder 913 at 923
  - 12.12 10/5/97 Policy file decision 11 is made. Rory Robinson has been located and it is directed he be arrested 913 at 924

- 12.13 12/5/97 Policy File decision 13 is made. A meeting is held where Mr Murnaghan, DCI **P39**, Greg Mullan, DCS McBurney and Supt Anderson are present. DCS McBurney briefed them on the investigation and the incident. Murnaghan outlined his role in supervising the complaint. DCS McBurney to continue with murder investigation and to be in charge of the investigating complaint. ICPC to obtain copies of all documents so far 913 at 926
- 12.14 14/3/97 Policy decision 15 is made to discuss with ICPC reconstruction of Land Rover 913 at 928
- 12.15 15/5/97 Policy file decision 17 is made to arrest David Woods because Andrew Allen names him as a suspect 913 at 930
- 12.16 15/5/97 Policy file decision 18 records “insufficient evidence to charge Andrew Allen at present” 913 at 931. (NB See however the report of DI Irwin which says Witness B saw “Fonzy” Allen kick Robert Hamill in the face 6103).
- 12.17 15/5/97 Policy decision 19 is made to contact xxxxxxxxx with regard to cooperation of witnesses and liaison with the Mr Hamill family 913 at 932.
- 12.18 16/5/97 Policy file decision 20 is made to release Mr Woods without charge as there is “insufficient evidence” 913 at 933.
- 12.19 19/5/97 Policy decision 22 sets out the strategy for gathering evidence for the purpose of the complaint 935 at 936.
- 12.20 20/5/97 Policy file decision 23 is made to develop options available for Tracey Clarke to protect her as she is a vulnerable witness 913 at 926.
- 12.21 30/5/97 Policy file decision 25 is made that as DCI **P39** is going on leave, the policy file is to be handed to DI Irwin 935 at 941.
- 12.22 2/6/00 The decision to re-interview Andrea McKee is recorded by DI Irwin in message form 2416.
- 12.23 26/6/00 DCS Colville Stewart and DCI **K** open a policy book regarding the conspiracy to pervert the course of justice 32348.
- 12.24 14.30 Policy decision one is made that DCI **K**, DS **H** and DC [REDACTED] are to be the officers reinvestigating the conspiracy 32349
- 12.25 10.00 Police file decision four is made. The investigation will be managed and actioned on the HOLMES murder account. This is because the allegations of conspiracy regarding Res Con Robert Atkinson are inextricably linked with the murder of Robert Hamill and any new evidence that may benefit the murder investigation 32353.

- 12.26 11/1/01 Policy decision 43 is made to appoint DC [REDACTED] to assist DCS Colville Stewart to revisit and examine the wider issues associated with the investigation into the murder 32296 at 32299
- 12.27 13/3/01 DI Michael Irwin is reinterviewed by [REDACTED] and Chris Mahaffey and specific questions are put to him regarding the handling of Andrea McKee. DI Irwin also describes the meeting with Andrea McKee at Kernan. He states that DCS Maynard McBurney directed that there be no notes and no entry onto HOLMES in order to prevent information getting back to Res Con Atkinson 22760
- 12.28 11/5/01 Supt Karen Kennedy, who joined Complaints and Discipline investigation in April 2001, takes over the Complaints and Discipline investigation from [REDACTED]. This was confirmed formally on 11 May 2001. The first entry in the policy file was 06 June 2001 (see transcript RHI interview). This appointment was approved by PONI 21446.
- 12.29 10/03 [Exact date in November not known] PONI report is issued on the misconduct investigation into DCS McBurney, DI Michael Irwin, DC Honeyford and DC McAteer. DCS McBurney's failure to record any policy decisions is worthy of serious criticism. There is no evidence of impropriety on the part of DI Irwin or DC Honeyford in relation to their dealings with Andrea McKee 26925.

#### **Submissions by Edwards & Co Solicitors (Serving and Retired Police Officers)**

We would remind the Panel of policy decision 5 , that the issue of Atkinson and Hanvey was recorded openly for anybody to see at a later stage.

#### **Submissions by John P Hagan Solicitors (Robert and Eleanor Atkinson)**

Any comments in relation to DI Irwin and DC Honeyford in relation to their dealings with Andrea McKee are dealt in Section 8.

#### **Submissions by the Police Service of Northern Ireland**

See section 14 below.

- 13 Witnesses said as follows:

##### **Edward Honeyford**

##### *Oral Evidence*

- 13.1 DCS McBurney was "hands on" who worked to get the job done who put his heart into investigations and he thinks there were times when he did not cover in writing what he should have. He did not discriminate between Catholic or Protestant victims (p13).
- 13.2 DC Honeyford could not access HOLMES and was given information (p29).

## **P39**

### *Statement*

- 13.3 Para 13: Policy files were only available within HOLMES.
- 13.4 Para 17: She opened a policy book but DCS McBurney made it clear that because there was intelligence of officers involvement with the suspect we had to restrict the recording of information and in his view they should not have recorded anything. She was therefore selective about entries.
- 13.5 Para 29: There was a complaint investigation supervised by ICPC. I remember McBurney telling me to make a full note of the first meeting with Mr Mahaffey.
- 13.6 Para 32: On 30/5/97 she went on leave and handed a policy book to DI Irwin.

### *Oral Evidence*

- 13.7 Para 17 (81570) when Mr Hamill died she was off work. "DI Irwin phoned to tell her what had happened. I believe he briefed DCS McBurney as well" Says she opened a policy book and the investigation moved to HOLMES (p29). DCI **P39** states that she believes that was the first time she opened a policy book (p30). In 1997 policy 7 books in relation to GBH were never used (p185). Para 17 "DCS McBurney made it clear that because there was intelligence of an officer's involvement with a suspect, they had to restrict the recording of information. He was of the view we shouldn't have recorded anything for security reasons and was therefore selective about the entries she made in policy book" (p30) DCI **P39** kept policy book in briefcase and carried it with her. Facilities in Portadown station were sparse (p31). Entries at 934 and 941 are both her handwriting (p31). Her last dealing with the policy file (941) was "handed policy file to DI Irwin. Going on annual leave" (p32) 918 "Obtain records of incoming/outgoing phone calls from Elizabeth Hanvey and Robert Atkinson to establish authenticity of the intelligence". It is signed 9 May 1997. She says she obviously left the interview to do that. She did not backdate it (p38). 24696 shows DCI **P39** signed DC McAteer's request off and it was approved by DCS McBurney. She knows that it was made immediately (p38). Per para 24 81573. "Do not remember when got the results back but it would've taken some time". She accepts it may have taken a week. She recalled the telephone billing confirmed the Clarke allegation to a degree (p39). Per 14622. "DCI **P39** asked about billing enquiry and when she became aware of the information about Res Con Atkinson's call to Allister Hanvey. She stated that she must have been aware of it prior to Tracey Clarke's statement being recorded". This is because she would not have been briefed by DCS McBurney and DI Irwin that Andrea McKee gave information verbally (p127). She was therefore aware of the information on the morning of 9 May after the briefing (p128).

## P18

### *Statement*

- 13.8 Para 1: In April 1997 I was a detective constable stationed at Portadown.
- 13.9 Para 7: I was engaged on enquiries linked to the investigation and it was the norm to have morning conferences and briefings usually taken by DI Irwin or one of the detective sergeants. I cannot now remember if DCI P39 was present at those briefings. At those conferences, updates were given on the condition of Robert Hamill and I can remember that his injuries, although serious, did not appear to be life -threatening."

### Karen Kennedy

#### *Oral Evidence*

- 13.10 Would expect in chief Inspector rank running non-MIRIAM or HOLMES investigations policy decisions to be recorded in journals or conferencing or policy book (p26). Journals are the property of the Chief Constable, not officers. That was always the legal position but she does not believe this was ever communicated to the service. She would be critical of an officer who retired and destroyed journals despite them referring to an ongoing investigation (p27).

### John McDowell

#### *Oral Evidence*

- 13.11 Para 15 80898 "Been asked if there was a record of the GBH investigation as it went along. She cannot remember precisely but there would have been two occurrence books kept: one filled in by the Station Duty Officer and once CID had been notified they would have kept their own book. If reported crime occurred there'd also be a crime form completed. If CID became involved then there would have been a Form 38" Not aware there was a policy book. Has never dealt with a policy book in any investigation. Occurrence books would not record things like strategy decisions (p83).

### Raymond White

#### *Statement*

- 13.12 Policy files were made a must by the end of 1997. It was an evolving process before then with element of flexibility given to SIO (p124). DCS Maynard McBurney may have been lax to a degree about completing policy documentation (p126).

## Michael Irwin

### *Statement*

13.13 81456: DI Irwin briefed DCI **P39** as HOLMES was not capable of carrying sensitive material. Secret Policy files were not used in crime investigations in 1997. DCS McBurney directed that the message sheet should not be submitted due to the confidential and sensitive nature of the information. DI Irwin did not regard this as unusual.

## DCS Maynard McBurney

### *Statement*

13.14 Para 17: He was unhappy about keeping policy files as he was concerned about leaks.

13.15 Para 19: He was conscious a good record had to be kept of the first meeting with the ICPC. After the ICPC meeting was recorded, he assumed the policy file would be dispensed with.

13.16 Para 21: He did not trust a sensitive policy file any more than trusted an open one. He did not keep policy files as he needed to keep investigation in secret. It was an investigation that depended on uniform personnel talking openly to CID and it would put them off if they knew it was all recorded.

## H

### *Statement*

13.17 Para 7: Maintenance of policy books is the responsibility of the SIO and his deputy. Policy books are for recording decision-making and strategic moves.

## Ronnie Flanagan

### *Statement*

13.18 Para 7: Was not aware DCS McBurney had not kept a policy book. He was surprised he did not.

## Chris Mahaffey

### *Statement*

13.19 Para 27: DCS McBurney had the opportunity to have used the secret sensitive files to maintain a record of strategy dealing with McKee.

- 13.20 Para 28: DCI **P39**'s policy files could have been entered on HOLMES and a secret sensitive file could have been maintained in hard copy with a reference to it in HOLMES but not the content.

Colville Stewart

*Statement*

- 13.21 Para 9: There were no policy files between DCI **P39**'s final entry on 30/5/97 and DCI **K** starting his files on 26/6/00.
- 13.22 Para 10: Use of policy files and sensitive policy files was standard procedure in the RUC in 1997.

*Oral Evidence*

- 13.23 He was aware policy files were run from 9 May 1997 to 30 May 1997 and then there was a gap until 26 June when DCI **K** started (p128).
- 13.24 It was obligatory for SIOs to run policy files during a murder investigation. There is no excuse not to run one. It was standard practice (p129).
- 13.25 Sensitive policy books may be used where there is a risk that information may leak out that may compromise the investigation so only few people have access to the book. Otherwise a sensitive book performed a similar function to a normal policy book (p138).
- 13.26 A secret policy book would be kept by the SIO or deputy (p180) locked away in their filing cabinet in their office. It would be left there overnight. It would have been quite safe unless someone broke down a door then broke open the filing cabinet (p181).
- 13.27 DCS Stewart has no doubt that DCS McBurney's reasoning for not using a policy book was that he did not trust all the officers. He wasn't one to commit a lot to paper (p175).
- 13.28 DCS Stewart would have recorded the decision not to arrest Res Con Atkinson in a policy book (p139).
- 13.29 If information came in suggesting an officer had assisted a murderer then DCS Stewart would have discussed the decisions that needed to be made with his deputy and maybe other senior detectives in the investigation. He would have recorded the outcome of those deliberations (p140). That is normal procedure (p141).

**K**

*Statement*



13.30 Para 8: Commenced a policy book on day of 26/6/00. Use of policy books was the norm in 2000.

13.31 Para 9: Discussed entries with DCS McBurney as investigation progressed.

#### *Oral Evidence*

13.32 DCI **K** believes a policy book is absolutely essential because it draws together all the threads. A secret policy book is equally important. A policy book is also very important if there is a transfer to a new SIO (p8).

#### Colin Murray

##### *1st Report*

13.33 Para 12.31: Investigation into GBH was hampered by failure of DCI **P39** or DI Irwin to commence a policy file which would have provided the direction and focus the investigation needed.

13.34 At the least, once DCS McBurney had been appointed to both investigations, a separate policy file should have been commenced for the complaint.

13.35 Para 13.23: The use and content of the policy file was totally inadequate. It was of such limited value in setting out a thought process as to be almost worthless.

13.36 Para 13.24: DCS McBurney should have used a policy file to outline his strategies.

13.37 Para 13.25: He would expect entries dealing with forensic, suspect and witness, search, communications and other strategies to be in the policy book.

13.38 Para 13.26: DCS McBurney could have used a sensitive policy file to deal with the covert meeting between DI Irwin, DC McAteer and Andrea McKee.

13.39 Para 13.30: Whilst 1997 was a difficult period in Northern Ireland policing, that did not negate the need for a structured, documented approach.

13.40 Para 16.44: Search strategy for Mr Hanvey's house should have been recorded in a sensitive policy file.

#### Submissions by the Police Service of Northern Ireland

See section 14 below.

## **Comment**

- 14 There was no policy book until Mr Hamill died. The Panel may feel that on the balance of the evidence, even a serious GBH did not necessarily require a policy book. Given that the GBH team was small and had regular briefings, and that DI Irwin raised a number of actions under the informal “mini-MIRIAM” system, the Panel may wish to consider whether a policy book would have added anything between 27 April and 8 May 1997.

### **Submissions by British Irish Rights Watch and Committee on the Administration of Justice**

Nowadays we believe that a policy book would be opened for a crime as serious as GBH. The fact that none was opened in Robert Hamill's case seems to us indicative of the fact that no real attempt at detection took place until after Robert Hamill died, and Andrea McKee started the chain of events that led to the interviews of Tracey Clarke and Timothy Jameson.

### **Submissions by Edwards & Co Solicitors (Serving and Retired Police Officers)**

It was not the practice within the RUC to maintain a policy book for GBH in 1997. In fact P39 kept a detailed journal which probably provided the focus and direction that the GBH investigation needed. There is nothing to suggest that the use of a policy book would have added anything to the GBH investigation

### **Submissions by the Police Service of Northern Ireland**

The PSNI agree with the comment that a policy book might have been helpful but certainly was not required for so long as this incident remained a GBH investigation. The criticism advanced by Mr. Murray (Para 12.31 of his report) is not accepted.

### **Submissions by Russell, Jones & Walker Solicitors (Michael Irwin)**

At his very earliest opportunity, Michael Irwin sat down on returning from other duties on the afternoon of the 27 April 1997 and began to write out action sheets. He had been off duty at the weekend and on the Monday morning DCI P39 sent him on other, very important, duties.

Before going off duty for the night, Michael Irwin alone had written out 42 action sheets himself. See specifically pages 81434 – 81439 of Michael Irwin's statement. These are the actions of a conscientious Detective Inspector working very hard. Michael Irwin took this task on himself, unprompted, to give the investigation a basic structure despite this not being common practice in Northern Ireland. P39 referred to this system as a “Mini-Miriam” system. Everything Michael Irwin did, including this introduction of a “Mini-Miriam” system was done under the watchful eye of P39.

- 15 DCS McBurney's failure to maintain a policy book after 30 May 1997 was plainly eccentric. The reasons that he subsequently gave for that failure appear to have impressed no-one. Against that, he held regular briefings, was supervised by the ICPC, and he kept senior officers and the ODPD informed of progress. The murder investigation was on HOLMES. Again, the murder team was small. While it is easy to identify strategic failings, such as an inadequate concentration on obtaining scientific evidence, it is less easy to conclude that those failings would have been avoided by the use of a policy book. The issue for the Panel may therefore be whether the absence of a policy book actually inhibited the murder investigation.

### **Submissions by British Irish Rights Watch and Committee on the Administration of Justice**

DCS McBurney's failure to open a policy book for the murder investigation was not merely eccentric, it was grossly negligent. It gave DCS Burney very tight control of the investigation, and meant that, if for any reason he was unable to complete the investigation, any new SIO would be completely in the dark as to what had been done and why. He may well have kept his own team, the ICPC, senior officers and the DPP informed, but had a question ever been raised about his own conduct of the investigation, there would have been no record against which to check his actions or question his decisions. His failure to keep a policy book, coupled with the fact that he fatally compromised both the complaint investigation and the Atkinson aspect of the murder investigation would certainly have required explanation had he lived. Failure to keep such crucial records has been found to go hand-in-hand with collusion by Lord Stevens, Baroness Nuala O'Loan, and NGOs.

### **Submissions by Edwards & Co Solicitors (Serving and Retired Police Officers)**

We agree that it is hard to identify how the absence of either a policy or sensitive policy book inhibited the murder investigation.

What is clear from all the evidence is that DCS McBurney had little time for policy books.

We note that according to ACC White that policy files were only made a must by the end of 1997. It was an evolving process before then with an element of flexibility given to the SIO. Furthermore, according to DI Irwin, secret policy files were not used in crime investigations in 1997. Whilst there is evidence which conflicts with this view, we note that DCS Stewart p175, had no doubt that DCS McBurney's reasoning for not using a policy book was that he did not trust all the officers and that he wasn't one to commit a lot to paper.

Again, it is hard to identify how the absence of a policy book inhibited the investigation.

### **Submissions by the Police Service of Northern Ireland**

The PSNI agree that this is a fair and proportionate comment.

RUC Force Order No. 91/97 (cited at appendix M, page 129 of Mr. Armstrong's report) did not come into force until 31 December 1997. It provided that a policy file "must be maintained on all enquiries where a major incident room (MIR) is established. This would include any instance in which a HOLMES system is established...."

Notwithstanding the date of this Order it is accepted that by the date of Mr. Hamill's murder it was generally understood within the police service that the investigation of serious crime involving the use of HOLMES would be accompanied by the use of a policy book.

This expectation is reflected in the evidence of various witnesses who have given evidence: Mr. Honeyford, P39, Karen Kennedy, Sir Ronnie Flanagan, amongst others.

Mr. Stewart captured the position most emphatically by commenting that it was "obligatory" to run a policy book in a murder investigation. He could conceive of no excuse for failing to do so (pages 127-8). Notably, only Mr. White suggested that an SIO continued to retain an element of discretion in this respect until the Force Order was operational (page 126).

A number of points can be made in mitigation of the somewhat maverick approach adopted by DCS McBurney. The comment (above) has summarised many of them: the records of the murder investigation were captured on HOLMES; McBurney was open and frank with the ICPC, DPP and senior officers in relation to sensitive issues such as Atkinson, and made early disclosure of this issue; he held regular briefings.

It might also be said on his behalf that he was an "old school" police officer who simply wasn't inclined to write down what he could say or keep in his head. Moreover, he appears to have been genuinely concerned about the risk that sensitive information could be leaked, and he appeared to be unpersuaded by the merits of a sensitive policy file.

In the final analysis it is accepted that the key issue to address is whether the absence of a policy file undermined the murder investigation in any substantive way. It is submitted that there is little to suggest that it did.

The absence of a policy file has possibly harmed DCS McBurney more than anyone or anything else. The purpose of a policy file "is to draw together all the threads" (per DCI K at p. 8). It is a facility which permits an understanding of the thinking and strategy of the SIO. Ironically, the absence of this facility has permitted all sorts of unfriendly speculation about DCS McBurney's thinking and motives.

## THE FIFTH ISSUE: WITNESS STRATEGY

- 16 The materials were to this effect:
  - 16.1 After speaking to Tracey Clarke, DI Michael Irwin and DC John McAteer spoke to Andrea McKee who related what Tracy Clarke had told her about the incident 22760
  - 16.2 8/5/97 further to **P53**'s interview on 29/4/97, DC McDowell calls him again 3267
  - 16.3 9/5/97 Information is received by Special Branch stating that Allister Hanvey was responsible for the beating of Robert Hamill. DI Irwin logs this and notes on 2/6/97 that he has been charged on 10/5/97 10647.
  - 16.4 9/5/97 Rosemary Nelson makes a note following a call from an anonymous caller. It is noted that Mr Hanvey was pulled off by Sgt **P89** and Res Con Murphy. It is noted that Res Con Atkinson knows Mr Hanvey and Mr Bridgett. It is noted Res Con Cornett is a weak link. Con Neill, Res Cons Cornett, **P40** and Atkinson are noted. Res Con **P40** is tagged with "back" 41967.
  - 16.5 Interview list for 27 May 1997 – XXXXXXXXX, Lee Stockdale, Noelle Moore, Kenneth Milligan, Kyle Magee 9868. They all fail to appear 14799.
  - 16.6 24/6/97 DI Irwin speaks to Diane Hamill following message of 9/5/97(38) which stated that a female friend of Ryanne Hamill, whose boyfriend had already made a statement, told her that a male with a ponytail was the ring leader. Diane Hamill was left to make enquiries with the family and Ryanne Hamill 2187.
  - 16.7 6/11/97 A note is written for the Anglo-Irish division of the department of foreign affairs. It states that the RUC encountered difficulties in identifying perpetrators and believed a number of witnesses had been intimidated. The ongoing allegations against the four in the Land Rover are noted.
  - 16.8 19/10/99 DI Irwin writes a message noting that Andrea and Michael McKee have separated, and that further details will be submitted in due course and at an appropriate time regarding the coroner's request 2395.
  - 16.9 20/4/00 Surveillance is compromised, listening devices are removed 16710.
  - 16.10 2/6/00 The decision to re-interview Andrea McKee is recorded by DI Irwin in message form 2416.
  - 16.11 4/11/00 DS **H** interviews Rodney Smyth about his duty patterns at work over the weekend of 27/4/97. Rodney Smyth states that he cannot be positive if he went to the McKee's house that weekend, he states it could be possible and he did use a taxi on occasions when he had been drinking at their house 4325.

- 16.12 6/11/00 DCI **K** collects documents in relation to the anonymous call to Father Dooley. He produces a progress report in relation to the re-investigation of Res Con Robert Atkinson 22636.
- 16.13 20/12/00 Julian Lyons, proprietor of Paranoid Clothing, is interviewed by DS **H**. He indicates that for £175 the only jacket that Paranoid sold was a Daniel Poole puffa jacket 1941.
- 16.14 4/1/01 [REDACTED] makes a statement stating that she used to use Call-a-Cab to get from the town centre to her home in [REDACTED]. She recalls returning from a band practice and being dropped off in the centre and walking to Call-a-Cab and taking a taxi. She does not remember what time it was but thinks it was most likely 02.00 on Saturday night as parades were held on Saturday nights 21734.
- 16.15 7/6/01 DC **P5** sends the PACE production order in relation to itemised billing for public phone boxes 1591.

### **Submissions by the Police Service of Northern Ireland**

See section 18 below.

- 17 The witnesses who dealt with the issue said this:

#### **Diane Hamill**

##### *Statement*

- 17.1 Para 56: Told by PONI of developments in conspiracy investigation.

##### *Oral Evidence*

- 17.2 Police went to house on 27/4/97 to get Robert Hamill's clothes. One of her sisters was home. The clothes were with Robert Hamill's fiancée. Do not know if they ended up with solicitor (p19). Knew [REDACTED] (solicitor with clothes) as went to him initially. No idea how the clothes got to him (p20). She does not remember the police visiting on 29/4/97 or 30/4/97. No-one in family told her about that (p20). Went to the station to speak to DI Irwin on 31/4/97. Does not remember officers visiting on 7/5/97 who spoke to Robert Hamill's mother. Remembers them coming in the middle of wake to say they had arrested some suspects. The next visit was to inform them about their release (p21).

#### **P42**

##### *Oral Evidence*

- 17.3 Answered questions during an interview at his house in 2002 (72308) as best he could. He was stressed and did not want to give evidence openly (p19).

Police did not bring the anonymous letter to the interview. He could not remember events clearly (p33).

### Beverley Irwin

#### *Oral Evidence*

17.4 Did not want to make statement as did not want to be involved and had not seen anything (p119).

### Derek Lyttle

#### *Statement*

17.5 Para 30: Police came to his house on 29.5.97. He told police about the incident but would not sign anything as “told you I would tell you what I have seen which is basically nothing”.

### Noelle Moore

#### *Oral Evidence*

17.6 She would not withhold information about murder if she had it (p84). She was not present and is not withholding information (p90).

17.7 Nobody talked about incident (p93). There was no wall of silence made amongst Mr Mr Monteith’s clients (p98).

### Paul Currie

#### *Oral Evidence*

17.8 Was approached once in the middle of 1997 when police were interviewing a neighbour who put Mr Currie with him. Police called round and asked if he was with a neighbour. He said yes and heard no more from police (p51).

### Iain Carville

#### *Oral Evidence*

17.9 Police interviewed him on 19th May 1997. He was not surprised when they interviewed him as there were rumours other people had been visited who he’d been with (p57).

Mark Currie

*Statement*

17.10 Para 2: Remembers making 9163 as police came to his work.

Pauline Rogers (nee Newell)

*Oral Evidence*

17.11 Police, she thinks two officers, came to her mother's house for a short meeting to take 9128 (p5). She remembered bits and pieces but not every detail (p6)

17.12 Re 81049: She felt the police kept pushing her to remember events and people she had not seen or heard but does not remember clearly (p22) "I cannot honestly say they were putting words in my mouth" (p23).

17.13 9128 and 70986(A) were the only two times police spoke to her (p24).

Dennis Hayes

*Oral Evidence*

17.14 Police came to him to make 9170. He was happy to make a statement (p94).

Christopher Henderson

*Oral Evidence*

17.15 Para 16: Did not mention party in 9602 as he did not consider what he did after the fight. No one asked him to avoid mentioning the party.

Trevor Leatham

*Oral Evidence*

17.16 Did not think contents of talk were relevant to the investigation (p40). Answered all the questions the police asked honestly (p41) but did not want to be involved with investigation more than police required (p44).

Stephen Sinnamon

*Oral Evidence*

17.17 Remembers police coming to house for 8141 (p99).



17.18 Does not know why there was welling up and blushing in 3149 (p114). He felt the police put him under a lot of pressure but there was nothing he could say (p130).

Andrew Osbourne

*Statement*

17.19 Para 9: Re [him being named in] Crimestoppers call, he does not know Phillip Lunt. He met Mark Burcombe in 2001 but they are no longer in contact. He never knew Phillip Lunt. He does not know why he would be named in Crimestoppers. Police never interviewed him about it.

Andrew Allen

*Oral Evidence*

17.20 In paragraph 5 Inquiry Statement 80009 says “is a true transcript but does not refresh my memory at all” (p134). He says he knew it to be true as the police would not make it up (p135).

John Johnson

*Oral Evidence*

17.21 Does not know how “pushing kickers away” got into his statement (p139). He does not remember signing statement. Statement was recorded and read to him (p140). Has always been in his mind police did not go near the person on the ground (p141). Is not saying police put words in statement (p142) but it is possible. He is not lying about police not going over to injured person. Did not see statement between making it and today (p143). Only glanced at statement and signed it because he presumed the police had written down what he said (p156).

17.22 He did not tell the police about the spokesman as they did not ask. He was not asked to go through what happened but was asked to respond to questions. He remembers telling police when taking the statement police did not leave Land Rover but seems it did not enter statement (p146). Police were polite when taking the statement. There was no suggestion that they bullied him (p147). He does not think police asked questions about police helping the man on the ground (p148.)

Carol Ann Jones

*Oral Evidence*

17.23 Police called at her door to take statement. Both her and boyfriend were at home then. Ms Jones and boyfriend did not give statements in same room at the same time (p69). She does not remember if aware brother arrested before she gave statement (p70). Cannot expand on statement (p71).

Jason McClure

*Oral Evidence*

17.24 Per 17308 “I saw police at the fight. They appeared to be breaking it up” was not suggested to him (p83).

Eric Williamson

*Oral Evidence*

17.25 His recollection was that the police were aware there had been a party and it was to try and establish where that party was, and who had attended it (p54). They believed some of the witnesses to the assault had attended the party and to try and establish if there was discussion at party about assault (p55)

Dereck Bradley

*Oral Evidence*

17.26 A QPF was required from everyone they spoke to (p50).

John McAteer

*Oral Evidence*

17.27 Visited the Hamills four or five times accompanied by DCI **P39** (p195). They did not go more often as if detectives went to a house in that area they required armed uniformed cover. They did update them as the investigation progressed (p196).

**P39**

*Statement*

17.28 Para 15: Attempted to enlist the support of the community to get witnesses to come forward and in particular she contacted local priests and the Hamill family. None of the priests who came back to me were any help and animosity was building.

- 17.29 Para 19: Once Tracey Clarke had given her statement she concluded they needed to keep her and Andrea McKee on board. If Ms Clarke's mother ever called at the station for me I dropped everything and went to her.
- 17.30 Para 20: DCS McBurney and DCI P39 discussed what should be done to protect Tracey Clarke and attempts were made to relocate her and find her work.
- 17.31 Para 25: Witnesses were known as A and B and no notes were left lying around.

*Oral Evidence*

- 17.32 Per para 2 81567 "After retiring from the RUC I retained my journals, which was customary at the time. Had these journals destroyed for security reasons. Make this statement relying solely on memory and those papers disclosed by interviewers." (p3). She recorded everything relevant to her duty in her journal. She recorded in great detail. She would have recorded conclusion there was sufficient evidence to arrest and fact of the arrest. (p4) She had the journals destroyed as she lived alone and did not want anything of a police nature in her house (p61). It never crossed her mind to keep journals in e.g. a bank (p62). She was aware of the disclosure issues. She was confident she would not be needed for court cases. She had not given evidence, nor been asked by the ODPP to give evidence in relation to murder so felt there was nothing to disclose (p63). It would be totally unheard of to leave her journals with the investigation team. There was absolutely no procedure for dealing with journals when she retired (p64). There was an instruction implemented subsequent to her (p65). She can safely say no witness or suspect would have asked for her journal. There was no other reason to dispose of the journals (p67).
- 17.33 She made a decision that, after reading the statements, the evidence coming through was unclear and she believed the best way forward was to try and get witnesses to make statements (p15). Ultimately found difficulty in getting witnesses to come forward (p17). She believed the Catholic community would be willing to give statements and based her decision on that belief (p18).
- 17.34 Para 16 81570 "On 1 May 97 we planned to arrest three individuals but for reasons I cannot remember we had to delay it. On 6 May 97 we arrested Mr Bridgett, Mr Forbes and [REDACTED]. I am reminded that after interview it became clear [REDACTED] had nothing to do with it and he was released. The other two were released on bail." (p19) She remembers that there was an arson in Portadown sub-division. There were five prisoners arrested and all the interview rooms were occupied in the division. Therefore the pre-arranged arrests were cancelled (p185). [REDACTED] most probably was eliminated by DI Irwin but she could not say categorically (p167). Genuinely cannot remember who made the assessment of [REDACTED]'s alibi (p168). Person was eliminated from enquiry because the description did not fit. He was eliminated because his description was similar to that of Marc Hobson (p169).

- 17.35 She disagrees that nothing had changed regarding her understanding of Mr Bridgett's actions between 27/4/97 and 1/5/97 as the decision was made on 27/4/97 that she was going for witnesses and believed the Catholic community would help. Asked the Hamill family and Catholic priests to ask witnesses to come forward. When she found there was great difficulty in getting witnesses to come forward on 1 May her decision changed and decided to go for people (p19). She believed the evidence against Stacey Bridgett was extremely weak because the man was standing at the Land Rover (p20).
- 17.36 She raised a questionnaire to identify people on the street and was getting descriptions. Went and interviewed people they could identify. She was going for "both Catholic and Loyalists community" (p21).
- 17.37 Para 15 81570 "[Hamill's mother] received us well, but was aware of animosity building to police" (p26). Thought animosity was building due to the lack of support from the Hamill family and from the press reports that police officers remained in the Land Rover and did not help at the scene (p27). Once when leaving the Hamill's house she was verbally abused by a lady. She certainly was not one of Mr Hamill's sisters but she does not know if she was another relation (p143). That was part and parcel of abuse police got (p144)
- 17.38 Para 26 81573 "On same day (10/5) PC Neill carried out the confrontation identification on Marc Hobson. Other officers were not requested to attend as it was necessary to interview them about their ability to identify suspects and, due to the ICPC not being available, the interviews were not carried out" (p54). She recalls that confrontation identification is the weakest form of identification and did not want to weaken the evidence against the suspects. She cannot explain statement (p56) DCS McBurney explained why that should be but she cannot remember the explanation (p60). For the identification they did not have mug shots (p57) or videos from places such as Drumcree. DCI **P39** cannot recall if consideration was given to a confrontation between Con Cooke and, who was told Stacey Bridgett was involved in the assault, to establish if he was a murderer (p58)

### John McDowell

#### *Oral Evidence*

- 17.39 For witnesses who were not officers, detectives would take statements from them. He does not remember the questionnaires (p81)

### Karen Kennedy

#### *Oral Evidence*

- 17.40 Witness strategy would emerge from officers' statements and CID would then draw up a list of witnesses. Questionnaires were not commonplace in 1997.

She cannot explain why they were used and finds it unusual. A duty statement would have much more evidential quality (p21). She would expect that names of witnesses that are provided by other witnesses to be shared through conferencing or debriefing when MIRIAM and HOLMES are not used (p22)

### Michael Irwin

#### *Oral Evidence*

- 17.41 On 29th May DI Irwin was only thinking about what the opportunities were for getting evidence. He was not thinking about witnesses giving evidence in court (p28) He was the statement reader as there were only 8 in the office. He was running a mini-MIRIAM by raising actions after reading statements (p29)
- 17.42 DI Irwin felt there was a strong risk Mr Jameson and Ms Clarke would withdraw their evidence. There would have been a lot of pressure on them (p30). DI Irwin was not party to DCS McBurney's thoughts on their protection. He knew DCI P39 was liaising with Ms Clarke and her family. He was not aware of any such steps being taken with Mr Jameson (p31)
- 17.43 The police went through the process used for identity parades as dictated by PACE. Each individual who was interviewed was asked to take part in an identity parade and they refused. They could not show photographs to witnesses as they had a suspect (p51). DI Irwin felt there was a policy book entry about officers going on identity parades. It is a judgement call based on each individual statement about whether it was appropriate to put them on an identity parade. His belief was Mr Hull could not identify the individual (p53). He could identify the individual wearing a red, white and blue scarf that was put into and taken out of a Land Rover. The identification was not of Mr Lunt but of the circumstances linking Mr Lunt to the case so there would not be an identity parade (p54) DI Irwin is sure consideration was given to an identity parade between "Muck" and Ms Clarke but they found it pointless to put on an identity parade where there is recognition, so the officer was put on but not Ms Clarke (p56)
- 17.44 DI Irwin believes that everything was done in relation to identification and confrontation that could be done (p106)
- 17.45 DI Irwin did not have reason to believe on 7th May that Allister Hanvey was involved but he was aware that when taking questionnaires the officers could be talking to those involved. All were therefore being assessed (p58)
- 17.46 DI Irwin does not recall Mr ██████ being a barman in St Patrick's Hall (p111) He agrees that Mr ██████'s initial comments to DC Williamson was that he did not see the police on the ground and that he changed his story when he spoke to DI Irwin at the re-enactment (p113). DI Irwin agrees that door-to-door enquiries would have been best practice in this situation (p114). DI Irwin accepts that that may not have been done and asked if an action sheet had been raised (p115)

- 17.47 When the police released [REDACTED], the decision was made after talking to DS **P15** who took an alibi statement (p44). It was a judgement call based on the interview and the alibi statement to release him (p46)
- 17.48 **P38** was the man who provided the information about the Hamill incident on 8 May. He was not given incentives to plead guilty to a serious crime. DI Irwin did not meet him until he pleaded guilty and was convicted of a very serious crime (p55)
- 17.49 In making the questionnaire DI Irwin was trying to establish movements to be able to focus on the suspects (p60)
- 17.50 DI Irwin says the actions at 3529, 3531, 3533 and 3535 are those of house-to-house enquiries (p65)

### Freddie Hall

#### *Statement*

- 17.51 Para 42: Some weeks later he met a group of Roman Catholic priests from Portadown area to discuss the issue of community.

### K

#### *Statement*

- 17.52 Para 42: He found no strategy for looking after witnesses A and B on HOLMES. In 1997 there were no guidelines for dealing with vulnerable witnesses.

### Ken Armstrong

#### *1st Report*

- 17.53 Page 70, Para 3.3.1: Neither DC McAteer nor DC Honeyford were trained in investigative interviewing techniques. It was not uncommon for untrained officers to interview significant witnesses.

### Colin Murray

#### *1st Report*

- 17.54 Para 14.16: Believes there is little more RUC could have done to ID potential witnesses. A number of people were unwilling to give evidence.

17.55 Para 14.23: Was no apparent strategy as to how police would adduce the evidence of Witness A and B. Is difficult to see how statements could be sanitised to protect their identity.

#### **Submissions by Edwards & Co Solicitors (Serving and Retired Police Officers)**

We agree that there is little more that the RUC could have done to identify potential witnesses. It is self evident that the gathering of potential witness is an important, if not basic, initial step in any police investigation.

We are not sure as to what apparent strategy, apart from calling A and B as witnesses, could ever be envisaged.

We further agree that it is difficult to see how the statements of A and B could be sanitised to protect their identity.

#### **Submissions by Gus Campbell Solicitors (Marc Hobson)**

The Panel should take notice of paragraph 13.16 and paragraph 13.17 which tend to suggest that the most senior officer in the investigation did not trust all of the officers involved. If DCS McBurney had serious doubts as to their veracity then so should the Panel.

In relation to paragraph 17.34 it is submitted that the alibi provided by xxxxx would not have stood up to any judicial scrutiny.

In respect of paragraph 17.43, it is submitted that no consideration appears to have been given to the holding of any identification procedure involving Tracey Clarke and Marc Hobson. It is not accepted that Clarke's evidence in her statement to police amounts to recognition - she simply identifies him as Muck (17328). All others are specifically named. Clarke in her oral evidence, states that she did not see anybody kick or hit anybody (p11 &) and furthermore adds that the names were suggested to her by police (p12) and she had heard them about the town. When asked if she knew any of the ones she had named in her statement, she stated that she did not know all of them and at the time she did not know Muck, she knew Marc Hobson now but not then, p49 (Clarke's Oral evidence). Cognisance must therefore be given to the scenario whereby police did not hold an identity parade with Clarke and Hobson because it was clearly understood by them that she did not in fact know who he was.

#### **Submissions by John P Hagan Solicitors (Robert and Eleanor Atkinson)**

In relation to the evidence of John Johnson at 17.21, the issue regarding evidence of police approaching the injured parties at the scene if dealt with in Part 5. In relation to paragraph 17.16 we would refer the Panel to comments made in Section 8.

## Submissions by the Police Service of Northern Ireland

See section 18 below.

### **Comment**

- 18 DCI **P39** had a strategy of getting Catholic witnesses to come forward. Questionnaires were administered with a view to ascertaining who was on the scene and interviewing them. DCS McBurney plainly took a number of pragmatic steps in an attempt to secure that Tracey Clarke would be guarded against intimidation, and he appears to have concluded that Timothy Jameson was immune to it. The Panel may wish to consider what else could reasonably have been done.

## Submissions by British Irish Rights Watch and Committee on the Administration of Justice

We can find no mention in the summarised evidence of any liaison with or request for assistance from Special Branch. The names of potential (who were in fact actual) suspects were known at a very early stage, not only from Tracey Clarke's and Timothy Jameson's statements, but from anonymous calls and, to a limited extent, from RUC officers who were in attendance on the night of the attacks. Wayne Lunt was already on bail on an assault charge. These suspects all had paramilitary connections. Special Branch would almost certainly have had intelligence on all or some of them. It is not beyond the bounds of possibility that at least one of the suspects was a Special Branch informer, although we understand from the Inquiry Team that they could find no record that this was the case (however, the absence of records does not definitively rule out the possibility, in our experience).

The failure to use photographs or videos from Drumcree to help to identify suspects (17.38) is remarkable, since the suspects would almost certainly have been present.

No mention is made of any attempt to build profiles of the suspects, or to have looked at links between them, including paramilitary connections and connections to the Tae Kwon Do martial arts club - it does not seem to us to be a coincidence that at least one of the suspects, Allister Hanvey, was a martial arts expert and that Robert Hamill was kicked with great violence in the head.

Since both Tracey Clarke and Timothy Jameson withdrew their statements, any steps taken to protect Tracey Clarke from intimidation were apparently ineffective and the assumption that Timothy Jameson was immune was apparently illusory.

The fact that P39 felt it necessary to destroy her journals (17.32) is unfortunate, to say the least, especially when taken in the context of the absence of any policy books.



### **Submissions by Edwards & Co Solicitors (Serving and Retired Police Officers)**

It is our submission that both DCS McBurney and P39 acted with diligence and professionalism in attempting to secure and manage witnesses to pursue a prosecution of those involved in this crime. In particular P39's strategy in attempting to enlist the support of the Catholic community to assist police in the investigation was reasonable, rational and sound. She believed the Catholic community would be willing to give statements and based her decision on that belief. It is further clear that this strategy was frustrated by the lack of cooperation from the Catholic community, and indeed the Panel may decide that those Catholics who did make witness statements in the early days of the investigation did not tell the full truth in those statements

It is quite clear that P39 did her best to keep Tracey Clarke on board through her personal contact with the Clarke family, and that both she and DCS McBurney took active steps to protect her. It must be remembered that there were no guidelines in 1997 for dealing with vulnerable witnesses-see Inquiry Statement of K at Para 42.

It is further clear now that door-to-door enquiries were also made in an effort to get evidence-see 17.50 above.

### **Submissions by the Police Service of Northern Ireland**

The PSNI agree with this comment.

It is submitted that from the outset the police faced an unpromising environment for conducting an investigation. Sectarian attacks tend to lead to community entrenchment. It was almost inevitable that the Protestant community would seek to protect the perpetrators by limiting the flow of information. That two members of that community would eventually come forward to give detailed statements to the police implicating Mr. Hamill's killers was a welcome but surprising development.

P39 had a right to anticipate support and co-operation from the Catholic community given that the victim came from that background. It was a sensible strategy to seek to foster good relations there in order to secure the co-operation of witnesses.

However, the fact that rumours began to emerge that police did not leave their vehicle to assist Mr. Hamill led to a build up of animosity towards police (per P39, page 27). This was a singularly unhelpful development.

Nevertheless, it is the case that those who have poured criticism upon the conduct of police and who could have assisted the investigation refrained from doing so. Quite how such people thought police could apprehend the killers of Mr. Hamill when they would not come forward to give information to police is difficult to fathom

It is submitted that from the outset the RUC took seriously their obligation to identify and bring to justice the killers of Robert Hamill. Significant police resources and a variety of investigative techniques were deployed which were either intended to persuade witnesses to come forward or had the potential to bring witnesses to the attention of the police:

an appeal for witnesses was made using press releases referring to Crime Stoppers;

- house to house inquiries were conducted;
- a reconstruction was held by placing the police land rover at the top of Woodhouse Street;
- a QPF was developed in order to build up a picture of those who were at the scene and what they knew;
- police entered into close liaison with the Hamill family (four or five visits according to Mr. McAteer at page 195) and asked them to get witnesses to come forward (per P39 at page 19);
- CCTV tapes were seized and examined;
- correspondence was directed to Rosemary Nelson's office seeking the co-operation of her clients who were also witnesses;
- contact was made with local priests (per P39 at para 15).

It must also be emphasised that steps were taken to protect the important witnesses who eventually came to the notice of police and agreed to co-operate with the investigation. Both Clarke and Jameson were anonymised as "A" and "B" and their names were not released during the court processes. Moreover, it was recognised that Tracey Clarke was especially vulnerable and steps were taken to maintain close contacts between her and her family and the police (per P39 at Para 19 and 20).

In the circumstances the Inquiry is invited to conclude that the RUC developed and implemented a comprehensive witness strategy and that little more could have been done to improve upon it. It is further submitted that there can be no doubt that all of the detectives involved and most notably Irwin, P39 and McBurney were determined to bring the perpetrators to justice. Their failure to do so was not through any want of effort or strategy.

#### **Submissions by Russell, Jones & Walker Solicitors (Michael Irwin)**

Michael Irwin drafted the "Pro-forma" questionnaires used in the investigation (see page 81445 of his statement). On numerous occasions during the evidence, the use of the questionnaires was referred to. This was regarded as

good police practice. It is suggested that this is another example of how Michael Irwin brought structure to the investigation.

## **THE SIXTH ISSUE: ARREST AND SEARCH STRATEGY**

- 19 The materials showed this:
  - 19.1 6/5/97 Officers search the premises of Stacey Bridgett 780
  - 19.2 6/5/97 Officers search the premises of Dean Forbes 9723
  - 19.3 23.45 Policy file decision four is made. Stacey Bridgett and Dean Forbes to be arrested next day. The files records that Wayne Lunt, Allister Hanvey, Marc Hobson and Rory Robinson were arrested and premises searched 913 at 917
  - 19.4 10/5/97 06.55 DI Michael Irwin briefs the search teams in relation to the arrest operation of suspects 72960
  - 19.5 10/5/97 Policy file decision 11 is made to locate and arrest Rory Robinson 913 at 924
  - 19.6 15/5/97 The premises of Andrew Allen are searched and his clothing seized 869
  - 19.7 15/5/97 Policy file decision 17 is made to arrest David Woods because Andrew Allen names him as a suspect 913 at 930
  - 19.8 18/1/01 DCS Colville Stewart presents his findings to the Chief Constable. He has identified [amongst others] absence of an early arrest strategy. It was these areas of concern that Supt [REDACTED] of C&D was appointed to investigate, which was inherited by Supt Kennedy in April 2001 26879
  - 19.9 19/1/01 A conference is held regarding a new C&D investigation into [amongst others] arrest strategy. PONI will supervise this, with Chris Mahaffey as the supervisor 14679
  - 19.10 29/1/01 Chris Mahaffey was appointed on behalf of PONI to supervise. It was agreed that the investigation would focus on: (a) Immediate arrest strategy and (b) General arrest strategy for those identified at the time as being concerned.
  - 19.11 27/3/01 On 8 May 1997, DCS McBurney accepted overall responsibility for the murder and police misconduct issues. He was briefed on 8 May 1997 as to the meeting with Andrea McKee both as to the involvement in the murder and the allegations against Res Con Robert Atkinson. DCS Maynard McBurney says that he discussed the handling of telephone enquiries, that they were to be

done surreptitiously and that he and DI Michael Irwin, rather than DCI P39, made the decision in relation to the arrests 22811

### Submissions by the Police Service of Northern Ireland

See sections 21-22 below.

20 The witnesses gave evidence to this effect:

#### Charles Andrews

##### *Statement*

20.1 Para 4: The Bridgett search was not specific as they claimed four shirts, two pairs of trousers and one pair of shoes

20.2 Para 5: The search of the Hanvey house on 10 May followed a briefing by CID

##### *Oral Evidence*

20.3 At that stage his unit would do 2 searches a week at least. Normally the briefer would say “the suspect lives at an address. We are doing search regarding this incident”. They would be divided up into teams and sent to do search. Sgt, perhaps log keeper, would be given more detail but they would have been detailed by log keeper to go into a certain room and log keeper would be called if there was anything of note (p3). As a searcher they are not given a briefing pack. Only Sgt and Log Keeper get one. What they are to look for is on the warrant, if the information is available (p14)

#### Michael Bingham

##### *Statement*

20.4 Para 3: He searched Mr Bridgett’s premises on 6/5/97 having been briefed by DC Keys and having been given a copy of search warrant. See statement for clothes he seized from Mr Bridgett (para 6)

#### John McAteer

##### *Statement*

20.5 Para 17: Visited the parish priest and two parish curates

#### George Lawther

##### *Statement*

- 20.6 Para 13: He briefed officers about the search of the premises of Messrs Bridgett, Forbes and [REDACTED] on 6/5/97

## P5

### *Statement*

- 20.7 Para 14: Mr Allen was interviewed again by two other officers. This is unusual and there may have been evidence from other interviews that needed to be put to him.

### *Oral Evidence*

- 20.8 He imagines he was given a verbal briefing by DI Irwin in relation to the Andrew Allen interview (p75)

## Dereck Bradley

### *Statement*

- 20.9 Para 22: He was told to prepare search warrants.
- 20.10 Para 26 and 30: DI Irwin briefed him for searches of Mr Lunt and Mr Allen

### *Oral Evidence*

- 20.11 Para 22 81513 “Night 9/5 or early hours 10/5 P39 asked me to stay on late. She told me to get the search pro formas prepared and the search warrants. I was also asked to arrange manpower for the searches. I cannot recall now the fine detail”.
- 20.12 Para 24 “Think it was the early hours of the morning when we got the warrants because I had a [Justice of the Peace] on standby for quite a while and at 0200 he signed the form”. 73985 is a standard form that’s used all the time (p54). Had to give evidence to the Justice of the Peace to get a search warrant (p56). Has never seen 51350 (p57). It came from HOLMES. DS Bradley took the handwritten application (73985) to be signed. The Justice of the Peace does not sign the application, the Insp does (p58). Justice of the Peace signs the actual warrant. He was HOLMES receiver but does not see a printed version (p59). He cannot help why 51350 and 73985 contain different items to be searched for (p61). He wrote the warrant after he was briefed by DCI P39. He was not aware of the suggestion of burnt clothing (p111). DCI P39 must have told him warrant was for trainers and clothing (p125)

- 20.13 Briefing of search team and CID was done by DI Irwin (p63). He cannot recall what basis there would be for seizing only three items (p64). DI Irwin gave search teams and CID officer a full briefing (p77)

Eric Williamson

*Oral Evidence*

- 20.14 Does not believe he was aware of an interview strategy for GBH investigation. Does not believe he would be consulted on arrest strategy. Detectives Irwin, **P39** and McBurney would issue tasks for the day (p53)
- 20.15 Was drafted in to help investigation. On 10 May, per 81766 para 16, which was his second day he attended a conference with DCS McBurney, DCI **P39** and DI Irwin and was detailed to interview Mr Bridgett (p61) He did not remember if the arrests were discussed at the evening conference on 9 May but he had no part in arrests on 10 May. He was briefed to interview Mr Bridgett by DI Irwin and was given a briefing pack. Would not have expected to know the interview or arrest strategy for any of the investigations (p62). Was not involved in interviewing any suspect except Mr Bridgett. Was involved in investigating double murder in June 1997 but may have been off the Hamill inquiry before that (p63). When he interviewed Mr Bridgett there were three or four statements in the pack. He did not remember the content of the briefing (p67). Briefing pack was just a manila file with statements inside (p71) but that was the terminology used (p72). Briefing pack for an interview is different from documentation that accompanies a HOLMES action. Is up to person in charge of investigation how many documents are given in furtherance of action. It is the normal thing to do (p74)

**P39**

*Statement*

- 20.16 Para 26: On 10/5 Con Neill carried out a confrontation identification on Mr Hobson
- 20.17 Para 26: Other officers did not attend identity parades because they had to be interviewed in presence of ICPC
- 20.18 Para 16: They planned to arrest three individuals on 1 May but this had to be delayed to 6 May
- 20.19 Para 26: On 10 May the police arrested Messrs Forbes, Bridgett, Lunt , Hanvey and Hobson

Karen Kennedy

*Oral Evidence*

20.20 Arrest strategy would arise from statements being looked at, evidence ascertained, evidence put to suspects and arrests arranged. Unless there was MIRIAM or HOLMES, this would be done by conferencing (p24)

20.21 It is a judgement call to search and arrest to get forensic evidence or to build a case in the short-term before making an arrest (p25). Whether seizure of clothing would overshadow the building of a case is a judgement call (p26)

John McDowell

*Oral Evidence*

20.22 Para 11 80897 “Investigation team considered whether it was appropriate to arrest straight away, but felt it was too early” (p81). He only assumes Messrs ■■■, Forbes and Bridgett were arrested on 6 May because of evidence that connected them to crime. He assumes the team felt it was too early to arrest the others as they did not feel they had evidence to proceed. He did not remember any details about discussions about evidence and what next step was (p82). He did not remember if in the early part of the GBH investigation whether there was a delay of arrests due to an administrative matter. There were probably half a dozen interview rooms in J Division. He did not recall 5 people being arrested for arson that caused the delay of arrests for a few days (p111)

Paul McCrumlish

*Statement*

20.23 Per 80893 “I recall that the general feeling of the whole investigation team was that Robert Hamill had been the author of his own misfortune” (p64). The general feeling was that Robert Hamill was leaving St Patrick’s and had come down Thomas St and had initiated an assault on a person at the door of the Queen’s Bar and a group of 50 revellers got off the bus from the Coach Inn while the fight was in progress. That was general talk amongst policemen (p65). Talk did not affect his enquiries and he did not detect an alteration in any other officers he worked for (p79)

Donald Keys

*Statement*

20.24 Para 39: He was not directed to affect any arrest based on police statements. That was for DCI **P39**

20.25 Para 51/2: He briefed searchers for Mr Bridgett and accompanied them. He was to give advice and guidance to search teams

## Maynard McBurney

### *Statement*

- 20.26 Para 36: Spoke to Chief Inspector to prepare briefing notes for the arrests and to use outside teams. He said it was too late to arrange outside police. They'd have to use local MSUs. DCS McBurney said that was not satisfactory and so and he was to take one or two. He also wanted sufficient SOCOs for each house.
- 20.27 Para 37: Told DI Irwin to prepare documentation for arrest and searches but he had to be back at 06.00 to brief teams so they knew exactly what they were looking for and exactly what forensic issues were at stake.
- 20.28 Para 39: Recalls some of the searches and arrests took longer than others.

## Michael Irwin

### *Statement*

- 20.29 81440 and 81441: Were some major difficulties to overcome to make people accountable for the crime:
- a. Had been no immediate arrests
- 20.30 81442: Arrest strategy was influenced by:
- i. What evidence could be put to them
  - ii. Potential for forensic links
  - iii. Effect arrests would have on potential witnesses
  - iv. Arrests and interviews would have made significant demands on scarce resources
  - v. Witness statements addressing identifications would be weakened if obtained after arrests
- 20.31 81450: Believed DCI **P39** had attempted to have some resources made available on 1 May to conduct arrests due to failure of CCTV evidence, lack of witness information and lack of witness co-operation. The arrests were prevented by unavailability of interview rooms.

### *Oral Evidence*

- 20.32 The searches would be looking for specific clothing mentioned in statements but it is a judgement call about what to brief them to look for (p64)



- 20.33 The search teams and CID officers were all briefed together at Portadown. They were all briefed to seize clothing and footwear believed to be relevant. DI Irwin mentions that the searches were to check everywhere and “attics...clothes lines...sheds were checked”. He cannot account for what happened on the search (p65). The second search was made of Mr Hanvey’s house after the information about the silver coat came in from Jonathan Wright (p66)
- 20.34 DI Irwin read the statements of Ms Clarke and Mr Jameson before briefing the search teams on 10th May. He was actively reading statements to identify which clothes the suspects were wearing (p90). There was no conference between the statements being given and searching the suspects houses but he would have been in contact with DCS McBurney and DCI P39. DI Irwin told the search teams to check everywhere for any indication of clothing (p91). Whatever description Res Con Warnock had of Mr Hanvey’s jacket would have been on the whiteboard in the briefing room (p93) along with all the other descriptions they had. The search teams would have directed for specific clothes identified in statements (p94)
- 20.35 DI Irwin always appointed a CID officer to accompany a search team as they do the arrests and they were there for guidance and advice during the search and they could ask DI Irwin if there were any difficulties (p61)
- 20.36 The resource difficulties named in DI Irwin’s statement were not intended as a criticism of the police force (p86). Those difficulties were not unique to the Hamill investigation, which was highlighted in the Blakeley report. DI Irwin believes it is a fair comment to say resources were put in to a murder investigation that were not there for the GBH investigation (p87) as they came from Regional Crime Squad. They did the best they could with the eight individuals, including himself, they had (p88)

### Colin Murray

#### *1st Report*

- 20.37 Para 15.25: Was an opportunity to arrest suspects, particularly Mr Bridgett and Mr Lunt, before they were eventually arrested.
- 20.38 Para 15.26: Early arrests were essential considering the inherent difficulty in securing witness evidence and that the earlier the arrest, the greater chance of recovering forensic evidence.
- 20.39 Para 15.27: Arrest strategy was put together after receiving statements of Witness A and B. RUC moved rapidly to arrest the suspects.
- 20.40 Para 15.28: To mount such an operation is always problematic. Does not feel there was anything else DI Irwin could have done about the arrest strategy.
- 20.41 Para 16.9: Searches conducted on 6 May were focused and proportionate. Officers had been properly briefed.

20.42 Para 16.24: Search strategy was good considering time it took to arrange. Strategy in relation to David Woods and Andrew Allen was questionable.

20.43 Para 18.17: Interview strategy for suspects other than Mr Hanvey was good.

#### *Oral Evidence*

20.44 The arrest strategy was good and immediate and the police worked particularly well to get the resources required. The police could have done no more to get witnesses (p62). He is not critical of the strategy for Witness A or B (p63)

20.45 The search strategy of 6 May was focused and proportionate. His only concern over the searches on 10 May was whether the Hanvey search team were properly briefed (p64)

#### **Submissions by John P Hagan Solicitors (Robert and Eleanor Atkinson)**

The searches resulted in no evidence whatsoever that the contents of the alleged phonecall, i.e. the burning of clothes, had any foundation.

#### **Submissions by the Police Service of Northern Ireland**

See sections 21-22 below.

#### **Submissions by Russell, Jones & Walker Solicitors (Michael Irwin)**

Mr Colin Murray was impressed by the arrest strategy he did not feel: "... there was anything else DI Irwin could have done about the arrest strategy." The RUC had moved rapidly to arrest suspects despite such operations being problematic. As against this, Colin Murray questions whether the search team carrying out the search of the Hanvey home on the 10 May 1997 were properly briefed. Michael Irwin did the briefing for all 4 searches at 6.55am on 10 May 1997. The following is what he says happened at the briefing which has been contradicted by no one:

1. Prior to 6.55am Michael Irwin had to collate information from P39 and Chief Superintendent McBurney along with statements from Tracey Clarke and Timothy Jameson from the night before.
2. He had to read any other documents including all relevant statements. There was no conference until 9.30am.
3. In the CID room all information coming from documents and from reading by all officers was put on a white board.

4. Michael Irwin briefed a CID officer to head up each search team, as was his practice, because of their experience. He was not at the searches. All searches were briefed together.

There is no criticism of the other 3 searches. If the search in the Hanvey home was not as thorough as it ought to have been, this was no fault of Michael Irwin. There was no reason why the Hanvey search should not have been as thorough as the other 3 searches. All 4 teams were briefed in the same way. All 4 teams had experienced CID officers put in charge. The search packs contained the relevant information. Each team had roughly the same number of officers.

It is difficult to see how one can say the briefing in relation to Hanvey's home is open to question, given the foregoing. One might question how the search was actually carried out, but Michael Irwin cannot be criticised for this. The fact is that there were 3 other searches carried out without criticism at the same time. One must also look at the evidence of the actual search of Hanvey's home which has been criticised. The search of Hanvey's home began at 7.21am in the morning which was within half an hour of the briefing conducted by Michael Irwin. Regarding getting rid of the clothes, Tracey Clarke's words, reported by Andrew McKee, were: "Get rid of the clothes." (See statement on pages 19981 and 31618). So the team were not specifically looking for a burn site. The Detective Constable put in charge of the Hanvey search was DC McAteer who had been 25 years in the RUC at that time. At no stage did he come back to Michael Irwin for clarification of what he was looking for. DC McAteer was adamant in his evidence that Tracey Clarke gave only a general description of what Alistair Hanvey had been wearing on the night. He did not record a specific description because she didn't give one. This was the information available to Michael Irwin at the 6.55am briefing the next day. DC McAteer then went looking for blood stained clothing. His evidence was, however, that the team, in addition to searching one bedroom, also searched their house generally. He referred to: "... a quick search of the thing". The only description other than Hanvey's available to Michael Irwin to provide in the briefing was that of Reserve Constable Warnock whose description (number 06367) was put on the white board and was given on the 27 April 1997. That was that Hanvey was wearing: "... jeans with a dark coloured baseball type jacket with greyish coloured sleeves". It is difficult to imagine that Michael Irwin would not have put this description on the white board as he said, in his evidence, he did.

If DC McAteer was not at the briefing, then it seems inconceivable that the other searchers would not know what they were looking for. At the search, if there was any doubt, the searchers under DC McAteer could have referred back to Michael Irwin. In any event, DC McAteer's evidence is that he understood that the searchers were looking for blood stained clothing so he obviously had had a discussion with his searchers about what they were looking for. The search log (73996) records that, indeed, a pair of jeans, a jacket and a pair of trainers were taken from bedroom 1. This accords with the

only description known at the time, put on the white board from Reserve Constable Warnock.

Other searchers of Hanvey's home on the 10 May 1997 included Sergeant Michael Bingham who said in his statement that DC McAteer "... Was there to steer him." In oral evidence he said that he was "... very much guided by DC McAteer." He also agreed with Inquiry Counsel that they may have "... arrowed in on certain clothing." This suggestion is the opposite of saying that they did not know what they were looking for.

Charles Andrew was another of the searchers of Hanvey's house who said that it was not at all unusual to search only one room, but he had no memory at all of the briefing.

William Stewart was another of the searchers. He did not have a memory of the search of the 10 May 1997 apart from "... going from room to room." He gave evidence that because the warrant said "... clothes and trainers", not all clothes would be taken. He would have gone to the team leader or the CID man there to clarify which items to take.

To conclude, in the above circumstances, it is clear and it is submitted that Michael Irwin must have carried out a proper briefing to the best of his ability. P39 said that if she were to brief a CID Constable to search, she'd expect him to come back and ask if he didn't know what he was looking for in the search. Also Michael Irwin's evidence was that DCS McBurney directed that Reserve Constable Atkinson was not to be included in the search teams. Michael Irwin felt that this limited the terminology used in the search warrant for the Hanvey search. Finally, just how hard Michael Irwin was working on this issue can be seen from notebook entries which showed that he had terminated duty at 1.30am on the morning of the searches and then had come back into the station at 6.30am to brief the search teams.

#### **Comment**

21 This is a particularly difficult issue. As far as arrests were concerned, DCI P39 had a strategy of attempting to get Catholic witnesses to come forward. Only when that failed were arrests made for GBH, and those arrests could not realistically have led to GBH convictions. The murder arrests were made on the basis of the statements of Tracey Clarke and Timothy Jameson. Looked at in isolation from searches, those strategies appear sound.

#### **Submissions by British Irish Rights Watch and Committee on the Administration of Justice**

The lack of evidence sufficient to lead to convictions for GBH was not merely the result of Catholic (or, indeed, other) witnesses failing to come forward. Many of the comments made at paragraph 18 above about the identification of suspects are relevant here. This case was never going to hinge on eye-witness evidence, despite the statements subsequently made by Tracey Clarke and Timothy Jameson, because the political atmosphere and tensions in Portadown in 1997 would make most witnesses far too fearful to come forward. Forensic evidence was much more likely to be crucial, but the crime scene had been left

unsecured for five and half hours. According to DCI P39, the police were ready to arrest three people on suspicion of GBH, but the arrests were delayed until 6<sup>th</sup> May (20.18) for the hard-to-credit reason of "unavailability of interview rooms", according to DI Irwin (20.31). Had they been arrested sooner and their homes searched, it is possible that valuable forensic evidence might have been found. The overall impression that one is left with is that, until Robert Hamill died and Tracey Clarke and Timothy Jameson came forward, no-one in authority was taking Robert Hamill's case seriously. Paul McCrumlish's statement, "I recall that the general feeling of the whole investigation team was that Robert Hamill was the author of his own misfortune," is telling (20.23).

### **Submissions by Edwards & Co Solicitors (Serving and Retired Police Officers)**

We agree the strategy to get both Catholic and Protestant witness evidence was sound. We now know, with hindsight that cooperation from both sections of the community was extremely limited. It is therefore unfair to suggest now that the alternative strategy of immediate arrests and searches should have been employed. This was a judgment call made in good faith by P39.

### **Submissions by the Police Service of Northern Ireland**

For the reasons set out in 22 below it is submitted that the decision not to immediately proceed to searches and arrests was a legitimate one for P39 to adopt.

Others may consider that they would have done the job differently. This in itself does not provide a footing for any allegation of want of due diligence on the part of P39 or others.

It is clear that the team led by P39 worked tirelessly to pursue their witness strategy. They demonstrated an ability to move to work flexibly and when they considered that sufficient information wasn't flowing from the witness strategy they moved to an arrest strategy.

Ultimately, when information came into the system from Tracey Clarke and Timothy Jameson the detectives moved with commendable speed (on the 10 May 1997) to put the resources in place and to carry out searches, arrests and interviews. That six people were then charged and remanded in custody for their part in the killing of Mr. Hamill is indicative of good police work even if successful prosecutions failed to materialise.

- 22 However, the detectives must have realised from an early stage that getting witnesses to give evidence was fraught with difficulties. They knew that Mr Hamill and D had been kicked and jumped on. Mr Hamill was left bleeding. It followed that there was a chance of scientific evidence being available if searches were conducted quickly. The question the Panel may wish to address, therefore, is whether the detectives should have organised arrests and searches very quickly after officers had identified suspects such as Mr Bridgett and Mr Robinson.

## **Submissions by British Irish Rights Watch and Committee on the Administration of Justice**

Earlier arrests may well have assisted in the search for forensic evidence. However, the GBH team may have been confused by the Land Rover crew's false alibi for two of the suspects, Dean Forbes and Stacey Bridgett, with whom they claimed to have been chatting while the attacks took place. They may also have been affected by the general view prevailing within Portadown RUC, as expressed by Paul McCrumlish, that Robert Hamill had started the fight by assaulting David Woods (20.23). As we have explained at paragraph 15 of module 5, we believe the evidence for this alleged assault is unreliable.

It is not clear why Andrew "Fonzy" Allen, who was identified by Timothy Jameson as a suspect, was not arrested or charged, despite P5's evidence that he was interviewed at least twice (20.7) and a search warrant was issued in relation to him (20.10). We understand that Timothy Jameson was reluctant to attend an identity parade, but this problem had been surmounted in Marc Hobson's case by arranging a confrontation identification with Constable Neill. It would appear that DCS McBurney's impression of immunity extended not only to Timothy Jameson, now regarded by the Inquiry as a potential suspect, but to his companion.

## **Submissions by Edwards & Co Solicitors (Serving and Retired Police Officers)**

See 21 above

## **Submissions by the Police Service of Northern Ireland**

P39 gave evidence that when she became seized of the GBH investigation she sat down with two detective constables and studied the statements. It was her view that the picture was "complicated" and that she did not have "enough information to go and carry out arrests (Para 11)."

P39 also dealt with this issue in her oral evidence. She was asked whether she devised a strategy for proceeding to make arrests and to carry out searches quickly (page 14). The particular example of whether she gave consideration to the arrest of Stacey Bridgett was put to her (page 15).

It is clear that P39 gave consideration to the best strategy which was available to her bearing in mind the quality of the evidence that she had, including the information relating to Bridgett. She explained her position in this way: "I made the decision that, after reading the statements, that it was unclear with regard to the evidence that was coming through, and I believed at the time that my best way forward was to try and get witnesses to make their statements, so that they could identify those who were in the town centre at the time, and those who were suspected of having committed the crime against Robert (page 14)."

It was in the face of limited information about suspects that P39 adopted the questionnaire approach in order to build up a clearer picture of events and who might be suspects. It also dictated her decision to work with the local Catholic community in an effort to get witness statements from that source. She reasonably hoped that she would receive co-operation from that community because of the identity of the victim (page 17).

Others might take the view that P39's approach was overly cautious. Mr. Murray, for example, has opined that early arrests were essential for the prospects of recovering forensic evidence (15.26 of his report).

However, his opinion appeared to mellow when he gave his oral evidence (page 79-80). He recognised that the arrest strategy was her judgment call to make. He recognised that it was at least valid for her to take the view that the evidence against potential suspects was "tenuous" and that it was necessary to build up a better picture about suspects by going to the community.

It is also the case that P39 demonstrated flexibility. She wasn't wedded to a single strategy. When she realised that her optimism in terms of obtaining information from the Catholic community was proving to be unfounded (page 17-18), and when other sources such as CCTV and media appeals were shown to be unproductive, she switched tack and moved to an arrest strategy.

It is submitted that while the witness strategy did not bear fruit this does not provide a sound basis for criticising P39 for having attempted it. The arrests which were planned for the 1 May 1997 (and which took place on the 6 May) might well have taken place earlier if there had been no other worthwhile strategy available to detectives. That there was this alternative witness strategy is clear and it is clear that it was pursued with vigour and diligence.

That this strategy may have had the unfortunate side effect of depriving the investigation of access to possible forensic opportunities was unavoidable if a premium was placed on building up a better evidential picture of who the suspects were. It is submitted that P39 was entitled to give an emphasis to this strategy at least initially, and that she is to be commended for recognising its limitations and moving to make arrests. She appears to have worked determinedly to get the best out of the limited hand that she had been dealt. The searches which were carried out at the time of these arrests was focussed and well executed (see for example Mr. Murray at 16.9) and yielded the cream blood stained jeans of Mr. Bridgett.

Ultimately, Mr. Murray accepted that having heard the evidence of P39 she played an "excellent role in the pursuit of this investigation (page 80)."

In all of the circumstances it is submitted that the strategies adopted were sound even if they carried the disadvantage of limiting the potential for exploiting forensic opportunities.

23 The conduct of the searches themselves is dealt with in detail in section 12.

### Submissions by the Police Service of Northern Ireland

See chapter/section 12.

## **THE SEVENTH ISSUE: FORENSIC STRATEGY**

- 24 The material disclosed the following
- 24.1 From 27/4/97 to 12/5/97, a Major Incident property register is compiled dealing with the clothing seized from those at the scene (961)
  - 24.2 6/5/97 DI Michael Irwin submits an injured party form “C” for Robert Hamill to FSANI (Forensic Science Agency of Northern Ireland). The form states that the clothing of Robert Hamill is being submitted to check blood and hair contact with any of the suspects’ clothing and to determine if intimate samples are required from the suspects (8178)
  - 24.3 7/5/97 DC Donald Keys attends a briefing given by DI Michael Irwin on the Robert Hamill case and completes FSANI form D in relation to the clothing of Stacey Bridgett. The FSANI form is sent by DC Donald Keys to test items of clothing believed to have been worn by Stacey Bridgett including cream jeans which were recorded as blood stained (8181 and 8187)
  - 24.4 Between 7 and 21 May 1997, Lawrence Marshall at FSANI receives forensic materials. These include Robert Hamill’s and D’s clothing and blood from Stacey Bridgett, Dean Forbes, Rory Robinson, Andrew Allen and David Woods. He also receives clothing items from Messrs Bridgett, Forbes, Robinson, Woods, Allen, Wayne Lunt, Maureen McCoy and Marc Hobson. Lawrence Marshall also receives blood samples which were lifted from the ground (9656)
  - 24.5 8/5/97 Glen Stewart, gives a statement. He describes the two casualties on the roadway and a third casualty who walked to the ambulance with blood coming from his nose (9188)
  - 24.6 8/5/97 Blood samples are taken from Stacey Bridgett and Dean Forbes. They are received by FSANI (8187 and 676)
  - 24.7 9/5/97 DC John McDowell sends the FSNI form to request test of blood sample from Stacey Bridgett against the clothes of Robert Hamill and D (8190)
  - 24.8 9/5/97 Mapping officers attend the scene and draw up a plan (9258)
  - 24.9 11/5/97 DC Paul McCrumlish and DC Albert McIntosh are briefed by DCI **P39** to search the home of Thomas Hanvey. They are told that Allister



Hanvey had gone to that address after the fight. The purpose of the search is to locate any clothing that might have been worn. The briefing specifically covers a jacket with grey sleeves and evidence of burnt material (4577)

- 24.10 13/5/97 ODPD issued a direction to the RUC for Professor Jack Crane to establish his views and findings on cause of death (913 at 927)
- 24.11 13/5/97 FSANI form submitted with clothing and footwear possibly worn by Allister Hanvey; jeans, trainers and black padded jacket submitted (8205)
- 24.12 14/5/97 Policy decision 15 is made to discuss with ICPC reconstruction of Land Rover (928)
- 24.13 16/5/97 The fingerprint report is returned. It shows prints on a tonic wine bottle found at scene which belonged to Wayne Lunt. It shows DC Donald Keys as the officer in charge (12508)
- 24.14 27/5/97 A HOLMES action is issued that DC John McDowell should speak to Lawrence Marshall of FSANI and obtain a report about the tests for blood stains on clothing and footwear.
- 24.15 2/6/97 DS **P10** listens to and transcribes the ambulance call out tape (9268)
- 24.16 9/6/97 DC John McDowell speaks to Lawrence Marshall who tells him that Stacey Bridgett's blood was on Robert Hamill's jeans. A report from Lawrence Marshall is expected later that week (3743)
- 24.17 9/6/97 A note with a map is made following attendance at the scene in order to make a forensic reconstruction (38938)
- 24.18 10/6/97 Photographs are taken of Carol Ann Woods' former premises overlooking Thomas Street (736)
- 24.19 10/6/97 A reconstruction is made of the position of the Land Rover (9279)
- 24.20 10/6/97 Video is taken of the scene (741)
- 24.21 16/6/97 Noise tests are carried out on the Land Rover with the doors open and closed and with fan on and off (8165) and report shows noise comparisons (73898)
- 24.22 26/6/97 The report on noise tests on Land Rover is received (8165)
- 24.23 6/8/97 DI Michael Irwin signs a form headed "DISCLOSURE UNUSED MATERIAL" which lists the report on results of the fingerprinting. In the manuscript on the form it is noted that the report showed Lunt's fingerprints on tonic wine bottle and had been considered by DS Dereck Bradley and DI Michael Irwin and the statement reader. DI Michael Irwin is recorded as the SIO. It is noted that the report had been disclosed as unused material. It is not mentioned in file (12512)

- 24.24 12/8/97 ODPP Interim Direction Part I is issued. It is noted that forensic evidence (body fluids and physical methods) and the post-mortem are still outstanding. The direction is that no prosecution decision is to be made before receipt of those. "Finally, I note that reference is made by both the investigating officer and DCI P39 to a separate report in a sealed envelope reference Witnesses A and B". This does not appear to have been forwarded with the original (or copies of) police file. This report should now be forwarded under appropriate classification, if necessary." (18106)
- 24.25 12/8/97 Ray Kitson writes to Mr Mr Monteith stating that the full police file has now been received and that post-mortem, medical and forensic reports are not yet available. He says he has issued a direction to police seeking expedition of all outstanding reports (18114)
- 24.26 18/8/97 Mr Monteith writes to Ray Kitson expressing his disappointment that the crime file lacks the post-mortem, medical and forensic reports (18105)
- 24.27 20/8/97 Ray Kitson writes to Mr Monteith noting his disappointment that the crime file lacks the post-mortem, medical and forensic reports and promising to write to him when they become available (18104)
- 24.28 27/8/97 [REDACTED] writes to Ray Kitson expressing his concern about the absence of the forensic and pathology reports (18103)
- 24.29 15/9/97 Ray Kitson writes to [REDACTED] noting his concern that the crime file lacks the post-mortem medical and forensic reports and promising to write to him when they become available (18101)
- 24.30 25/9/97 Mr Monteith writes to Ray Kitson expressing considerable disappointment that no progress has been made and requesting an early timescale for receipt of the post mortem and other forensic reports (18099)
- 24.31 7/10/97 Ray Kitson writes to Mr Monteith noting his request for an early timescale for receipt of the post mortem and other forensic reports. He says that the need for expedition has been made known and he has made enquiries with the agencies, but can give no (18098)
- 24.32 21/10/97 The report of William McDowell and FSANI is sent to DI Michael Irwin stating that the passenger in Land Rover would not have had a view of what was taking place outside Eastwoods Clothing. Both rear passengers' view was extremely restricted (11097 and 9260)
- 24.33 21/10/97 A file note is written asking the Director to establish what response if any has been received from the Pathologist (31870)
- 24.34 23/10/97 A note is written for Ray Kitson by a court official on behalf of the resident magistrate expressing concern about the lack of the pathologist's report (31871)

- 24.35 24/10/97 Lawrence Marshall, FSANI, sends a report of scientific examination to DI Michael Irwin (17797 and 17798)
- 24.36 A HOLMES action will be raised on 12 November 1997 which DI Michael Irwin speaks to Lawrence Marshall about his report. As a result of this conversation, Lawrence Marshall tested unknown A against the DNA of Marc Hobson, Andrew Allen, Wayne Lunt with negative result. Colin Prunty and Maureen McCoy said it was not their blood (17797 and 17798)
- 24.37 31/3/04 The DNA profile for “unknown A” was loaded on the NI database (73300 at 73301) See explanation of DNA database (72806)
- 24.38 Lawrence Marshall reported on the 6 April 2004 showing the extent of sampling of “unknown A”’s blood, see (38901). See also diagram of blood stains (72303)
- 24.39 27/10/97 Ray Kitson writes to the Resident Magistrate in relation to the delays of the completion of the post mortem report in R v Lunt and others, saying it should be completed shortly (31863)
- 24.40 28/10/97 DI Michael Irwin wished the ODPP to consider the forensic evidence linking Stacey Bridgett (18342) A decision on Stacey Bridgett had to await Counsel’s advice but Raymond Kitson’s view was that the forensic evidence was not sufficient to support proceedings against Stacey Bridgett (18346)
- 24.41 3/11/97 ODPP receives Lawrence Marshall's report on items of clothing attributed to Hamill. Robert Hamill’s black leather jacket had extensive blood staining on the back with blood stains on the back right sleeve, right front and side. His jeans were bloodstained at the bottom of both legs, with staining more heavily on the left and with light stains on the seat. On the white shirt there were bloodstains on the collar and over the right shoulder at the back. It shows that unsuccessful DNA testing was carried out on Robert Hamill’s jacket, seat of his trousers, right shoe and the right cuff of Maureen McCoy’s jacket. Successful tests showed Stacey Bridgett’s blood on his own clothes and the right leg of Robert Hamill’s jeans, blood from unknown A on Robert Hamill’s clothes and on Maureen McCoy’s jacket collar, and blood from an unknown person B on D’s top (17797)
- 24.42 13/11/97 Gordon Kerr QC analyses the evidence. the case against Mr Bridgett was difficult and required further information as to the blood staining (17633)
- 24.43 17/11/97 A file note is made by Roger Davison, ODPP, that he had discussed the evidence of Stacey Bridgett’s blood on Robert Hamill’s clothes (on the right leg of his jeans) with Lawrence Marshall, FSANI. One small spot of blood the size of a penny coin was found. The blood on the left trouser leg was smeared and did not come from Stacey Bridgett. Lawrence Marshall said the fact that the spot was not an elongated shape meant that there was nothing to indicate what direction the blood came from and he was reluctant to offer any interpretation as to how the blood got there but said it was consistent with

Robert Hamill lying on the ground and a drop of Stacey Bridgett's blood falling as he stood over him. A meeting to discuss this was arranged with Gordon Kerr QC for the next day (18040)

- 24.44 20/11/97 Roger Davison, Mr Kitson and Mr Kerr QC meet to discuss case against Bridgett and Wayne Lunt. Forensic evidence in relation to Stacey Bridgett is discussed and it is indicated that Roger Davison had spoken to Lawrence Marshall. Gordon Kerr QC advises that this evidence was insufficient as all it proved was that Stacey Bridgett had been close enough to Robert Hamill to drip blood on him, but there was no evidence as to what he did. Further, the lie during interview, that he was not close to Robert Hamill, was not sufficient to inculpate him. Gordon Kerr QC advises that there is no reasonable prospect of convicting either (18041)
- 24.45 20/11/97 Maureen McCoy is reinterviewed about the blood on her jacket. She states that she did not bleed on the night in question and she cannot account for the spot of blood on her jacket. She states she treated Robert Hamill after he was kicked on the ground. P4054 (4054)
- 24.46 28/11/97 The clothing of Allister Hanvey is returned to him from FSANI (4048)
- 24.47 5/2/98 DS Dereck Bradley makes a note on HOLMES that the source of the blood that was on Robert Hamill has not been identified and that Colin Prunty and Maureen McCoy state that it is not theirs (2342)
- 24.48 4/10/2000 Donald Keys is interviewed by DCI K. He states that he had been asked to come into duty on 27 April 1997 regarding a serious assault. On arrival he spoke to Inspector Alan McCrum in communications then went to the scene with Constable Gordon Cooke. On returning to station he spoke to DCI **P39** and asked her to attend. He met her as she came on duty at 07.15 and they returned to the scene. It was at this point that instructions were given to seal off the scene and start a scene log (11150)
- 24.49 27/11/00 RUC discovers that exhibit PHJW1 was not forwarded to Exhibits officers or Investigating Officers who were unaware of its existence. Introduction of HOLMES system, which operated from Gough Barracks, caused operational difficulties (2796)
- 24.50 19/1/2001 A conference is held regarding a new C&D investigation into [amongst other topics] scene preservation, collection of forensic materials and forensic strategy. PONI will supervise this, with Chris Mahaffey as the supervisor (14679)
- 24.51 26/9/01 QPF of Christopher Henderson. He says that he, Allister Hanvey and Jason McClure walking from Tracey McAlpine's house to the centre and shared a taxi. The centre was taped off with yellow and black police tape (70945)

## Submissions by the Police Service of Northern Ireland

See sections 26-28 below.

25 The witnesses said the following:

### John McDowell

#### *Statement*

25.1 Para 16: Became exhibits officer (above)

25.2 Para 17: Had to ensure exhibits were properly labelled

#### *Oral Evidence*

25.3 Para 24 80900 “On 10 May 97 I appear to have attended two interviews: the first was the interview of Marc Hobson conducted by DC Honeyford and [another]. The second was the interview with Allister Hanvey conducted by DC McCrumlish. He did not remember those interviews” He still did not remember those interviews (p84). He did not remember being briefed for them either. He did not take notes at either interview. He was just present (p85). He recalls entering interviews as Exhibits officer and showing items to suspects. 9699 shows he was in interview for 4 minutes. 9703 shows he was in other interview for 5 minutes (p112)

### John McAteer

#### *Statement*

25.4 Para 15: He picked up Mr Hamill’s clothes on 29/4 from family’s solicitors

### Lawrence Marshall

#### *Statement*

25.5 Para 7: Submission forms to FSANI were dated 7/5/97

#### *Oral Evidence*

25.6 Would expect that he would have been told that case had been upgraded from GBH to murder. Would hope to be told about and developments over who was bleeding or numbers involved. Does not think he was told about this. Thinks most of info he got was on submission forms (p6)

- 25.7 Was no deterioration of samples between incident and submission on 7/5/97 as bloodstains, once dry, preserve well. He was not aware of anything that had been washed/tampered with to prevent achieving proper results (p7)
- 25.8 72304 came to him. Is not his writing. Sample four is his writing. Sample three was Mr Bridgett's blood. The red spot at the right hand side does not appear to have been sampled (p8). The rear view shows a spot on the right hand side that has not been sampled. He did not know what happened to the jeans. There was no discussion about testing untested spots (p9) Would not expect police to have asked him to do more as they had not examined them in way lab examined them. It is left up to his judgement which areas to sample (p10). Had there been case conferences then, as there are now, the matter would have been dealt with in more depth. Either police or FSANI could decide to call conference (p11)
- 25.9 Per 72303, the lifts on 07.03.03 are Marshall's writing (p17) When testing Mr Hamill's jacket, he thought the blood on collar was more likely than not to be Mr Hamill's. He says that there are areas of blood staining which are unsampled (p18). There was further testing in 2002 and they have to be selective about sampling areas (p19). Selective means that when he looks at garment, he forms a conclusion about where the stains came from and then samples the patterns. They cannot do everything (p22). Had he been aware at time that some assailants were injured when attacking Mr Hamill, it would have influenced his thinking. He was not aware when testing that assailants were injured at time of assault (p22)
- 25.10 Per 80761 para 3 "If detectives investigating case wished to submit material to FSANI, it went firstly to submissions unit then police personnel employed there would act as a filter and decide which material would be submitted and which would not". Decisions were based on what they wished to establish to advance an operation. This was done in consultation with FSANI (p23). There would be "toing and froing" if FSANI needed material not submitted by police for e.g. reference sample. Now they are aware of all items brought in. At the time they were not (p24). Received from Submissions department that which was given by police to the Submissions Department. He did not get any items from DC Keys himself (p53). He now examines the files to see if there are any exhibits not submitted that he should test (p55)
- 25.11 Per 17798 there is not WAS3 mentioned. Marshall states if it is not in report, it was not submitted. He did not know if it was submitted to the Submissions Unit but it may have been (p25). The minute bloodstain mentioned in 17803 on grey sweater of Mr Hobson's (item 38) was less than 1mm in diameter. It was visible to naked eye (p26). When the initial approach made regarding a review, Mr Marshall was off sick. 72895 is his writing. Colette Quinn conducted review of case biology (p27). 72898 shows Item 38 was sent for LCN examination. LCN is low copy number, a DNA sampling technique. At time there were no issues with it but controversy has arisen since (p28). He would take a large area when taking a LCN swab as if a person starts with too small a sample, they may not get a large enough sample (p30). The Inquiry can take it that LCN analysis was never carried out on item 38. Mr Marshall

raised the issue with police about not being able to find Item 38 for testing in 38904 (p33). He thinks it would be worth trying a LCN test now if the item had been stored in cool, dry state (p34)

25.12 In 17806 he was not asked for blood spatter analysis (p37)

### Collette Quinn

#### *Oral Evidence*

25.13 In the majority of cases, materials submitted to FSANI by police would be filtered by Submissions Unit. In large, complex cases the forensic officer and a police officer would discuss what they want on the case (p58). The Hamill case was a large, complex case. She believes that in this case, as there were experienced SOCOs at the scene, then there would be no screening (p59)

25.14 Would have expected further discussion between police and FSANI than what's on Form A (p60)

25.15 Is standard practice to take samples of stains. Choice of samples being informed by discussion with police depends on what he was looking for (p60)

25.16 Now there is more focus on case conferences between FSANI and PSNI (p60) Everything would be logged and what is relevant would be discussed at case conference (p61)

25.17 Mr Bridgett's blood being found would not necessarily lead to further dialogue. It would depend on pattern of blood. If heavily bloodstained garment with lots of attackers there may be further work done. If lightly stained, the focus would be on interpreting blood pattern (p62). Would have been very surprised if police had come back and asked for more sampling of blood stains (p63). It was entirely a matter for FSANI degree of testing they did (p64). Now, the situation is still the same (p65). Scientists would take samples from a sample that they believed came from 1 person (p67). Per 72303 she would have tested one on front; cuffs; one of ones from collar or back. Would not have tested all blood on victim's clothes if they thought assailants were bleeding (p69) as she would make an assessment on the areas sampled. From that there would be an indication if more than one person was bleeding at time (p70). At that point she would discuss the case with the police. She would not stop testing until she was sure all the blood was accounted for. Submission forms often do not bear a resemblance to what happened, so the practice is to try and clarify the information before the forensic sampling starts (p71). She would have expected to see a note to indicate the number of people injured, the number of people in the area and the injuries to the injured parties (p72)

- 25.18 Made an error in 72909 as it should be Item 38, not 39 as there was no blood on 39 (p76). She briefed Mr Marshall after he came back as to the work to be done. She knows that Item 38 had not come in as it was requested by FSANI (p78)
- 25.19 There was no forensic strategy in this case that she was aware of so she did not know if police had their own forensic strategy (p79). There is a fast-track scheme now for urgent work. This costs the department more (p80)

### Michael Irwin

#### *Statement*

- 25.20 81440 and 81441: Were some major difficulties to overcome to make people accountable for the crime:
- a. There was a difficulty in forensically linking the suspects through blood transfer from the victim
  - b. Clothing worn was made of fabric that did not lend itself to fibre transfer
- 25.21 81471: DNA buccal swabs were obtained from all suspects.

#### *Oral Evidence*

- 25.22 At page 23 81440, all the factors were identified by DI Irwin himself as he read through the statements on the 28th and 29th (p2). The decision on the items to be sent to FSANI was down to discussions between the SOCO, DI Irwin and DCI **P39** (p4). There would not be an action raised about that. It would not be possible for someone to determine whether, and why, certain items were not sent to FSANI. This was because he was trying to get a positive outcome early on (p5)
- 25.23 DI Irwin would not have recorded a discussion between himself and the forensic scientist about what he was looking at and what he finds. It was a discussion about what the police wanted and that Mr Marshall wanted to go for blood first and then move back. DI Irwin is not sure but it could well have been after Mr Hamill died that Mr Marshall told the police that the suspected large blood stains were wine. DI Irwin believes a sheet was put in by DC McDowell about contact with Mr Marshall and as a result DI Irwin contacted Mr Marshall (p6). It may not be the most sensible thing to put a message form about forensics until the forensic report is completed. There was no formal position of discussing with FSANI before the report is received (p7). Contact would be by phone calls or meetings. The RUC/FSANI liaison officer had a policy role (p8). The SOCO would have been present at case conferences (p9)
- 25.24 When making 2336 that was the first time he had realised (p22) that evidential samples had been taken from all but three suspects and DNA samples had



been taken from all suspects (p26). DI Irwin then asked Mr Marshall to put the samples through the DNA database, which eliminated the three individuals blood (p22)

25.25 DI Irwin strongly believes that Colin Hull was the source of the unknown blood on Mr Hamill (p24) as he was bleeding and was in the right location. Mr Hull would not speak to the police about getting his DNA. Rosemary Nelson would not answer DI Irwin's calls or assist him in any particular way. He does not know why she would not speak as there are benefits for everybody in getting the solicitor to talk to police and her non-cooperation affected the investigation (p25)

25.26 To DI Irwin's knowledge in 1997 the police did not ask another forensic scientist to look at a blood stain. The Forensic Science Laboratory was independent of the police and was relied on by the police as its source of forensic investigation. Often forensic reports in 1997 did not arrive until after committal proceedings (p95). It nearly became the norm for the forensic report to arrive the week before, or the morning of, the trial (p96). The police therefore had informal contact to establish what stage their case was at (p97)

### Maynard McBurney

#### *Statement*

25.27 Para 47: Relied on FSANI for forensics to advise if anything could, or should, have been done, or if it could be enhanced by sending it to England. He is aware the ODPP raised blood spattering with FSANI.

25.28 Para 51: As a rule forensic issues and adequacy of evidence were matters for ODPP so blood stains and fingerprints would be dealt with by ODPP, not police. If they wanted more evidence they would ask police for that.

25.29 Para 66: A Detective Inspector must be at the post mortem because it is his responsibility to assist Pathologist in determining the cause of death. Information would give a heads up before the report came through.

### Ken Armstrong

#### *1st Report*

25.30 Page 81, Para 3.6.4: Unclear why forensic evidence that supported both witness A and B was not progressed further.

### Colin Murray

#### *1st Report*

25.31 Para 17.21: Believes forensic strategy in relation to the scene was good, apart from not testing the bottle with Mr Lunt's fingerprints on it for DNA.

25.32 Para 17.39: Apart from the failure to take and submit samples for certain suspects, the forensic strategy was focused and proportionate. This is evidenced by the submission of clothes consistent with those described in witness statements.

#### **Submissions by Edwards & Co Solicitors (Serving and Retired Police Officers)**

See evidence of DI Irwin about the issue of the taking of samples at 25.24 above. We disagree with the comment about the alleged failure to take and submit samples for certain suspects.

#### **Submissions by the Police Service of Northern Ireland**

See sections 26-28 below

#### **Comment**

26 The materials were submitted for examination within a reasonable time, and the result of most importance, namely the connection between Mr Bridgett and Robert Hamill, was reported orally very quickly.

#### **Submissions by British Irish Rights Watch and Committee on the Administration of Justice**

The greatest forensic difficulty for the RUC was that they could not be sure that the clothes they seized were in fact those that the suspects had been wearing on 27<sup>th</sup> April 1997. This is particularly so in relation to Allister Hanvey, if it is true that RC Atkinson had advised him to dispose of his clothing. A black padded jacket belonging to Allister Hanvey was submitted for testing, but Tracey Clarke's mother has suggested that he may have been wearing a silver jacket bought for him as a Christmas present (14896).

#### **Submissions by Edwards & Co Solicitors (Serving and Retired Police Officers)**

We agree

#### **Submissions by the Police Service of Northern Ireland**

The PSNI agree with this comment.

27 It is unfortunate, though understandable, that the decision what tests to run on was left entirely to FSANI. There appears to have been no guidance offered to FSANI about what priority ought to be given to tests. For example, the fingerprint analysis on a bottle which disclosed Mr Lunt's fingerprints destroyed any DNA evidence that might have been on the bottle. Had there

been any useful consultation between the RUC and the FSANI that might have been avoided, and it is possible that the DNA evidence may have inculpated or exculpated Mr Lunt as someone whose bottle struck Robert Hamill.

### **Submissions by British Irish Rights Watch and Committee on the Administration of Justice**

There seems to have been a marked lack of consultation between the police and the forensic scientists. Lawrence Marshall of FSANI did not think that he was told that the charges had been changed from GBH to murder, or how many people were involved (25.6) . He was certain that he was not aware when he was carrying out tests on bloodstains that any of the assailants were injured at the time of the assault (25.9). It seems self-evident that a scientist can interpret materials s/he is subjecting to tests better if s/he understands the circumstances in which fluids or other matter may have come into contact with the materials being tested.

Lawrence Marshall found that large areas of staining on Robert Hamill's clothing turned out to be wine rather than blood (25.23). The bottle bearing Wayne Lunt's fingerprints was a tonic wine bottle (24.13). If Robert Hamill was struck by a bottle, then some of his DNA may have adhered to the bottle. If his DNA had been found on the bottle bearing Wayne Lunt's prints, then, together with the wine stains on Robert Hamill's clothes, a strong case could have been made against Wayne Lunt, but this potential forensic opportunity was lost because of poor liaison between the murder team and FSANI.

### **Submissions by Edwards & Co Solicitors (Serving and Retired Police Officers)**

Was it not reasonable to have the bottle fingerprinted?

### **Submissions by the Police Service of Northern Ireland**

The PSNI accept that in 1997 arrangements for liaison between the police service and FSANI were not ideal. Much of this had to do with the lack of appropriate structures, resources and training.

Since then the PSNI in co-operation with the FSANI and the PPS has put in place a number of structures which have improved the nature of the interface with FSANI.

This has been the subject of comment from Ms. Colette Quinn (page 59). The structures now appear to be more streamlined and focussed. The PSNI utilises a dedicated system of crime scene management. Crime scene managers are required to actively engage with the FSANI even before exhibits are submitted to the lab (page 60). There is much more emphasis placed on case conferencing (page 59).

Mr. Marshall has advised that had there been a system of case conferences in 1997 the issues around forensic strategy would have been dealt with in "a bit more depth (page 10)."

It is submitted that had case conferencing been a more regular feature of the system in 1997 the options available to analyse the bottle and the implications of any particular test for the police investigation might have been fully ventilated, to take one example.

As Ms. Quinn acknowledged, it still remains a matter for the FSANI to determine the degree of testing which is carried out (p. 65), but current arrangements appear to allow for a much greater degree of consultation, information exchange and tactical considerations than was the case 12 years ago.

#### **Submissions by Russell, Jones & Walker Solicitors (Michael Irwin)**

It is unfair to say that there was no guidance given to FSANI as to what tests to run on. Michael Irwin's evidence was that he was trying to catch up with the GBH investigation very early on saying "... run with it and see if we could get a positive outcome very early on". Contact with Lawrence Marshall of FSANI was often by telephone and Mr Marshall confirmed in evidence that this was normal. Written records were merely the forensic forms submitted and the eventual report. In between times there were phone calls and meetings. The fingerprint report form indicates that there was insufficient detail to prove that the fingerprints were evidentially those of Wayne Lunt.

The RUC forensic liaison officer in 1997 did not get involved in particular cases. There were conferences morning and night and DCS McBurney and the SOCO man would be there. It is clear from evidence, it is submitted, about Stacey Brigett's blood on Robert Hamill's trouser leg namely the tear drop formation etc, that there was close telephone contact. It is submitted that Michael Irwin's contact with the FSANI was typical of the relationship which existed between the RUC and FSANI in 1997. Whether that system is open to criticism does not reflect in any way on Michael Irwin.

- 28 That lack of consultation appears to have been systemic. The Panel may wish to consider whether the system was adequate.

#### **Submissions by British Irish Rights Watch and Committee on the Administration of Justice**

We would urge the Inquiry to do so.

#### **Submissions by Edwards & Co Solicitors (Serving and Retired Police Officers)**

The police were entitled to rely on the expertise of the Forensic Science Agency

#### **Submissions by the Police Service of Northern Ireland**

The system in place in 1997 was a product of its time. It appears to have been a system where police and scientists relied upon informal contacts.

Opportunities to discuss issues of mutual concern were not generally afforded the facility of a formal case conference, and issues which may have required consideration may have been missed because of other pressing operational demands.

There were clearly inadequacies in that system, although there is no clear evidence that the murder investigation was significantly effected because of it. Nor is it clear that the inadequacies were unique to Northern Ireland. It is submitted that if the Inquiry is concerned to comment upon the systems which were in place in 1997 it must be careful not to judge them using a 2009 microscope.

### **THE EIGHTH ISSUE: THE INTERPLAY BETWEEN THE MURDER INVESTIGATION AND THE NEGLECT INVESTIGATION**

- 29 The materials specific to this are as follows:
- 29.1 6/5/97 A complaint is sent by Rosemary Nelson to Complaints and Discipline, Gough, Armagh. The complaint alleges that police officers witnessed the assault on Robert Hamill but did not intervene as promptly as possible. The complaint was received by Complaints and Discipline on 7 May 1997 (at the latest) and received by headquarters on 9 May 1997. There is some reason to believe that the Chief Constable had referred the subject of this complaint to the ICPC of his own volition before receiving the complaint 15272 and 44407
  - 29.2 9/5/97 A copy of the letter sent from Rosemary Nelson to C&D (see 6 May 1997) is faxed to the ICPC for the attention of Mr Mullan. There followed a document referring the complaint formally to the ICPC 15273
  - 29.3 9/5/97 DCS Maynard McBurney is appointed SIO for complaint. His assistants are Superintendent Robert Anderson and CI Richard Bradley 8089
  - 29.4 11.00 Policy file decision three is made to appoint the ICPC to supervise the complaint as per ACC Hall's direction 913 at 916
  - 29.5 23.50 Policy decision five is made to obtain phone records of Elizabeth Hanvey and Robert Atkinson, to establish the authenticity of intelligence 913 and 17175
  - 29.6 10/5/97 10.00 Policy file decision eight is made that DCS Maynard McBurney is to contact the ICPC (Independent Commission for Police Complaints) to brief ██████████ in relation to the arrests and interviews. The reason given is to keep ICPC apprised of developments and to give them the opportunity to be present at interviews if they so wish. By 11.30, no contact has been possible and a meeting is to be arranged with ██████████ 913 at 921
  - 29.7 15.00 Policy file decision nine is made. Constable Alan Neill is to attend the confrontation identification of Marc Hobson. It is recorded that no other officers are requested to attend as it was necessary to interview them in

relation to their ability to identify suspects. Due to the ICPC not being available, the interviews were not carried out 913 at 922

- 29.8 12/5/97 Greg Mullan meets ██████████, DCS Maynard McBurney and DCI **P39** at Portdown police station. He makes a file note of the meeting. The notes deals with the clarification of who was the investigating officer dealing with the complaint of alleged inactivity 27269
- 29.9 12/5/97 A meeting is held with Mr Roy Junkin (Deputy Director ODPP), DCS Maynard McBurney and Superintendent ██████████ at which they discussed the incident, the cause of death and the allegation of inactivity at the scene. There is no mention made of the allegation by Tracey Clarke that Res Con Robert Atkinson had assisted an offender 31613
- 29.10 A meeting with the ICPC takes place, at which ██████████, Superintendent ██████████, DCS Maynard McBurney and DCI **P39** are present. DCS Maynard McBurney briefs the ICPC of the incident and investigation so far. ██████████ outlines his role, which was supervising the complaint of inactivity at scene. It is recorded that DCS McBurney is to continue with the murder investigation and be in charge of the complaint investigation. The reasons are cited that all strands of the incident are inextricably linked. At this stage of the investigation it is necessary to examine all strands of the incident 913 at 926. (NB ICPC note by Greg Mullan 14823)
- 29.11 13/5/97 Form 17/3 is served on Res Con Robert Atkinson in relation to the complaint by Rosemary Nelson. He records no comment at this stage 61214
- 29.12 14/5/97 Form 17/3 is served on Res Con Denise Cornett 61313
- 29.13 14/5/97 Policy decision 15 is made to discuss with ICPC reconstruction of Land Rover 928
- 29.14 17/5/97 Policy file decision 21 is made to continue close liaison with witness A (Tracey Clarke) because of her vulnerability 913 at 934
- 29.15 19/5/97 Res Con **P40** is cautioned and served with Form 17/3 61058
- 29.16 19/5/97 Policy decision 22 sets out the strategy for gathering evidence for the purpose of the complaint 935 at 936
- 29.17 19/5/97 At about 19.00 a meeting is held at Portadown Police Station with the ICPC at which DCS Maynard McBurney, ██████████, Greg Mullan, Superintendent Robert Anderson, DCI **P39** and DI Michael Irwin are present to agree the strategy for handling of the complaint. ██████████ outlines his role was primarily to investigate complaint and that persons interviewed should be made aware that the investigation was in relation to the complaint about the police, not the murder investigation and the allegation made by witness A. He states that the handling of the telephone calls was already in hand 935 at 936-938. In Greg Mullan's minutes of the meeting it is recorded that DCS Maynard McBurney was dealing with the issue of Res Con Robert Atkinson

allegedly phoning Mr Hanvey and that telephone records are in the process of being seized 14803

- 29.18 22/5/97 DCS Maynard McBurney writes to Rosemary Nelson requesting the attendance of Diane Hamill at Portadown police station for interview 9854
- 29.19 3/6/97 The Secretary of State for Northern Ireland wrote to Mrs Mary Hamill in relation to the complaint. She assured Mary Hamill that the ICPC was supervising the complaint and the investigation was being taken seriously 15423
- 29.20 4/6/97 Rosemary Nelson wrote to DCS Maynard McBurney advising that Diane Hamill would not be attending the next day for interview 15243
- 29.21 4/7/97 Superintendent **P33** sends a letter to British Irish Rights Watch (“BIRW”) in response to their letter of 19 June 1997. The letter explains that the appointment of DCS McBurney to supervise the investigation of this complaint was because he was a CID officer of long-standing and great experience. His appointment was approved by the ICPC and, contrary to any impression which may have been created, DCS McBurney was not based at Portadown and neither were Superintendent Robert Anderson or Chief Inspector Richard Bradley. The letter recorded that Portadown was chosen as a logistical centre for the enquiry, for a number of reasons, not least of which was the fact that the incident took place in Portadown. The letter continued that the investigation encompassed the criminal and disciplinary aspects of the complaint and also the broader aspects of the circumstances of the disturbance which resulted in the death of Robert Hamill. Six persons had been charged with the murder, and a further two persons were to be the subject of a report to the ODPP. Superintendent **P33** confirms that “no police officer attached to Portadown sub-division will be involved in determining the nature, scope or direction of this ICPC supervised investigation”. “Regarding the matter of suspension, this aspect is continually kept under review. Where necessary or appropriate, arrangements will be made, at any stage of the investigation process, to suspend officers whose conduct or behaviour warrants such a course of action. In your letter you allude to sectarian abuse which regrettably the Hamill family have experienced since Robert’s murder. The RUC is aware of one such instance having been reported to police at Portadown, however no person has as yet been made amenable” 63622
- 29.22 9/9/97 20.34 Res Con Robert Atkinson attends voluntarily and is interviewed by DI Michael Irwin and DCS McBurney in relation to criminal neglect of duty, assisting offenders and withholding information about an arrestable offence 9476
- 29.23 9/10/97 Res Con Robert Atkinson is reinterviewed by DI Irwin and DCS McBurney under caution in relation to the complaint of neglect of duty and allegations regarding Allister Hanvey. There was no ICPC involvement in this interview, unlike September Interview 9541

- 29.24 9/12/97 Raymond Kitson ODPP writes to the Director in relation to the letter from the Secretary of State. Raymond Kitson notes that the police investigation file was received on 7 August 1997 by the ODPP. The file reported eight persons, six of whom had been charged with murder, the other two were not regarded as relevant as there was insufficient evidence to charge them with murder 18335
- 29.25 15/12/97 A report by DI Michael Irwin is sent to DS [REDACTED] of the Crime Admin Unit which indicates that a ODPP file was being submitted relating to an allegation of a link between one of the accused and a police officer 16499
- 29.26 18/12/97 A memorandum is sent from ACC White to the staff officer to the Chief Constable which noted the sick leave of the Land Rover officers: Con Alan Neill was on sick leave from 10 June 1997 to 11 December 1997. Res Con **P40** was on sick leave from 13 May 1997 to 22 October 1997. Res Con Denise Cornett was on sick leave from 29 May 1997 and continuing. Res Con Robert Atkinson was on sick leave from 10 September 1997 and continuing. All cases were apparently related to the incident of 27 April 1997. It is noted that DCS McBurney's investigation was almost concluded and he was indicating that the officers did their very best 15385
- 29.27 22/12/97 DCS McBurney reports on the neglect and crime. He recommends that no charges be brought against the Land Rover crew. He notes the policy decisions of 19 May 1997 in relation to the interplay. He regards it as extremely important that no response was received from [REDACTED] to the letter requesting assistance. He indicates that it is imperative that the murder investigation file be read in conjunction with his report on Diane Hamill's complaint making express reference to the necessary cross referral with the murder investigation regarding the association between Allister Hanvey and Res Con Robert Atkinson. In his report, DCS Maynard McBurney highlights Res Con Paul Warnock's statement putting Allister Hanvey in a baseball jacket with greyish sleeves. The report deals with the search of Allister Hanvey's home and the denial by Allister Hanvey of wearing clothing of the type described by Jonathan Wright (NB It ignores Res Con Warnock's statement and the failure to investigate [REDACTED], Jim Murray and Paranoid Clothing) He notes the res gestae "you sat there and watched that happen," but did not analyze the reason for it. DCS McBurney contends that every effort was made to prove or disprove the contention of the contact between Res Con Robert Atkinson and Allister Hanvey. The report notes that Res Con Denise Cornett spoke to Stacey Bridgett and Dean Forbes with a view to admonishing them and that the police believed the situation to be normal. DCS Maynard McBurney uses the "fact" that Stacey Bridgett and Dean Forbes attacked Robert Hamill after speaking to the police as a reason to conclude that the attack had not occurred prior to their discussion with the police. DCS Maynard McBurney adopts uncritically Thomas Hanvey's alibi for Allister Hanvey that he was staying at Thomas Hanvey's home from about 03.30 onwards. The report fails to mention that Andrea McKee had been the source of information about Tracey Clarke's evidence, had sat in on her interview and had then given a contradictory alibi. He says in his (DCS



McBurney's) report that the interview of Res Con Robert Atkinson was terminated in order for Res Con Robert Atkinson to produce his telephone records. They were produced on 9 October 1997. DCS Maynard McBurney said that it was the October 1997 interview with Res Con Robert Atkinson, which revealed contact between the Atkinson and Hanvey homes 9028

- 29.28 22/12/97 [REDACTED], police division, makes a note that the Secretary of State had asked the Chief Constable and the Attorney General for their responses to the Hamill family's concerns 39324
- 29.29 12/1/98 ICPC comments adversely on the actions of Con Alan Neill and Res Con **P40**. The ICPC endorses the recommendations of DCS McBurney but comments that depending on the decision of the ODPP and in respect of Con Neill only they would be considering whether to recommend formal discipline 14799
- 29.30 22/1/98 A report is sent from Greg Mullan to [REDACTED] which recommended that the ICPC should approve DCS McBurney's report. Greg Mullan says that he was satisfied that the four officers in the Land Rover had been questioned in depth and all relevant lines of inquiry had been exhausted 14757 (NB See also the RUC recommendation of no prosecution dated 12 February 1998 30266)
- 29.31 6/3/98 Res Con Denise Cornett is interviewed by Chief Inspector Richard Bradley, in a discipline only interview 61315
- 29.32 22/1/99 A further interim direction from the ODPP is made in the allegation of criminal conduct made by Rosemary Nelson. The direction states that should any evidence which is material to this complaint arise at the trial, consideration will be given to it at that stage. To that end the ODPP expresses that he would be grateful if DCS Maynard McBurney would forward a final report at the conclusion of the trial 63507
- 29.33 22/2/99 Res Con Robert Atkinson gives evidence at the Marc Hobson trial. He refers to a history of difficulties in the centre of town, at week ends 8333. His cross-examination is at 8347.
- 29.34 1/6/99 DCS Maynard McBurney reports, in response to the interim direction from the ODPP to consider the comments of McCollum LJ in the Marc Hobson trial, that no further lines of investigation are required 19370
- 29.35 1/7/99 Further advice is received from Gordon Kerr QC in relation to the allegations against the police. Advice 1 – p19334 (undated) The advice states that so far as the complaint against Res Con Atkinson alone is concerned, it arose from the statement of witness A and that her refusal to give evidence would be likely to extend to a prosecution of Atkinson. Gordon Kerr thought it remarkable that the McKees could recall the telephone calls, but whatever the truth of the calls, they did not themselves prove anything. Advice 2 – p19343 (undated) The advice deals with the statements of Colin Hull and Vincent McNeice received from Rosemary Nelson and concludes that the statements conflict with other evidence. Advice 3 – p19345 (20 June 1999) The advice

deals with the evidence given at the trial, which simply highlights the confusion in the evidence. Advice 4 – p19347 (1 July 1999) Gordon Kerr advises that there may well be legitimate criticism about the police reaction on the evening in question but he did not consider the standard required for prosecution to have been reached on the evidence.

- 29.36 2/8/99 Greg Mullan produces a draft report for the ICPC, which criticizes DCS Maynard McBurney's investigation and found that it was regrettable that Res Con Denise Cornett and Res Con **P40** had not been not called at the Marc Hobson trial and that both should have done more at the scene. He said that Con Alan Neill, as the senior officer, should have taken steps on hearing Thomas Mallon's warning 14747
- 29.37 29/8/99 ODPP issues a direction stating that prior to a final decision being taken the written advices of Senior Counsel were obtained and considered. It is not considered that the evidence is sufficient to afford a reasonable prospect of convicting any police officer reported on the file of any offence. The ODPP therefore directs no prosecution 8999
- 29.38 11/11/99 A letter is sent from Police Complaints and Discipline to CID South Region pointing out that the C&D Department is required to afford confidentiality to its communications. The letter records that now the criminal aspect of DCS McBurney's complaint investigation had been completed, Superintendent [REDACTED] and CI Richard Bradley were to finalise the discipline aspects under ICPC supervision. DI Irwin's requests to identify anything in the C&D files capable of advancing the murder investigation may be best addressed by meeting those officers 15297
- 29.39 1/12/99 Res Con **P40** is interviewed by CI Richard Bradley in relation to the C&D aspects of the Nelson complaint. Res Con **P40** tenders his prepared statement 61099
- 29.40 20/12/99 Con Alan Neill is interviewed by CI Richard Bradley in relation to the C&D aspects of the Nelson complaint 61147 – 61179 and 61180 – 61202
- 29.41 7/2/00 Res Con Robert Atkinson is interviewed by CI Richard Bradley in relation to the C&D investigation 61216
- 29.42 15/3/00 Complaints and Discipline RUC provides an update to the ICPC concerning the complaint and indicated that Rosemary Nelson had provided the statements of Colin Hull and Vincent McNeice on 19 October 1998. The update concludes that the claims by Colin Hull and Dermot Vincent McNeice that police ignored a plea for help and remained in the Land Rover until the arrival of the ambulance were simply not true on the weight of the overall evidence 60599 at 60558
- 29.43 20/3/00 A letter is sent from the ACC C&D notifying ICPC of the DCS Maynard McBurney report of 1 June 1999 and the ODPP direction of no prosecution of 29 September 1999. It notes that no disciplinary charges should

be brought because the lack of action by police was fully examined during the Marc Hobson trial and in the DCS McBurney report 10841

- 29.44 30/3/00 A certificate of satisfaction with the investigation into the complaint is issued 14988 and 14987
- 29.45 30/3/00 The ICPC notifies Diane Hamill that a certificate has been issued and notes that whilst the ICPC is satisfied that the investigation has been properly carried out, its role in the matter does not end there. There is a second stage at which the Independent Commission for Police Complaints will examine the details of the case again and decide whether or not to accept the Assistant Chief Constable's findings on the disciplinary aspects. The ICPC states that Diane Hamill will be advised of this decision in due course 14889
- 29.46 18/10/00 DI Irwin responds to the Committee on the Administration of Justice (CAJ) document recommending pursuit of the issue in relation to the anonymous calls to Rosemary Nelson and Father Dooley 2793
- 29.47 6/11/00 DCI **K** collects documents in relation to the anonymous call to Father Dooley. He produces a progress report in relation to the re-investigation of Res Con Robert Atkinson 22636
- 29.48 28/11/00 Meeting is arranged between Ray Kitson, ODPP, DCI **K** and Chris Mahaffey, PONI, to discuss the investigation 2717
- 29.49 28/2/01 A meeting with is held with PONI, DCI **K** and DCI **P39**, at the home of DCI **P39**. p14622 DCI **P39** refers to a meeting on 9 May 1997 which set ground rules for 3 separate investigations (1) murder (2) inactivity (3) telephones. DCI **P39** thought that Res Con Robert Atkinson probably was interviewed by officers from another area. DCI **P39** had no involvement in the matter of the alibi of Andrea McKee and Michael McKee. Mr [REDACTED] had said there should be three separate investigations and her priority was the murder, his inactivity was a mixture of complaints and discipline and DCS McBurney and the other was the telephones 14622
- 29.50 27/3/01 DCS McBurney is interviewed by PONI. He is interviewed as a witness because he has retired. He explains that between 27 April 1997 and 8 May 1997, DCI **P39** was responsible for the investigation and his role was simply to ensure that she had sufficient resources. On 8 May 1997, DCS McBurney accepted overall responsibility for the murder and the police misconduct issues. He was briefed on 8 May 1997 as to the meeting with Andrea McKee both as to the involvement in the murder and the allegations against Res Con Robert Atkinson. DCS McBurney says that he discussed the handling of telephone enquiries, that they were to be done surreptitiously and that he and DI Irwin, rather than DCI **P39**, made the decision in relation to the arrests. As for the interview of Res Con Atkinson on 9 September 1997, DCS Maynard McBurney says this was concerned with his membership of the Land Rover crew but he was asked to identify the relevant telephone billing for his home address. He accepted that no questions were put to Res Con Robert Atkinson about the call because DCS Maynard McBurney wanted to provoke

a response. DCS McBurney says he hoped that, following the statement from Andrea McKee, an opportunity to exhibit the statement would materialize either through the trial of Marc Hobson or at an inquest but this did not happen. DCS McBurney denies that he had instructed Res Con McCaw not to make a note of the information first provided by Andrea McKee in May 97 22811

- 29.51 11/5/01 Supt Karen Kennedy takes over from Supt [REDACTED] on the internal investigation into inactivity of police at scene 10120 at 10124
- 29.52 15/5/01 A meeting is held with Superintendent Karen Kennedy, DCS Colville Stewart, head of C&D, Chris Mahaffey of PONI, and CI Desmond Jackson. It is agreed that a team would be appointed to work full-time. It is agreed that a further form no 17/3 will need to be served on Res Con Robert Atkinson after the criminal investigation was completed 16614
- 29.53 21/1/02 A memo is sent from Chris Mahaffey, PONI, to the Director of Legal Services relating to the complaint against Con Alan Neill setting out the history of the investigations into the complaint and the decisions in relation to whether Con Neill should be disciplined. It is indicated that an independent opinion should be sought by PONI before endorsing the PSNI decision not to discipline Con Neill 14449
- 29.54 22/4/02 PONI withdraws the direction that Constable Neill be charged; proceedings are withdrawn formally 14425
- 29.55 11/03 [Exact date in November not known] PONI report is issued on the misconduct investigation into DCS McBurney, DI Irwin, DC Honeyford and DC McAteer. DCS McBurney's failure to record any policy decisions is worthy of serious criticism. There is no evidence of impropriety on the part of DI Irwin or DC Honeyford in relation to their dealings with Andrea McKee 26884 at 26925

#### **Submissions by Conor Downey Solicitors (Colin Hull)**

It is submitted that the statement provided to Rosemary Nelson by Colin Hull on 15<sup>th</sup> May 1997 (00542) was not deliberately false nor made with the intention of misleading. Colin Hull frankly accepted in oral evidence that he had consumed 8-9 pints of beer (p6.17); that there was chaos and mayhem at the scene (p47) and also conceded that other witnesses' accounts, at the scene before him, may be more accurate (p46-47).

#### **Submissions by John P Hagan Solicitors (Robert and Eleanor Atkinson)**

The Panel is referred to the voluntary attendance of Reserve Constable Atkinson at all interviews he was requested to attend. He cooperated fully and only indicated that he would not answer questions when those questions related specifically to issues arising out of the contentious, intrusive surveillance material and on the advice of his solicitor. Reserve Constable Atkinson agreed that the statements he made in the criminal investigation and

the telephone bill could be used in the disciplinary investigation (see paragraph 30.11)

### **Submissions by the Police Service of Northern Ireland**

See section 31 below.

30 Witnesses said this:

#### **Richard Bradley**

##### *Statement*

- 30.1 Para 9: He was appointed assisting investigative officer to the neglect complaint in relation to its disciplinary aspect. With Supt Anderson he was appointed to investigate the disciplinary aspect of the complaint matter
- 30.2 Para 10: The criminal investigation had primacy.
- 30.3 Para 11: The disciplinary matter would not be reported upon until a decision was made about any criminal proceedings
- 30.4 Para 12 and 14: He had no involvement in the criminal side of complaint and he regarded the tip-off allegation as a criminal matter with which he was not involved.
- 30.5 Para 15 and 16: He was not aware of any full blown investigation into the criminal allegation against Res Con Atkinson and did not learn of it until after he retires in 2001
- 30.6 Para 17 and 21: He assumed the ICPC were supervising the criminal matter
- 30.7 Para 24: He commenced his disciplinary investigation after receiving the ODPP's decision of no prosecution against the 4 officers and he interviewed Res Con Atkinson
- 30.8 Para 26: He prepared the report on disciplinary proceedings recommending no proceedings (60558)

##### *Oral Evidence*

- 30.9 Criminal investigation had primacy over disciplinary investigation. "ODPP would receive criminal file and make decision about allegations against officers of any criminal nature." If there was a criminal and disciplinary matters in same complaint "would serve a 17(3) notice on the officer concerned. When officer was interviewed, would caution him and advise him what was alleged. [Criminal and discipline allegations] would be put to him as they were one sequence of events" (p55)

- 30.10 Would be two or three separate files in relation to an allegation when putting in the criminal investigation. In the great majority of cases, one officer would investigate both sides of the complaint and a 17(3) would be served at the earliest possible opportunity (p56)
- 30.11 CID investigated Res Con Atkinson from a criminal point of view. He then took up and interviewed him about the discipline aspect and put to him the same facts about the tip-off. Res Con Atkinson agreed that the statements he made in the criminal investigation and the phone bill could be used in the discipline investigation. "That is all I can say" (p100)

Eric Williamson

*Oral Evidence*

- 30.12 DC Williamson does not believe he was aware of the neglect complaint when he joined the investigation. Statement taking was unaffected by the neglect question. He does not believe Mr Johnson knew about the complaint against the police (p60)

Archibald Hays

*Statement*

- 30.13 Para 2: Was ACC for C&D (G Dept)
- 30.14 Para 9: He reported to the DCC, who was Blair Wallace
- 30.15 Para 29: Sup Anderson was assistant investigating officer and he would make sure that I's were dotted and T's crossed in terms of the formality of the investigation procedure and ensure that the times limits were observed with regard to serving notices
- 30.16 Para 34: The tip-off allegation would be a matter for CID and the supervision of it was tied up with ICPC

*Oral Evidence*

- 30.17 Had no knowledge of the complaint. "Did not have hands-on" (p24)
- 30.18 Believes allegation against Res Con Atkinson would justify reference under Article 8 (p7). He would have expected ICPC to have raised concerns with the Chief Constable but he says the whole matter was under investigation within the original neglect allegation. He was not directly involved. As far as he knows, it was passed on to CID and was put in the investigation process. ICPC were informed, they took it on board and appointed a supervisor. C&D appointed an officer to make sure all residual discipline matters were dealt with as the investigation moved along (p8). He would have expected it all to be included under ICPC supervision (p9)

- 30.19 If an allegation cropped up in an investigation it would go through SIO to the ACC and then on to the Chief Constable (p10). For the Chief Constable to refer an allegation to ICPC he would notify G Department, who would tell the ICPC so that it is noted in the system. The Chief Constable could just call ICPC informally if he wanted (p11). If someone outside G Department contacted ICPC the terms of reference would be outside G Department's control (p13)
- 30.20 63695 is a document used by G Department to notify an officer that he had been appointed as an investigating officer into a particular complaint (p14)
- 30.21 44407 shows that ACC Hays believed the Atkinson allegation had been referred to ICPC under Article 8(1) Police (NI) Order. That was made prior to formal complaint from the Hamill family on 7/5/97 (p15). He wanted to ensure the records process established in G Department was followed (p16). It was basically asking Command Secretariat to notify them if they act on the Chief Constable's behalf (p17). G Department should have been involved from the first time the complaint was made to comply with the process they had set down (p17). In this case, with CID investigating and ICPC involved, C&D was attached to ensure anything disciplinary that arose was dealt with (p18). ICPC would be supervising to ensure the investigation was performed properly (p49)
- 30.22 If something is referred to ICPC without a complaint, they could decide whether to accept it or not (p19). If the Chief Constable wants an incident to be investigated, the only body within the force that can do it is G Department (p20). G Department only become involved after ODPP have completed their involvement (p21). C&D would be standing back and making sure that the process was followed in relation to any residual discipline once the criminal investigation was complete (p30). That would include serving 17(3)s. It was up to the investigating officer of C&D to consider serving a 17(3) (p47)
- 30.23 Supt Anderson was the liaison between DCS McBurney and G Department. Supt Anderson was C&D's investigating officer for the complaint (p23). Supt Anderson would not be at the neglect interviews as it was still a criminal investigation. The CID investigation took place over C&D (p25). Even if a complaint was made and then a later, more serious, complaint was made C&D would not investigate it as it would be under the control of CID (p29). Normal practice in G Department is for Supt New Complaints to appoint the investigating officer for the incoming complaint (p40)
- 30.24 Per para 6 81805: his responsibilities include the overview and efficient running of the department and liaison with ODPP (p32). It was the responsibility of the department, not him directly (p33)
- 30.25 Once an investigation supervised within G Department has been completed, if there were grounds to believe a criminal offence had been committed, a file would be referred by the police to ODPP (p33). The SIO had ultimate responsibility for submitting the file to ODPP (p34). If ODPP was taken not to prosecute, the matter would be returned to ICPC, if it supervised, or C&D if the ICPC were not supervising the matter, or to CID. C&D then consider

disciplinary charges (p35). The same would take place after criminal proceedings if there was a prosecution (p36)

30.26 ICPC had the authority to request a new investigating officer appointed by G Department if they were not satisfied with the existing one (p45)

30.27 C&D would rely on a criminal investigation when it comes to the facts about of criminal aspect. It only has to rely on any matters that are not in themselves criminal (p50)

### Greg Mullan

#### *Statement*

30.28 Para 13: There was confusion about whether DCS McBurney or Supt Anderson had been appointed as SIO

30.29 Para 14: Although Supt Anderson was advising DCSC McBurney, the ICPC would normally keep itself informed by dealing directly with DCS McBurney

30.30 Para 28: On 19/5/97 there was discussion that telephone billings were being sought (NB they arrived on 16/5. DSC McBurney was lying)

30.31 Para 40: ICPC interviewed Res Con Atkinson on 9/9/97 and that interview covered the tip-off allegation. Mr Mullan was surprised about that. He prepared the questions for the interview and they did not cover any such matter

#### *Oral Evidence*

30.32 It was not surprising one SIO was in charge of the neglect investigation and the murder investigation as “we really did not think about it” (p5). Per 27270 DCS McBurney produced a file in the meeting on 12 May about the Res Con Atkinson allegation. The Tracey Clarke statement was not in the file if he does not have file note summarising it. ICPC were supervising the neglect complaint. It was a surprise it was raised but he noted it. There was no follow-up. It was just something noted (p7). It was up to DCS McBurney if one of police in the Land Rover saw someone committing the murder (p8). He did not see that having as having any relevance to the ICPC’s investigation (p9). The allegation was being investigated, just not supervised by ICPC (p11)

30.33 Knew phone records had been sought in May 97. Did not bother to enquire what the result was. He had no knowledge of DI Irwin taking contradictory statements from Andrea McKee (p15)

30.34 Recollection is the investigating officer of the complaint would not come from the same subdivision as the officers complained about (p31). He did not know who nominated DCS McBurney to them to approve (p33)



Karen Kennedy

*Oral Evidence*

30.35 Her investigation only covered 27 April to 6 May. The Atkinson investigation was a completely separate investigation from hers (p28). An allegation of an officer having committed an offence would be criminally investigated by CID in the same way as any other criminal investigation. If an SIO comes across such an allegation they may take it higher or ask for another SIO to be appointed (p29). A criminal investigation into an officer would take precedence over a disciplinary investigation. C&D would be informed at a very early stage because Form 17(3) would be served but C&D would have no further role until the criminal proceedings were concluded. She would expect them to be informed as the investigation continued (p31). It would be a judgement call to separate the initial criminal investigation from the criminal investigation into the officer (p33). Her only involvement with Res Con Atkinson was serving a Form 17(3) on him in conjunction with the investigating officer in terms of the wording and when it could be served (p45). The letter saying that Res Con Atkinson would be prosecuted was sent to him in December 2002 in her capacity as head of C2 branch, not her capacity as investigating officer of the C&D investigation (p45)

Raymond White

*Statement*

30.36 Pg 3 para 4: No-one was in a position to second guess an SIO. They were given freedom to conduct investigations and be accountable for their decisions. The crime file that resulted would be the documentation on which SIO's professionalism and standard of work would be based. No-one would review his day to day working standard

*Oral Evidence*

30.37 Page 4 81256 "There were no formal briefings on the three investigations as none of the investigations were coming through my department in terms of me supervising DCS McBurney. I simply received the crime file once DCS McBurney had deemed it completed and contained all the evidence that he required to sustain a prosecution". ACC White would not personally see the file. It would come to his department. He had five or six chief supts and supts whose job was to read the files to ensure the content was correct (p55). It was quality control to provide a second opinion as to the content of the file that there was sufficient evidence to support the recommendations etc. It would take as long as it takes as they were the interface between ODPP and the police (p56). Often there would be phone calls between the department and DCS McBurney (p57). He would not have expected his officers to catch that DI Irwin took two contradictory statements from a witness and that the Hanvey search was bad if it was not discoverable from reading file (p60)

- 30.38 Final para 81256 “Was not aware that allegations were made against Res Con Atkinson from the outset and were supported by phone billing and I was not briefed in on details of investigation. I did not have specific meetings with DCS McBurney” Per 74231 “Attended meetings at [Regional HQ]. [Chief Constable in Chair] also briefed CC, DCC and ACC ‘C’ re allegation against Atkinson” (p58). He had no involvement with the Atkinson allegation apart from the meeting with ACC Hall except he would have been aware of the allegation as he probably read the synopsis accompanying the phone billing request (p59)
- 30.39 In fourth para 81255 he was trying to reflect that this was an evolving period for the police (p63)
- 30.40 There were no checks on an SIO to make sure they have done nothing wrong. There were only the checks that an independent reading of the file would show. If there were any nefarious motives, there would not be a great mechanism for picking that up. There is no crime investigation system bar the review process now in place (p65)
- 30.41 ACC Crime was the interface between the police and the criminal process. The investigation files to ODPP were quality controlled (p67)
- 30.42 If criminal charges are brought for murder and an officer assisting murder, it is for the determination of ODPP whether they wished to run with it as a separate matter. There would be an element of choice to incorporate the tip-off allegation into the murder investigation (p70). If they were deemed to be separate, the ODPP would consider the 2 files together (p71)
- 30.43 Is an omission that a call was made to the Hanvey house from the Atkinson house was not put to Res Con Atkinson in interview of 9/9/97 (p74). The evidence may have been confidential and so have caveats attached as to whether DCS McBurney could have showed it at interview. He can see what DCS McBurney was approaching: to establish whether there was contact between the Atkinson and the Hanveys on a social basis. This would then lead to the point whether there was direct contact over the murder, then whether there was contact by telephone. It could be DCS McBurney was waiting to see what Res Con Atkinson did about producing the phone record before putting it to him. In addition, the record shows a phone call was made, not who made the call (p79). He does not think it would have advanced the issue at that point for DCS McBurney to have shown Res Con Atkinson the record (p81)
- 30.44 His office would have the search record to decide if search was conducted properly. Searchers tend to leave off areas they have searched if they do not find anything (p120). The report would also have all the relevant statements (p121). Those reading the statements and the file came from “an investigative background, having been time-served, as it were, SIOs themselves” (p122)
- 30.45 DSC McBurney was a competent, professional officer. He lived for his work as a crime investigator. He demanded a high standard of integrity from those he dealt with (p123). If anything could be said about DSC McBurney it would

be “without fear or favour, he did his job and did it to a very high standard”  
(p126)

### Blair Wallace

#### *Statement*

30.46 Para 20: He would have thought that as the ICPC was supervising the neglect complaint, the referral of the tip-off allegation would have been automatic

#### *Oral Evidence*

30.47 ACC C&D would direct an investigation. He would appoint an investigating officer and one of his first tasks was to issue a 17(3). The officer would be then given an outline of the allegations against him (p22)

30.48 Mr Wallace would view the original complaint and the Atkinson allegation to be part of one investigation. DCS McBurney had been appointed by C&D as SIO for the original complaint (p24)

### Robert MacAuley

#### *Statement*

30.49 Was Superintendent New Complaints

30.50 Para 12: Supt Reel appointed DCS McBurney as investigating officer of the neglect complaint

30.51 Para 16: Appointment form explains the investigating officer procedures to be adopted, in particular 17(3)

30.52 Para 17: Article 8 referrals would not be his responsibility. There was an Article 8 referral prior to the receipt of the complaint

30.53 Para 20: He would have expected a criminal allegation against an officer arising from a public complaint to form part of the main complaint

### Maynard McBurney

#### *Statement*

30.54 Para 12: Thinks policy entry 3 (913) names ACC Hall because he directed the supervision by ICPC. As far as he knows, the direction came directly from the Chief Constable’s office through the Chief Constable’s Staff Officer who I believe was CS Sillery. He was in charge of Command Secretariat.

30.55 Para 14: Did not think it was a good idea to be running the complaint as he lived locally

Michael Irwin

*Statement*

30.56 81472: Had personal concerns regarding his involvement in the complaint investigation as he had informed Diane Hamill that he was not, and would not, be involved in the complaint. DCS McBurney's view was that all strands of the complaint were inextricably linked to the murder.

**P39**

*Statement*

30.57 Para 29: There were two investigations going on and DCS McBurney decided with Mr Mahaffey how they would be approached: It was that the murder investigation would take priority. She was conscious that three investigations would overlap and that the police would get evidence from one that related to the others. They were not, however, actually investigating Res Con Atkinson at the time. We needed to keep police officers on board as well as civilian witnesses. DCI **P39** did not consider including Res Con Atkinson in the murder investigation as they believed it would be better to deal with them separately.

*Oral Evidence*

30.58 DCS McBurney made a decision that there would be a separate investigation. DCI **P39** thought investigators for that would be from outside J Division (p40). DCS McBurney was regional so he was not from J Division, so she was not surprised to learn that DCS McBurney remained the officer in charge (p124). DI Irwin was from J Division (p178). Whether Res Con Atkinson should be suspended or arrested would be discussed by DCS McBurney when he was talking to more senior officers. She would not be privy to those discussions (p41). DCS McBurney was a very experienced officer who had a very strong personality (p42). If DCS McBurney gave an order, you did it (p178). Para 29 81574 "We were not actually investigating Res Con Atkinson at that time. We needed to keep officers on board. We did not consider including Res Con Atkinson as part of murder investigation; we believed it would be better to deal with them separately" She stated orally that she was not engaged in that decision (p43). It surprised her that no other team investigated Res Con Atkinson and nothing else was done until September 1997 (p44). They were conscious that the three investigations would overlap (p45). Per 926 "Meeting with ICPC. (12/5/97) Greg Mullan, DCS McBurney, Supt Anderson, DCI **P39**. DCS McBurney briefed ICPC. DCS McBurney to continue with murder investigation. DCS to be in charge of supervising complaint. All strands are inextricably linked." (p46). DCI P39 thinks there is

another policy book entry. At 936 “19/5/97. ██████ to be present at interviews and ensure persons are aware investigation about complaint about the police, not the murder or the allegation by Witness A”. DCI P39 states that is the allegation she is referring to (p47). According to 936 the ICPC was not involved in supervising the investigation into the Atkinson complaint. She considered the Atkinson complaint so serious that she ensured that there was an immediate call for billing records (p48). ICPC was in a supervisory capacity in the context of the complaint (p126). She did not remember if anything was said about the results of the investigation being fed into the murder investigation (p49). Phone records did not show the daily contact that Tracey Clarke mentioned in her statement (p49). DCI P39 was not party to considerations about whether the contact on the 27th was relevant to the murder investigation (p50)

### Colin Murray

#### *1st Report*

- 30.59 Para 13.11: Whilst it was in accordance with RUC policy to appoint DCS McBurney to be the SIO in both the neglect and murder investigations, Mr Murray believes a second SIO should have been appointed to the neglect investigation.
- 30.60 Para 25.16: DCS McBurney was appointed SIO for the neglect complaint, which in his view was wrong. In dealing with the complaint DCS McBurney was not able to remain focused on the murder investigation.
- 30.61 Para 25.17: Believes murder investigation was consumed by the complaint investigation.

### Submissions by British Irish Rights Watch and Committee on the Administration of Justice

We think that DCS Burney ought not to have taken charge of both the murder investigation and the complaint, for the reasons explained at section 8 above.

Given Tracey Clarke's vulnerability, we think it possible that DCS McBurney believed that, if he used her statement to pursue the tip-off allegation, Tracey Clarke's role would be exposed and she would not testify at the trial. On the other hand, as a loyal RUC officer, he may also have hoped to secure a conviction of Allister Hanvey without having to expose the fact that Reserve Constable Atkinson had allegedly colluded with him. DCS McBurney clearly believed Tracey Clarke's statement to be truthful, as he was using it to ground prosecutions for murder. That being the case, he ought to have considered whether it was in the public interest, or for that matter the RUC's interests, to allow an officer against whom an allegation of serious illegality had been made, to continue to serve. If such an allegation were to be made against a serving police officer today, we would expect that officer to be suspended from duty while the allegation was investigated. Instead, DCS McBurney let

him continue, reckless of how he might taint other police investigations in which he was involved if the allegation against him were found to be proven, either by further acts of collusion on his part, or by calling the integrity of those investigations into question.

Even if such considerations did not occur to DCS McBurney, one would have hoped that they would have occurred to C&D. Karen Kennedy's stance (30.35) and that of Archibald Hays (30.16, 30.17) can best be described as minimalist. However, it is doubtful whether the RUC as an organisation would have prioritised the exposure of alleged collusion by one of its officers, particularly at such a sensitive time, when the future of the RUC as it was then constituted was in question, over a high-profile murder investigation.

The ICPC was also characteristically supine. They merely noted the allegation against RC Atkinson, according to Greg Mullan (30.32)

There were aspects of the tip-off allegation that DCS McBurney could have pursued without jeopardising Tracey Clarke. As set out in paragraph 8 above, DCS McBurney was in possession of RC Atkinson's and Elizabeth Hanvey's telephone records by 16<sup>th</sup> May 1997 (strangely enough, DCS McBurney lied to the ICPC about this, telling them on 19<sup>th</sup> May that the telephone records were "being sought" - 30.30). He could have confronted RC Atkinson with them in May, without warning, and without risk to Tracey Clark. Instead, he waited until September and then put RC Atkinson on notice that he was interested in his telephone calls, thus destroying, rather than impeding, both the murder investigation and the complaint process.

There were also aspects of the murder investigation that DCS McBurney did not pursue. For example, a number of witnesses placed Allister Hanvey at a party at Tracey McAlpine's place, at which people were bragging about the attack on Robert Hamill and D, but Allister Hanvey denied having been there.

### **Submissions by Edwards & Co Solicitors (Serving and Retired Police Officers)**

We do not agree with Mr Murray here. There is no evidence to support these assertions or beliefs.

### **Submissions by Elliott-Trainor Partnership (Greg Mullan)**

For the avoidance of doubt, the Panel is referred to Para 47 of Mr Greg Mullan's statement wherein he asserts the ambit of the ICPC's role, specifically that this was an Article 7 complaint and at no time was any allegation against R/Const Atkinson referred to the ICPC by the Police as a formal complaint.

As referenced within the Statement of Satisfaction (page 15162) and Para 46 of Mr Mullan's statement, the ICPC limited its role to the original referral and did not therefore have any involvement or supervisory role in the investigation of the Hanvey/Atkinson allegation.

The Panel is referred to Paras 5 & 22 of Mr Mullan's statement wherein he details the terms of referral and the limitations on the powers of the ICPC to 'call in' or 'take over' an investigation.

### **Submissions by John P Hagan Solicitors (Robert and Eleanor Atkinson)**

The Panel is referred to the oral evidence of P39 at paragraph 30.58 "phone records did not show the daily contact that Tracey Clarke mentioned in her statement (pg. 49)

### **Submissions by the Police Service of Northern Ireland**

See section 31 below.

### **Comment**

- 31 A number of questions arise for determination. Firstly, was the neglect (and therefore tip-off) allegation held back so as to promote the possibility of Tracey Clarke giving evidence in the murder? Secondly, could and should the C&D officers have adopted a more interventionist stance? Thirdly, even if DCS McBurney's overall strategy was to give priority to the murder, should he have been taking some steps during 1997 to investigate the tip-off complaint, such as those taken in 2000 and 2001? Fourthly, if he should have, does his failure suggest that he or the RUC had no appetite to prosecute Res Con Atkinson? Finally, if so, did the conduct of the tip-off allegation impede the murder investigation?

### **Submissions by Edwards & Co Solicitors (Serving and Retired Police Officers)**

- Q 1. Were the neglect (and therefore tip-off) allegations held back so as to promote the possibility of Tracey Clarke giving evidence in the murder?

We submit that there is no evidence of the neglect allegation being kept back.

Witnesses were asked to attend for interview and failed to do so. Officers were served with 17/3s and interviewed. A reconstruction was arranged and a sound engineer was engaged. It is hard to see what more could have been done as regards the neglect allegation. Pursuing the neglect allegation would not have exposed Tracey Clarke

As regards the tip-off allegation, it may well be that DCS McBurney's priority was pursuing the murderers of Robert Hamill. The potential exposure at an early stage of Tracey Clarke, which would have been inevitable if the tip-off allegation either formed part of the murder enquiry, or was separately pursued at an early stage, would have had a disastrous effect on the murder inquiry. As Mr Murray states, it is difficult to see how the statement of Tracey Clarke could have been sanitised. We should not lose sight of the fact that this was a hearsay allegation, that was supported by the phone records to the extent that a call was made, but was of no evidential value in relation to the contents. Effectively, in those early months, unless either Hanvey or Atkinson admitted in interview the call and its contents, the investigation of the

tip- off allegation was doomed to failure.

The suggestion is that the alternative and more appropriate strategy would have been to arrest Hanvey and Atkinson in relation to the tip-off. This is a situation where we have the benefit of hindsight. We have all seen and heard the Hanveys and Atkinsons. We rhetorically pose the question whether these people (even in the face of phone records being put to them in interview) would have admitted their involvement?

This was never going to successfully break the tip-off allegation and the consequence of attempting to do so at that stage was to compromise the murder investigation.

Therefore if the tip-off allegation was held back, so as to promote the possibility of Tracey Clarke giving evidence, having regard to the above, this was a professional and balanced judgment.

It is abundantly clear from the evidence of DCI Irwin that DCS McBurney developed a strategy to deal with the tip-off allegation, and saw the intervention of Andrea McKee as a potential breakthrough in the long term. We will deal with this in more detail at a later stage.

Q2. Could C&D officers have adopted a more interventionist stance?

It is clear that criminal investigations had primacy over discipline matters and it was generally believed that the ICPC were supervising all criminal aspects of the neglect complaint, including the tip-off allegation. What else could C& D have done?

Q3. Should have McBurney taken more steps such as those taken in 2000/2001?

DCS McBurney had a strategy which foresaw the possibility of one of the conspirators breaking the case-rightly as it turns out. This may well have influenced his decision as to whether any further investigative actions were required, rightly or wrongly. We note moreover that the further evidence obtained in 2000/2002 was still insufficient to prosecute anyone for any offence, in the absence of Andrea McKee.

Q.4 Did DCS McBurney have no appetite to prosecute Atkinson?

Anybody who gave evidence concerning McBurney's appetite to prosecute Atkinson, attested to his determination to do so. These were people who knew this man, knew how his mind worked, knew his moral and ethical stance, and knew his professionalism and integrity. We will deal in greater detail with this at a later stage.

Mr Wood PONI at p29 stated that he was satisfied that K and DCS Stewart were also determined to get Atkinson.

Q5. Did the conduct of the tip-off allegation impede the murder investigation?



We submit that there is not any evidence to demonstrate this. In fact the opposite is probably the case in the protection of Tracey Clarke as a witness in the murder investigation.

### **Submissions by John P Hagan Solicitors (Robert and Eleanor Atkinson)**

The Panel is respectfully referred to the wealth of evidence referring to the appetite of DCS McBurney in investigating and law enforcing, for e.g. that of DC Honeyford, "He would be more for getting the job done and following enquiries, certainly a man who I believed and always believed, feels for each and every injured party, and he really does put his heart and soul into investigations... He always dedicated his life to the investigating of serious crime. " (Day 12, page 11, lines 4-11) Further throughout the Inquiry the evidence of the police officers is that, if it was established that the allegation made against Reserve Constable Atkinson was true, that their position is one of disgust. The thrust of the approach to Reserve Constable Atkinson showed great appetite to prosecute him as illustrated by matters such as the planting of intrusive surveillance equipment in his home and the timing and whereabouts of his arrest

### **Submissions by the Police Service of Northern Ireland**

Was the neglect and therefore the tip off allegation held back so as to promote the possibility of Tracey Clarke giving evidence in the murder?

This issue is dealt with indirectly as part of chapter 14 (The RUC Response to the Tip-Off Allegation), at section 4. The reasons for "holding back" on investigating the allegations of neglect and the tip-off appear to be various. It is clear that DCS McBurney's initial priority was the murder investigation: 14822.

After the six men were arrested and charged with murder there was a delay until 9 September 1997 when Mr. Atkinson was interviewed and asked to produce his telephone records. At chapter 14 (section 4) the reasons for this further delay are examined.

It is certainly feasible that one of the reasons for this delay was a desire to protect Tracey Clarke or to enhance the prospect of her giving evidence. In the absence of a policy book recording this strategy it is accepted that it is difficult to be dogmatic about this aspect.

Could and should the C&D officers have adopted a more interventionist stance?

This issue is again dealt with at Chapter 14 (section 8). It is accepted that the C&D officers ought to have taken a greater interest in the tip-off issue. There appears to have been confusion and uncertainty about how they should interface with an ongoing criminal investigation. Whether they should have

been intervening to the extent of challenging DCS McBurney's strategy and lines of inquiry is questionable, given the autonomy of his role.

They failed to serve a 17(3) on Res. Con. Atkinson which creates the false impression that the RUC were disinterested in what was alleged. Moreover, given their particular responsibilities it is surprising that they did not at least stumble upon the fact that the ICPC was not supervising the tip off allegation. The PSNI accept that a more interventionist approach may have identified and cured these omissions.

Even if DCS McBurney's overall strategy was to give priority to the murder should he have taken some steps during 1997 to investigate the tip-off complaint, such as those taken in 2000 and 2001?

It is submitted that the evidence of DI Irwin establishes that DCS McBurney believed that his best route to successfully bringing in the tip off allegation rested with breaking into the conspiracy which Res. Con. Atkinson had constructed around it. He realised that evidentially his main target had to be the McKees and that progress was unlikely while they remained a married couple. This is fully discussed at chapter 14 (sections 5 and 6).

It is agreed that there was certainly other investigative work which DCS McBurney and his team could have been getting on with in 1997 in order to undermine the conspiracy. For example there was a marked failure to have examined other ways to disprove the assertion that the McKees stayed with the Atkinsons on the 27 April 1997. There were a number of obvious steps which were later taken which helped to confirm that the alibi was a tissue of lies.

The PSNI accept that DCS McBurney and his team ought to have exploited all meaningful investigative opportunities as quickly as was reasonably possible. Any delay in taking such steps has the potential to prejudice the memory and the recollection of those witnesses who might be of assistance.

It may well be that DCS McBurney was so consumed by the view that the McKees would be the key to breaking the tip off complaint that he lost sight or ignored other useful avenues. This is perhaps understandable in that it seems unlikely that a case against Atkinson could ever have succeeded in the absence of evidence from one of his co-conspirators.

Fourthly, if he should have, does his failure suggest that he or the RUC had no appetite to prosecute Res. Con. Atkinson?

The evidence does not demonstrate any want of appetite on the part of the RUC to prosecute Res. Con. Atkinson. This matter is partly dealt with at Chapter 14 (section 11).

It should be added that from the outset DCS McBurney was frank and upfront about the nature of the allegation which had been made against a police officer. He informed the DPP and the ICPC about it at the earliest possible

stage. Clearly, his willingness to discuss this development must indicate that he did not want the allegation buried and forgotten about.

It is also clear that he had a strategy which he discussed with DI Irwin. This involved getting Atkinson to make a move and then attempting to attack the "alibi" which Atkinson's conspiracy created. That he had to engage in a patient, waiting game has led to allegations of foul play. However, for the reasons discussed at Chapter 14 (section 7) it is submitted that there is no warrant for alleging that McBurney or the RUC had any desire to save Atkinson from a prosecution.

DCS McBurney wasn't alive to defend his reputation before the Inquiry. Others have had to do that for him. The Inquiry will no doubt give consideration to the powerful testimonies which typically spoke of him as a man who brought high standards of professionalism and integrity to his role as a detective (see for example Mr. White's oral evidence at page 126).

Finally, if so, did the conduct of the tip-off complaint impede the murder investigation?

It is reasonable to analyse the tip-off allegation as a subset of the murder inquiry.

The fact that Atkinson saw fit to make a telephone call for the purpose of informing Hanvey to get rid of his clothes makes Hanvey a suspect even without the statements of Tracey Clarke and Timothy Jameson which spoke of what he did.

As a matter of logic Atkinson would not have made the telephone call if he was not at least concerned or suspicious that Hanvey had involved himself in the attack. There may even be the high probability that Atkinson saw exactly what Hanvey did on the night of the attack.

Such was the inextricable linkage between the tip off and the murder it follows that if the investigation into the tip off was corrupted in any way, or if it was conducted less than diligently, then of course it could have impeded the murder inquiry. If the tip-off complaint could have been broken, pressure could have been applied on Atkinson to give up what he knew about Hanvey.

However, it is submitted that the police service could not reasonably have done any more to bring Atkinson to account. Notwithstanding all the resources which the police service devoted to challenging the Atkinson "alibi" the prosecution of him regretfully failed.

With the failure of that prosecution the last remaining opportunity of persuading Atkinson to tell the story of Hanvey's involvement also disappeared, although his demeanour before the Inquiry suggested that even the threat of a lengthy jail sentence would not have parted him from what he knows about Hanvey.

## THE NINTH ISSUE: NON-COOPERATION

- 32 The materials on this pervade the entire inquiry. However, those that were specific to it were to this effect:
- 32.1 9/5/97 Ryanne Hamill, sister of Robert Hamill, speaks to DC [REDACTED] stating that a female friend of hers, whose boyfriend has already made a statement told her that a male with a ponytail was the ring leader 2185
- 32.2 15/5/97 Policy decision 19 is made to contact Rosemary Nelson with regard to the cooperation of witnesses and liaison with the Hamill family 913 at 932
- 32.3 20/5/97 DCI **P39** writes to Rosemary Nelson requesting her clients' cooperation and assistance in identifying witnesses. DCI **P39** requests an interview with Colin Hull, Maureen McCoy, Colin Prunty, **D**, **E** and **F** (not Dermot McNeice) and indicates that if no reply received by 31 May 1997, it will be assumed that they do not intend to cooperate 8085
- 32.4 22/5/97 DCS Maynard McBurney writes to Rosemary Nelson requesting the attendance of Diane Hamill at Portadown police station for interview 9854
- 32.5 4/6/97 Rosemary Nelson writes to DCS Maynard McBurney advising that Diane Hamill would not be attending the next day for interview 15243
- 32.6 24/6/97 DI Michael Irwin records that attempts to contact Vincent McNeice have been unsuccessful; contact would be directed via Rosemary Nelson, solicitor 7786 The same is true for Colin Hull 7785
- 32.7 10/10/97 Roger Davison, ODPP, speaks to DI Michael Irwin. DI Irwin tells him that witnesses were unlikely to come forward following the events at Drumcree and that it was unlikely that Tracey Clarke and Timothy Jameson would come forward. He states that Colin Prunty could only be contacted through Rosemary Nelson who was not responding to the police 18096
- 32.8 6/11/97 A note is written for the Anglo-Irish division of the department of foreign affairs. It states that the RUC encountered difficulties in identifying perpetrators and believed a number of witnesses had been intimidated. The ongoing allegations against the four officers in the Land Rover are noted.
- 32.9 19/10/98 Rosemary Nelson Solicitors forwards the statements of Colin Hull and Vincent McNeice to the Ombudsman and on to ODPP and the RUC 15046 (NB This is in response to a letter from Raymond Kitson on 21 September 1998 37873)
- 32.10 16/8/99 DI Michael Irwin writes to the Coroner listing a number of witnesses who had been interviewed after caution who declined to make witness statements or attend the inquest 373.

### Submissions by Conor Downey Solicitors (Colin Hull)

Colin Hull DID co-operate in that he agreed to talk with DC Keys on 10<sup>th</sup> May 1997 at 11:45 (see 03449), although he disputes the veracity of much of the content of same. It is submitted that 03499 "Action Record Print" is not the original transcript of what was said. Neither is there any signature or verification from Colin Hull that what DC Keys had recorded is in fact an accurate transcript of what Colin Hull told him.

### Submissions by the Police Service of Northern Ireland

See section 34 below.

- 33 The Panel may feel that most witnesses touched on the issue in some way. However, those that gave specific evidence said this:

#### Greg Mullan

##### *Statement*

- 33.1 Para 46: The Nationalist group did not come forward to assist investigation

#### D

##### *Oral Evidence*

- 33.2 Remembers being asked for blood sample and instructed not to by his solicitor (p31)

#### Diane Hamill

##### *Oral Evidence*

- 33.3 She did not know before hearings that Messrs Hull and McNeice's statements were not given to the police until October 1998. Neither her nor her family gave instructions for Rosemary Nelson to do that (p24). She did not know why Ms Nelson did not co-operate. Ms Hamill did not go to the station for police interview even though a complaint had been lodged. Neither did other witnesses. This was not at behest of the family (p25)
- 33.4 Para 34: She declined to attend a police interview on 5 June, in furtherance of the complaint, after receiving advice from Rosemary Nelson. She did not think anything would be achieved by seeing the police who were investigating themselves.

John Johnson

*Oral Evidence*

- 33.5 The police contacted him to make 9123. “I could see a Land Rover parked over on the other side of Market St, near the Alliance and Leicester. There were people near it. As the police went towards them they backed off”. The police backed off but one man stayed. He was one who was negotiating. “Recall something when police were trying to help man on ground some of those trying to kick at him but were pushed away” (p136). He did not recall the police being round the person on ground or them trying to help the man on the ground (p137). He did not write the statement. It was hard for him to make a statement. He would have been more reluctant to make a statement if he knew someone had died (p138). He was not trying to protect one side of the community as his hairdressers had customers from both sides (p157). The officer did not give him any details about who had been arrested (p158)

Stephen Sinnamon

*Oral Evidence*

- 33.6 He did not know if he would have told the police if he had seen anyone he knew fighting, and why he would not. He cannot answer if a large proportion of the Protestant population would not cooperate (p119)

Beverley Irwin

*Oral Evidence*

- 33.7 She did not want to make a statement as she did not want to be involved and had not seen anything (p119)

Noelle Moore

*Oral Evidence*

- 33.8 She would not withhold information about the murder if she had it (p84). She was not present and is not withholding information (p90)
- 33.9 Nobody talked about the incident (p93). There was no wall of silence made amongst Mr Monteith’s clients (p98)

Derek Lyttle

*Statement*

- 33.10 Para 31: Sometime later received a letter from police which he threw away and another from the Hamill's solicitor which he did not respond to. He likes to think that he would have given a statement if he had seen something of relevance.
- 33.11 He told the police about the incident but he would not sign anything as "I told you I would tell you what I have seen, which is basically nothing"

Stephen Thornbury

*Statement*

- 33.12 Para 27: He was not threatened. He would not have contacted the police even if he had seen something as "you never know who will be knocking on your door. You just cannot do these things".

Julie Sherwood

*Statement*

- 33.13 Para 26: She did not give a statement to the police on 28/5/97 as she did not see anything

Joe Black 80059

*Statement Notes*

- 33.14 Para 10: He did not go to the police immediately after the event as he did not believe he had seen anything relevant. He co-operated once approached

Lisa Hobson

*Oral Evidence*

- 33.15 She did not really recall 3549. She did not speak to an injured person (p44). She knew Marc Hobson but she did not remember talking about him (p45). She did not have solicitor or know Rosemary Nelson (p45). She did not remember refusing to answer any questions in 70973 (p39). She did not remember any of 6363 (p47). She did not remember refusing to make a statement. She did not know why she would not make statement (p54). 81553 is wrong about staying out of the investigation, her father had wanted her to stay out of the town centre (see pg 50/1 Inquiry Interview Transcript) (p56)

## Donald Blevins

### *Oral Evidence*

- 33.16 He would not have made a statement to police (p109) as he did not want to get involved. He thought if he made a statement he would end up dead. He did not know who he would be scared of (p110).
- 33.17 It was not the UVF, LVF, UDA or IRA (p111). He was afraid of Protestant paramilitaries (p112)

## Kenneth Milligan

### *Statement*

- 33.18 Para 3: Interviewed by DC Albert McIntosh on 17 May 1997. He declined to make a statement because he was not there. He did not want anything to do with it

### *Oral Evidence*

- 33.19 He denies he did not tell the police about Mr Bridgett as he used to beat him up. He says he was not at the scene (p135)

## Dennis Hayes

### *Oral Evidence*

- 33.20 It was not a good idea to provide the police with information about Protestants' criminal activity (p99). He did not know if he would tell the police about seeing people kick Mr Hamill. He would not tell on his family. He would have been afraid to tell because of paramilitaries. He thinks most young people would not mention anything (p106/7)

## Stephen Bloomer

### *Oral Evidence*

- 33.21 Told police he was drunk but it was not put in statement (p17)
- 33.22 Was not put under pressure by police and his evidence was voluntary (p10). He was not afraid of the police (p17)

## Anne Bowles

### *Oral Evidence*



- 33.23 Police came to house to take 7776. She did not know why there was no mention of any names except Dean Forbes in 7776. She refused to make a statement as the incident was nothing to do with her and she wanted nothing to do with it (p73). Police came to house again for 7777 (p74)

Victoria Clayton

*Oral Evidence*

- 33.24 She did not refuse to make a statement (2150). She did not remember being asked to make one but she was not sure if she would have made one anyway (p109). She would have helped the police if she had anything significant to say but she does not believe she had anything of significance (p110). She did not co-operate on 30/4/97 as she had told the police everything she knew and was under no obligation to make a statement (p125). She was not dodging the police (15749). It was very distressing for her (p134). When she was asked if there was a wall of silence she said: “not on my part” (p136)

Rodney Smyth

*Statement*

- 33.25 Para 12: Some time after he gave a statement he heard a story in a pub saying that he had given a ten page statement which incriminated people. He did not recall who told him the story, which pub it was in or those involved in the conversation. He spoke to a solicitor who contacted the police (11959)
- 33.26 Para 13: 11959 shows he did not want to name those who had talked about him. The document states that he “did not want to go to court as he was afraid”. He stated he was not afraid as there was nothing to be afraid of.
- 33.27 Para 14: Has not been approached or threatened by the Atkinson family or anyone in relation to the Inquiry.

Linda Wilson (80610)

*Statement*

- 33.28 Para 6: She was not aware she was making a statement when she made 17382, but the contents are correct
- 33.29 Para 8: Rodney Smyth heard that they had given a ten page statement to the police just after 13/11/00. She knew it was not true and was concerned that people were talking
- 33.30 Para 9: As a result she went to a solicitor to ask for the statement to be withdrawn and destroyed

33.31 Para 10: They were approached by Acting DI **H** about the withdrawn statement. They told the police that they did not want their names involved and had nothing to do with what happened. They had not been threatened. **H**'s statement about this is at 19959

Mark Currie

*Statement*

33.32 Para 11: Had the police not contacted him, he would not have contacted the police as he believed it had nothing to do with him

*Oral Evidence*

33.33 He did not know if he could have recognised anyone if an identity parade had been held (p87). He had told the police that he had not seen anything (p89)

Paul Currie

*Oral Evidence*

33.34 He did not want to sign 80234 as it was nothing to do with him (p53)

Kyle Magee

*Oral Evidence*

33.35 It is not the case that he will not identify a Protestant for kicking a Catholic (p84). He would have told the police if he had seen e.g. Hanvey fighting (p86). He would not like to think what would happen to someone naming Protestants as murderers, so he was not sure if he would name people (p87). He was not worried now about giving information (p87)

Jason Woods

*Statement*

33.36 Para 12: At the time it was common for people not to come forward to police

*Oral Evidence*

33.37 Last paragraph 81291 "would not have come forward" is because he would have feared for his safety. He was not afraid of the police but in his area, you do not go to the police (p29). It was nothing to do with trusting the police and there is nothing the police could do to persuade him to help (p31). He was afraid of Loyalist paramilitaries from within the Brownstown Estate (p32). He

is not prepared to name which paramilitary group he was afraid of but he was not afraid of the UVF, but it is one of the groups he was afraid of. He names the UDA as another group (p34). It was not just because a Catholic was the victim, three would not be any police contact (p44)

33.38 He was aware Tracy Clarke made 17327. It was notorious in Portadown. It would have made a stir in Brownstown Estate, considering the paramilitary influence (p38)

### Beatrix Campbell

#### *Statement*

33.39 Pg 5: I'm a journalist who writes about politics generally and has been involved in Northern Ireland for some years, not as a specialist and not particularly involved in dominant or overarching issues

33.40 Pg 9: She interviewed **E**, **F**, Diane Hamill and Rosemary Nelson

33.41 Pg 10: Rosemary Nelson explained some of the issues she was trying to address

33.42 Pg 11: Once the article was finished she sent it to Rosemary Nelson

33.43 Pg 12: Miss Nelson did not pass it on to **E** and **F**, who were both present. Miss Campbell also sent the article to Diane Hamill. She has had conversations subsequently about the details. **E** and **F** described what they had seen. They were the only witnesses to the events of the night. She saw statements from others who were present.

33.44 Pg 13: She did not get anything from Rosemary Nelson. The statements were "flying around". The makers were those who did not feel safe but wanted their evidence transmitted

33.45 Pg 14: Miss Campbell is aware that a lack of cooperation is not unusual. People often do not feel that if they give evidence the police will do anything with it or respect their right to life

#### *2nd Statement*

33.46 Pg 5: A witness who came out of the pub and tried to help was beaten back. He says he saw the girls at the jeep. He went to the jeep and pulled one of them out and said "you sat there and watched that happen".

### Carol Ann Jones

#### *Oral Evidence*

33.47 No-one ever asked her, or Terry, to make a false statement for her brother David. She would not have done it anyway (p82)

Rory Robinson

*Oral Evidence*

33.48 He refused to attend an identity parade on his solicitor's advice. When he got the Inquiry's summary of his statements he did not take advice (p35)

33.49 He feels under an obligation to assist the police and tried his best to help them (p31). He was as anxious to help the Inquiry as he was help the police (p38). He was assisting the police when said he did not recognise anyone from Portadown in the Coach; on the bus or walking up the High St (p39)

Marc Hobson

*Oral Evidence*

33.50 If he had seen who kicked Mr Hamill he would have told the police. Whoever it was (p152) had no fear of paramilitaries (p153)

Peter Maile

*Oral Evidence*

33.51 Occupants of [REDACTED] were photographed by the window but they subsequently asked for photos not to be used. There was one of them stood at each window (p18). They asked to remove the photos as they were afraid of being identified (p29)

Andrew Allen

*Oral Evidence*

33.52 If someone found out he had talked to police, he would be in trouble with paramilitaries (7330). He says the paramilitaries would not have had a problem with him telling the police about him, Mr Woods and Mr Robinson being attacked. No-one that he knows of was involved with paramilitaries (p148)

Jason McClure

33.53 He did not remember 70990 (p85). He was not trying to help the police when making 70990 and said that Messrs Hanvey, Forbes, Sinnamon and

Henderson were at the McAlpine party (p87). He tried to answer the questions he was asked (p90)

Anthony Byrne

*Oral Evidence*

- 33.54 Two revisions from his statement "Junction of Woodhouse St and Market St" not Thomas St (p84) and "When the man was getting out of the cab at their home, he said that he wanted me to take them back up to town." Should be "him back up to town" (p85)
- 33.55 Mr Byrne has a fairly clear memory of the female passenger saying they had been chased and she had fallen and cut her knees and that when they got out of the cab the man wanted to face who had been chasing him but his wife would not let him go (p85). Mr Byrne says it was definitely the girl who said she had fallen and cut her knees. She was doing most of the talking (p86)
- 33.56 Mr Byrne is not sure if the girl said she was running or running away from people (p86). He cannot remember the exact words but understood they had been running away from people (p89)
- 33.57 The man definitely did say he wanted to go back and face those people. Mr Byrne could not, and would not, have taken him back into town (p87) as it would have been too dangerous. When the man and his wife were talking about this they were out of the car (p88)
- 33.58 Mr Byrne could not see the Woodhouse St/Market St junction from where he picked up the passengers (p88). He was a couple of hundred yards from the junction (p89). He could not see the junction at any time as he had to drive around the barriers (p94)
- 33.59 The couple said they had come from St Patricks Hall (p89). Mr Byrne had collected people from outside St Pats that night, but cannot remember at what time. There was a large number of people outside (p93). The people were leaving and the function was over (p95)
- 33.60 Mr Byrne found the name of the man in the couple and contacted him by telephone (p90) to check where he had picked him up from. He contacted the Inquiry as he thought it was relevant someone was running away and got into a car and one was injured (p91). He has no reason to make any of this up (p92)
- 33.61 Mr Byrne discovered the man's name by asking another taxi driver and he said that man used to work for A-2-B Taxis. That was a few months ago (p99). He is sure is talking about the same man who was his passenger (p100)
- 33.62 Mr Byrne worked, but did not live, in the locality (p96). He discovered a couple of days, or maybe a week, later that a man had been attacked at the

junction on that night. He did not go to the police as he did not think there was an Inquiry (p97)

33.63 Mr Byrne picked them “maybe after midnight”. It could have been 02.00 (p101)

### P132

#### Statement

33.64 Para 2: **F** and **E** are his sisters. **D** is his brother in law. Robert Hamill is his first cousin

33.65 Para 3: In 1997 he worked for A-2-B taxis “now and again” at the weekends

33.66 Para 4: On the night of 26th April he went to St Patrick’s Hall with his wife.

33.67 Para 6: When they left St Patrick’s they could not get a taxi because there were so many other people. They walked down Thomas St. He could see a Land Rover sitting by the Halifax. It would have been usual to see a Land Rover parked there at that time.

33.68 Para 7: When they went past the Land Rover the doors were closed and there were no police officers out. There was no-one beside it. They went straight across the street and there was nobody there. You take your life in your hands crossing that junction.

33.69 Para 8: He did not see his sisters or Robert Hamill coming down Thomas St. He did not see Thomas Mallon.

33.70 Para 9: After crossing into Woodhouse St he stumbled and cut his knee.

33.71 Para 10: They got as far as the Royal Oak and could hear shouting. They did not turn around.

33.72 Para 13: He is not 100% that the taxi driver was Anthony Byrne.

33.73 Para 14: It was definitely **P132** and not **P133** who fell and cut their knee. He did not want to go back into town when he got home.

#### *Oral Evidence*

33.74 He knew Mr Byrne vaguely in 1997. They worked out of the same taxi office (p103). They were not enemies and **P132** cannot think of a reason why Mr Byrne would want to do him harm or why he is saying **P133** fell and he wanted to go back into town to confront the people who chased him (p104)

33.75 **P132** says Mr Byrne must have been mistaken and it was not him who wanted to go back into town (p104)

- 33.76 **P132** is not sure if he and his wife were the first people out of St Patrick's Hall. He does not remember seeing anybody else walking up Thomas St. He does not know what time he left St Patrick's Hall (p105). He did not know his sisters were coming behind him (p109). **P132** and his wife were "the first sort of people across the street" before any trouble began (p113)
- 33.77 He and his wife walked down Thomas St across High St, Market St into Woodhouse St. It was quiet at the time (p110). They were apprehensive. His wife was panicky and nervous and he was in a "power walk". It was about 0130/0200 after the club had finished (p111)
- 33.78 When **E** rang him she said that they were at hospital and there was trouble in town. He went to hospital as a result. She did not know the severity of what was going on. He thinks the call came in at 03.00 or 04.00. He was concerned about his sisters as they had been near trouble (p106). He cannot remember if they said they were in hospital because of Robert Hamill (p107)
- 33.79 **P132** says he was not in town when there was trouble and would have told the police if he had seen it (p108)
- 33.80 **P132** does not get on with Martin Hamill because he accused them of not doing enough to protect them. "They should have been killed more than Robert" was a slip of the tongue (p109)
- 33.81 **P132** knew Mr Byrne from the taxi company. He did take an A-2-B taxi home that night but cannot recall the driver (p112). He received a call from Mr Byrne in January or February 2009. Mr Byrne was calling him to let him know he was going to mention **P132**'s name (p112)
- 33.82 **P132** and his wife were definitely not chased that night. He definitely did not ask the driver to take him back into town (p113)

### **P133**

#### *Statement*

- 33.83 Para 3: They were at St Patrick's Hall on the night of 26th April.
- 33.84 Para 4: She was afraid of walking home. At that time a Catholic could not walk down through town
- 33.85 Para 5: There was no-one with them as they went down Thomas St.
- 33.86 Para 6: They saw the Land Rover when they were in Thomas St. It was parked at the Halifax and when they crossed they would have been behind it. They did not see anybody at the Land Rover
- 33.87 Para 7: When they got to the Royal Oak they could hear shouting. She did not look around.

33.88 Para 10: They were not being chased and she did not fall. **P132** tripped when they were in Woodhouse Street.

33.89 Para 14: Mr Byrne is mistaken and they did not want to go back down into the town.

33.90 Para 19: That crossroads was associated with trouble at night time.

*Oral Evidence*

33.91 **P133** does not remember seeing anybody walking up Thomas St (p115) but there could have been (p116), She did not want to go through town that night but she knew she had no other way of getting home. She does not remember other people standing around outside St Patrick's Hall (p116). **P133** says there must have been a large crowd of people outside St Patrick's Hall as she does not disagree with what her husband said (p123)

33.92 She assumes that they left St Patrick's when the music stopped but she cannot remember (p117)

33.93 **P132** and **P133** were not running "down Woodhouse St" but they ran across the road from Jameson's Bar as that's where there would have been an attack (p117)i She does not know if they ran all the way up to the Royal Oak, it could have been anywhere in Woodhouse St. They definitely were not running up to the Royal Oak because there was a riot going on (p118)

33.94 They went across the junction because a Land Rover was there (p119)i The Land Rover was between the Alliance and Leicester and the Halifax. It could have been in the middle of the road. She is not 100% sure (p122). They saw the Land Rover as they were walking down Thomas St. They were not running and she was unsure about whether to cross. They decided to cross when they saw the Land Rover (p123)

33.95 She does not know Mr Byrne and does not know why he would make things up about her and her husband (p119)

33.96 **P133** does not know what **E** told her husband in the phone call despite saying in her witness statement they were at hospital and had been attacked. She did not know at that stage who was injured (p120)

33.97 **P133** says her husband would not have left Robert Hamill, **D**, **E** and **F** if he had seen what was going on (p121)

33.98 She did not see the trouble (p121)

33.99 She has talked to her husband about the incident to try and remember what she can (p123)

33.100 She is aware there has been a falling out between the families but she does not know what it was about. She has never fallen out with **E** and **F** (p124).



She has spoken to **E** and **F** in general about what happened on the night. She cannot remember what they said (p125)

33.101 She was not chased and she did not fall. Her husband did not want to go back down into town when they were dropped home (p126)

### Brid Rodgers

#### *Oral Evidence*

33.102 Was a councillor in Portadown area in 1997 (p147) Was a serious distrust of police in Catholic community (p161)

33.103 Rodgers gave an example of why Catholics did not help as when she went with **E** on 27 April to make a statement, **E** was asked if she wanted to make a complaint against the police and was told the ICPC would be investigating so there was no point as police would investigate police (p152). Catholics did not tell her they did not have faith in police investigating a murder, only them investigating the complaint (p154). She feels that Catholics felt that “it’s OK to cross street as there is a police Land Rover there” meant that they would not be attacked rather than they would be protected if there was an attack (p170)

33.104 Would have suggested to family that they should cooperate with police but knew some felt “what’s the point?” (p162). In the back of her mind she wondered how thorough investigation would be (p163)

33.105 She did not know why **E** did not take **D**’s clothes to the police station with her on 27 April. Ms Rodgers got a call from **P134** asking if she would accompany **E** who was very upset (p156)

33.106 Her understanding was when the fight started there were two boys and two girls walking down Thomas St (p157)

33.107 Spoke to police about incident. Spoke to Sgt on duty who said “they were not safe to get out of Land Rover because they were afraid. They had not enough reinforcements”. When she asked why they did not ask for reinforcements from the station, officer said there was no-one in the station, they were out in the country (p158). She did not recall the officer’s name but he was on duty in the waiting room in daylight hours on the afternoon of 27/4/97 (p159). Is certain he said no-one was in station (p160)

33.108 Everywhere there was a rumour going round that there were policemen who had helped some of the witnesses get rid of their clothes (p167). She did not know when she heard it (p168)

### Edward Honeyford

#### *Statement*

- 33.109 Para 24: In the interview Mr Allen said he was with Allister Hanvey, Rory Robinson and David Woods. He said “Wee Davy” was attacked and Mr Hanvey and Mr Robinson were involved in the fighting. He said he would not give evidence and if anyone found out he had done so he’d “end up in a dark alley”. Mr Allen did say he had not been threatened. If he had requested anonymity Honeyford would have gone to DCS McBurney. That he did not shows that no request was made
- 33.110 Para 30: Thinks that those involved in the Hamill attack were trying to cover their tracks from the very beginning. 1996 and 1997 in Portadown was vicious and wicked. The Protestant community was very close knit and an attack on Catholic man would be seen as unremarkable. Coming forward to the police was very difficult and people would have been frightened.
- 33.111 Para 31: Drumcree 1996 engendered hatred in the Protestant community towards police. Any support people would have given the police would have stopped

Michael Irwin

*Statement*

- 33.112 81421: In Northern Ireland the population had a view on policing which was dictated, not by personal experience, but by political allegiance or family views or traditions.
- 33.113 81443: Strategy implemented in early stages was that the team attempted to secure identification evidence. The sectarian nature of the assault and the inactivity allegation had an impact on the support the police got.
- 33.114 81445: Difficulties in cooperation came from both sides of the community. Neither Mr Prunty nor Ms McCoy provided statements until 8 or 9 May. Attempts had been made e.g. Mr Prunty had been spoken to on 3 May and a questionnaire was partially completed. Mr Prunty declined to make a statement so the police constructed a pro-forma.
- 33.115 81447: Several of the most vital witnesses refused to fully co-operate. The police attempted through family and Rosemary Nelson to encourage their side of the community to come forward.
- 33.116 81448: Today lots of the witnesses would be identified as ‘significant witnesses’ and a completely different technique would be used. In 1997 some communities refused or were in fear of being seen to support the police.
- 33.117 81463: On 5/6/97 Diane Hamill asked if he had received notification from Rosemary Nelson. On 6/5/97 Diane Hamill agreed to contact Ms Nelson to chase some issues. Ms Nelson did not return any calls or letters.

33.118 81470: Mr Prunty did not come into station for the consultation on 5/11/97 as had been arranged the before. DI Irwin had to find him (per notebook)

*Oral Evidence*

33.119 Within days of Mr Allen being released DC Honeyford contacted Mr Jameson to ask him to attend an identity parade and it was declined. It was during the period that Mr Allen was on bail. As a result, in May the police had a suggestion Mr Jameson would not co-operate. At that stage no steps were taken to ascertain his position as he only did not want to partake in an identity parade and DI Irwin thought that Mr Jameson did not want to give evidence against Mr Allen (p33). DI Irwin feels that Drumcree hardened both sides of the community in Portadown, per 18096 (p34)

33.120 There were always casual contacts who did not want to give evidence. ■■■■■ made it clear he wanted to say what he said but would not give evidence (p71)

33.121 There was silence from both communities but bits of information came through (p144). 2185 (information from Ryanne Hamill) may not have had a follow-up as that was probably one of the enquiries that went through the family solicitor and so may have suffered from non-cooperation. DI Irwin does not know for sure (p145)

33.122 The confusion over who the witness in the white was who identified “Stacey” as being involved, as stated by Res Con Silcock, was one of the reasons the police wanted the help of Rosemary Nelson, as they wanted to pursue that witness (p52)

33.123 Per 81464 it shows Diane Hamill had understood DI Irwin would have been informed she was not attending the ICPC meeting (p116) and that she expected any witness information to be forwarded to DI Irwin. DI Irwin explained to Diane Hamill that the police were not getting cooperation and were not getting it from Rosemary Nelson (p117)

33.124 Regularly in Northern Ireland witnesses would say that they would not give evidence due to one person, not due to fear. This is on the advice of a “wiser head”. DI Irwin believes he has a notebook entry saying that Tracey Clarke’s mother told him that if Tracey Clarke went to see ■■■■■, or ■■■■■, he could tell her about not giving evidence (p107)

**K**

*Oral Evidence*

33.125 Para 61 81786 the police tried to obtain DNA samples from **D** (p122). After DCI **K** became SIO of the Hamill murder investigation he conducted a forensic review. He was surprised at not getting any cooperation in 2002 (p123)

33.126 Para 15 81777. Telephone billings could have been put into evidence. Sometimes service provider officials were needed from the mainland to provide statements as the providers were nervous to use local staff (p10)

### Sir Ronnie Flanagan

#### *Oral Evidence*

33.127 People identified in Portadown as providing the police with evidence would undoubtedly be at risk and so intimidation was a real factor (p209)

33.128 There were mechanisms to seek evidence from service providers and from time to time the police sought this evidence through the courts, but there was a reluctance to pass the information on (p214)

### Ken Armstrong

#### *1st Report*

33.129 Page 11, Para 5: In some hard line Loyalist areas the RUC was deemed unacceptable.

33.130 Page 15, Para 1.2.3: Influence of paramilitaries was an ever present problem. It caused a sense of fear and intimidation that often prevented witnesses from assisting police.

33.131 Page 81, Para 3.6.8: Remains unknown what impact the witnesses going into the LVF wing had.

33.132 Page 72, Para 3.3.12: Getting witnesses to come forward is often difficult particularly where it against a member of their own community.

33.133 Page 65, Para 2.5.8: Drumcree entrenched divided community views. He believes the sectarian nature of the Hamill attack may have been an overriding factor affecting the cooperation of the community. It is not beyond reason to believe that it had a detrimental effect.

### Donald Keys

#### *Oral Evidence*

33.134 **E** came in with Brid Rodgers on 27 April (p122). DC Keys has no difficulty with any community figure coming into the station. He could not allow her to sit in on an interview. On 9 May he went to the **D** family home and members of the Hamill family were there (p124). He accepts that he is mixed up between Hamill and D family (p125)

Colin Murray

*1st Report*

33.135 Para 19.7: That the media identified failures by the police no doubt impacted negatively on some members of the Catholic community and prevented them talking to RUC.

**Submissions by Edwards & Co Solicitors (Serving and Retired Police Officers)**

The media identified failures by the police were false allegations which were perpetuated by some members of the Catholic community and may well have impacted negatively on some members of the Catholic community, thus preventing them from talking to the RUC. One such allegation was that the Land Rover Crew actually sat and watched Robert Hamill being attacked and did nothing to intervene until the ambulance arrived-see Hull's statement to the Hamill family solicitor (41229).

**Submissions by Elliott-Trainor Partnership (Greg Mullan)**

The reference to Mr Mullan's statement should refer to Paragraph 36.

**Submissions by John P Hagan Solicitors (Robert and Eleanor Atkinson)**

The Panel is referred to paragraph 33.27, that Rodney Smyth stated at paragraph 14 of his statement that he "has not been approached or threatened by the Atkinson family or anyone in relation to the Inquiry."

**Submissions by the Police Service of Northern Ireland**

See section 34 below.

**Comment**

34 It is apparent that the atmosphere in Portadown in 1997 was not conducive to witnesses from either community coming forward to assist police or give evidence. The Panel may wish to consider whether that inhibited the murder investigation, whether the RUC should have known that it would, and whether the detectives took adequate steps to secure other, for example, scientific, evidence.

**Submissions by Edwards & Co Solicitors (Serving and Retired Police Officers)**

We agree that the failure of witnesses from either community to come forward and assist police or give evidence inhibited the murder investigation. It may be that the RUC knew from experience that witnesses would be reluctant to come forward, but they did everything they could to persuade them to do so, and as already stated, the attempted gathering of potential witness evidence is an

elementary step in every police investigation, and was rightly conducted in this investigation.

We refer to the comment at Chapter 9, paragraph 18, wherein it was stated that it is difficult to see how the forensic strategy could be criticised and that there is no reason to believe that anything of forensic value was lost. The issue of Stacey Bridgett's blood is dealt with below.

### **Submissions by the Police Service of Northern Ireland**

It is submitted that it is a basic civic responsibility for the citizen to assist police with the investigation of crime. Police are under an obligation to investigate and detect those who are responsible for crime. They cannot fulfil this function without the assistance of the public. Evidence is the currency of the criminal process and without evidence prosecutions are impossible. If the citizen abrogates his duty by failing to give up to police what he knows about crime the criminal process cannot be advanced and the criminal escapes justice.

It is agreed that in the circumstances of the investigation into the killing of Mr. Hamill, the lack of co-operation from witnesses on both sides of the community was a major obstacle for police which inhibited the murder investigation.

However, it is also submitted that while it is possible to accept that for some people the atmosphere in Portadown in 1997 was not conducive to coming forward to assist police to give evidence, this is not an acceptable excuse. After all Tracey Clarke and Timothy Jameson were prepared to come forward even if they felt unable for whatever reason to stay the course.

Certainly, at the outset it would have been surprising to police if members of the Loyalist community came forward in significant numbers to volunteer meaningful evidence about what they knew of the events of the 27 April 1997. This was a sectarian murder and shamefully, the instinct for those Loyalists who knew anything about it would have been to close ranks to protect the murderers, whether under the threat of intimidation or otherwise: see Mr. Armstrong's report at page 15 and 72.

It is much more difficult to understand the mindset of some within the Catholic community which elected not to co-operate with police in their investigations. Some on the Catholic side have criticised the failure on the part of police to bring Mr. Hamill's murderers to Court, while at the same time others on the Catholic side have inexplicably joined with their Protestant counterparts in refusing to extend to police even the most basic of co-operation (for example, the refusal of D to give a blood sample, Rosemary Nelson's retention or her clients refusal to release statements for some 18 months after the killing). This was the exasperating environment in which police were expected to do their job and to deliver results.

The excuses for failing to assist police are as familiar as they are unconvincing: we don't trust the police; they investigate themselves; they didn't intervene to protect Mr. Hamill. Whether genuinely held or not, these positions ought to have been set aside in order to pursue the objective of bringing the killers to justice.

Despite the efforts of police, it is not clear whether those within the Catholic community worked hard enough to get the evidence to the police. Mrs. Rodgers (page 164) recalled that she heard the phrase, "What is the point?" It is not clear that this apparent sense of resignation was ever challenged in any meaningful way. Her evidence would suggest that she failed to.

The excuses set out above also represent a deeper moral ambivalence which was again shared with us by Mrs. Rodgers. There was a sense from her evidence that it was hard for her constituents to defy the cultural norm where co-operation with police was frowned upon. So people looked the other way. If there was going to be a prosecution it was for others to assist the police, not them. As if nothing was lost by the lack of evidence coming forward from the Catholic community, Mrs. Rodgers commented (page 165), "...there must have been lots of other evidence. I felt there was a lot of evidence."

In point of fact P39's witness strategy was informed by the evidential vacuum (see the submissions set out at section 21 above). If Mrs. Rodgers believed that there was lots of other evidence lying about so that the RUC did not need to hear from the contact of RYANNE HAMILL, or could not have used information from VINCENT MCNIECE or COLIN HULL, to take just three of the examples that are known about, then she must have been spectacularly misinformed.

It is submitted that even if the RUC were aware that they were likely to be facing into a hostile environment in which witnesses would be discouraged from coming forward, this represented the best strategy by which to develop investigative leads. Detectives did not have much option other than to try. I have explored at section 21 (above) the thinking of P39 and the facilities at her disposal for getting to witnesses. She believed that the arrest and search opportunities available to her were unpromising at the outset because of a lack of clear information about who was involved. The ready availability of scientific evidence or the opportunity to obtain such evidence is arguably more illusory than real. She cannot reasonably be criticised for thinking that by identifying witnesses the investigation would move forward successfully.

### **Submissions by Russell, Jones & Walker Solicitors (Michael Irwin)**

There is an ambiguity in the above comment. It is submitted that the preponderance of the evidence suggests that no one doubts that neither community helped the police in 1997 in Portadown. To say that this then means that adequate steps to secure other, eg: scientific evidence, would have to be something over and above what was done normally, is entirely wrong. It is difficult to see what further steps are envisaged here.

## THE TENTH ISSUE: WHAT ROLES THE VARIOUS DETECTIVES HAD

- 35 The materials showed as follows:
- 35.1 Para 19.7: That the media identified failures by the police no doubt impacted negatively on some members of the Catholic community and prevented them talking to RUC.
- 35.2 6/5/97 DI Michael Irwin submits form "A" ("Incident Information form") to FSANI with the clothes of Robert Hamill and D. The form indicates that he is the Investigating Officer 8176
- 35.3 8/5/97 DCS Maynard McBurney is appointed Senior Investigating Officer (SIO) with responsibility for murder investigation. DCI **P39** is appointed as the deputy and DI Michael Irwin as the office manager 913
- 35.4 9/5/97 DCS Maynard McBurney is appointed SIO for complaint. His assistants are Superintendent Robert Anderson and CI Richard Bradley 8089
- 35.5 09.35 Policy file decision two is made, to increase the size of the investigation team by another five officers 913 at 914
- 35.6 A conference is held with DC Donald Keys, DI Michael Irwin, DCI **P39** and DCS Maynard McBurney 11102
- 35.7 11/5/97 DC Paul McCrumlish and DC Albert McIntosh are briefed by DCI **P39** to search the home of Thomas Hanvey 4577
- 35.8 DI Irwin completes the form for certification of the offences. He signs it as the Officer in Charge 19055
- 35.9 12/5/97 Greg Mullan meets [REDACTED], DCS Maynard McBurney and DCI P39 at Portdown police station. He makes a file note of the meeting. The notes deals with the clarification of who was the investigating officer dealing with the complaint of alleged inactivity 27269
- 35.10 A meeting with the ICPC takes place, at which [REDACTED], Superintendent [REDACTED], DCS Maynard McBurney and DCI **P39** are present. It is recorded that DCS McBurney is to continue with the murder investigation and be in charge of the complaint investigation 913
- 35.11 16/5/97 Police report by DI Michael Irwin concerning the death is submitted to the Coroner. It records that the deceased was walking home when he was attacked by a mob. He was kicked and punched and some of the attackers are suspected of having jumped on the head of the deceased. DI Michael Irwin signs the form as Investigating Officer 398



- 35.12 16/5/97 The fingerprint report is returned. It shows prints on a tonic wine bottle found at scene which belonged to Wayne Lunt. It shows DC Donald Keys as the officer in charge 12508
- 35.13 19/5/97 An action, raised on HOLMES on 16 May 1997 by SIO DCS McBurney is allocated to DI Irwin to interview Lisa Hobson under caution 3549
- 35.14 21/7/97 DI Michael Irwin reports to DCI P39 at J Division regarding Tracey Clarke and Timothy Jameson 6080
- 35.15 6/8/97 DI Michael Irwin signs a form headed "DISCLOSURE UNUSED MATERIAL". DI Michael Irwin is recorded as the SIO 12512
- 35.16 8/2/00 The Coroner spoke to the officer in Charge of the investigation. This officer was DI Michael Irwin 41375
- 35.17 28/2/01 A meeting with is held with PONI, DCI **K** and DCI **P39**, at the home of DCI **P39**. On 9/5/97 the murder investigation was ongoing, DCI **P39** was involved in that as assistant SIO to DCS McBurney 14622
- 35.18 13/3/01 DI Michael Irwin is reinterviewed by [REDACTED] and Chris Mahaffey and specific questions are put to him regarding the handling of Andrea McKee. DI Irwin denies that he had any responsibility for the conduct of enquiries as he is merely the officer manager and working to DCS Maynard McBurney under the supervision of [REDACTED] 22760 at 22780
- 35.19 27/3/01 DCS Maynard McBurney is interviewed by PONI. He is interviewed as a witness because he has retired. He explains that between 27 April 1997 and 8 May 1997, DCI **P39** was responsible for the investigation and his role was simply to ensure that she had sufficient resources. On 8 May 1997, DCS Maynard McBurney accepted overall responsibility for the murder and police misconduct issues 22811

### **Submissions by the Police Service of Northern Ireland**

See section 37 below.

36 Various witnesses dealt with this question, in this way:

#### Dereck Bradley

##### *Oral Evidence*

- 36.1 Was not involved in complaint investigation (p68)
- 36.2 DC Keys was an experienced officer, "one of the best" (p122)

## Edward Honeyford

### *Statement*

- 36.3 Para 5: Murder Investigation team held briefings most mornings and most evenings at 19.00. Attended some of the briefings when required to do so. Usually briefings were to update detectives and investigation team. If particular tasks were required, usual practice was Irwin would hand out Action Sheets detailing task.
- 36.4 Para 14: Was about 22.00 when Mr Jameson left the station. DC Honeyford went up to DI Irwin and DCS McBurney and gave them the statement. Then he left to go home. It was obvious to him there would be arrests but it was up to DCS McBurney and DI Irwin to decide the strategy.
- 36.5 Para 19: On 10/5/97 was briefed by DI Irwin for search and arrest of Marc Hobson. Believes it was a verbal briefing. Notebook is at 50234. Was given no statements just an action sheet containing items to be searched for.

### *Oral Evidence*

- 36.6 Office manager is third in line behind the SIO and the deputy. He analyses the material coming in and directs further inquiries. He should be involved in strategy (p138)

## P5

### *Statement*

- 36.7 Para 6: First involvement on the Hamill case was on 12 May.
- 36.8 Para 7: Attended a conference with his crime squad partner DC McCrumlish. They were briefed by DI Irwin. He was tasked in preparing files for the briefing of the ODPP by DCS McBurney.
- 36.9 Para 8: he worked on preparing the briefing for one day because after that he worked on the radio transmissions.

## John Leckey

### *Statement*

- 36.10 Para 8: Normally asks to speak to the investigating officer when a death had controversial circumstances.
- 36.11 He did not remember if DI Irwin was the investigating officer but he was a senior officer so it complied with normal practice

## John McDowell

### *Oral Evidence*

- 36.12 Para 16 80898 “When investigation changed from GBH to murder, investigation was moved up a gear and officers in charge decided they’d have to carry out searches and arrests. DCS McBurney started making decisions when it became a murder investigation. At same time an incident room was set up and I became Exhibits Officer. Thereafter, save for 1 search and arrest operation his time was taken up as Exhibits Officer which included liaising with FSANI” Per 3743 “Liaised with Lawrence Marshall re exam clothing and footwear. Told me blood stains had been discovered on a number of clothing items, most significantly being blood on Mr Bridgett’s jeans belonging to the deceased” (p86). It was not DC McDowell’s task to ensure forensic examinations took place. Did not have any dealings chasing up Mr Marshall’s report. His role was to receive exhibits from officers and make sure they were properly bagged and labelled and would liaise with senior officers about what next step was for those exhibits (p87). Would write a result on HOLMES action about liaising with Mr Marshall and the assumption is that would go on HOLMES and once submitted there it is up to someone else to make sure it is properly distributed. Once he has submitted it, it is the end of the story as far as he is concerned (p88). As Exhibits Officer he did not receive anything other than items seized, i.e. did not receive search log. That would go to HOLMES office (p90). He would never know as Exhibits Officer if the searchers make a bad job of the search (p91)
- 36.13 Para 16 80898 “When investigation changed from GBH to murder, investigation was moved up a gear and officers in charge decided they’d have to carry out searches and arrests” does not mean the police were not looking to arrest anyone until it became a murder. He had no knowledge of anything not having been done that should have been done prior to it being a murder investigation (p92). “move up a gear” is his figure of speech (p93)
- 36.14 Was below DI Irwin in chain of command. Above DI Irwin was DCI **P39** and above her was DCS McBurney. DC McDowell states he would have nothing to do with policy matters or decisions (p107)

## P39

### *Statement*

- 36.15 Para 18: DI Irwin was much more than office manager. He was responsible for managing investigations in Portadown.
- 36.16 Para 33: On 22/7/97 DI Irwin submitted his crime file to ODPP through her, sub-divisional officer and went to ODPP via Crime Branch

### *Oral Evidence*

- 36.17 First thing every morning there were briefings between DI Irwin and DCI **P39** but there were regular briefings in the day because of the investigation. They would discuss matters. She would not be dictatorial (p6) Per 22723: Irwin was asked if DCI P39 was SIO: “no unfortunately, nobody is appointed at that stage [before 8 May]. DCI **P39** was his supervisor on the Sunday of the incident. On 8 May the investigation was being supervised by DI Irwin and DCI **P39**.” DCI **P39** agrees with that. (p7) Per Para 18 81570 “In the policy book I recorded that DI Irwin was the office manager, but actually his role was much more than that. He was responsible for managing the investigations in Portadown.” DCI **P39** states that DI Irwin would have been managing the GBH with intent investigation but she had an input too. She was supervising (p8)
- 36.18 Para 26 81573 “On 10 May 97 we arrested five people. I prepared the documents for the arrests and DI Irwin briefed the arrest teams”. As the arrest teams also searched, then DI Irwin also briefed the searchers. She did not know whether DI Irwin only briefed the arresters or briefed the searchers as well, as the search team did not always contain a detective (p53). It was not normal practice to have detective accompany a search team but this was a very intense investigation. She would not expect a CID officer to go on a search and not know what was being looked for (p174)
- 36.19 DI Irwin came on duty at 08.15 on Monday 28/4/97. There was a briefing about the weekend’s events (p171). DCI **P39** sent DI Irwin to an incident in Banbridge where a man was kicked unconscious and five people were involved in the assault. DI Irwin was not involved in the Hamill case until he returned in the afternoon (p172). DI Irwin was a very competent officer (p176). He agrees with 80753 “DI Irwin had not been a DI for very long and he made every earnest attempt to secure the evidence and identify those involved” (p177). He would not have been prepared to take evidence from Andrea McKee when she provided the alibi statement for Res Con Atkinson in 1997. She could not answer without hindsight though (p189). She would have spoken to a more senior officer. She did not know what she would have done if a senior officer had made her take that statement (p190)

### Michael Irwin

#### *Statement*

- 36.20 81431: Commenced duty at 0815 on 28/4/97. There were two other serious incidents in J Division that evening. DI Irwin was directed to supervise enquiries in Lurgan and Banbridge whilst DCI **P39** continued to supervise the assault in Portadown.
- 36.21 81433: When he returned to the station in the afternoon of 28/4/97 he began to read the statements that had been received by CID regarding the Robert Hamill incident. DCI **P39** was the senior officer on duty. DI Irwin did not

believe that DCI **P39** and he discussed who was the investigating officer as they were both local managers and supervisors.

#### *Oral Evidence*

- 36.22 DI Irwin was in CID from 1985. Until he was promoted to Inspector he was involved in a large number of terrorist and non-terrorist murders (p2)
- 36.23 DI Irwin came on duty on the 28th as he had had the weekend off (p56). That morning he was sent to investigate two other serious incidents that had occurred that weekend. He returned to Portadown between 1500 and 1700, having started work at 08.15. He then got up to speed on the Hamill case and started working on the action sheets. He had written 42 actions sheets by the end of the day (p59)

#### Maynard McBurney

##### *Statement*

- 36.24 Para 22: DI Irwin's role was very wide-ranging. It was not a typical office manager's role.

#### H

##### *Statement*

- 36.25 Para 5: DCS McBurney had a strategic role whilst DCI **K** was driving the investigation. DI Irwin was not part of the investigation team but was involved at certain stages.
- 36.26 Para 8: There was a directional meeting to determine the investigation structure. DC **J** had responsibility for exhibits and DCs **P28** and **H** carried out outside inquiries. He believed a coherent strategy was operating at all times.

#### Robert Cooke

##### *Statement*

- 36.27 Para 2: Was Detective Superintendent at Crime Branch. He was in 'C2', which was responsible for prosecution policy. Their other responsibilities included conducting a review of the evidence contained in prosecution files submitted via the Chief Constable to ODPP.
- 36.28 Para 3: In mid-October 1997 his supervisor was off work so he stepped in to cover the consultations fixed for 17 and 21 October 1997. He attended the consultations to represent the Chief Constable. He reported back to the Chief

Constable on issues which were thought to be needed to be brought to his attention. Ultimately, the ODPP had the final say.

### Richard Bradley

#### *Oral Evidence*

36.29 Was Chief Inspector in 1997 attached to Complaints and Discipline. That was his sole function (p111). He had been in C&D for eight or nine years when the incident occurred (p112)

### Ken Armstrong

#### *1st Report*

36.30 Page 24, Para 1.5.12: The role DI Irwin played was more than that of an office manager, as shown by his examination and written directing on most, if not all, actions.

### Submissions by the Police Service of Northern Ireland

See section 37 below.

### **Comment**

37 It is not clear whether any issue remains over DI Irwin's role. The Panel may wish to consider whether "office manager" significantly understated it.

### Submissions by British Irish Rights Watch and Committee on the Administration of Justice

We agree with Ken Armstrong that DI Irwin's role was far more proactive than that of a mere office manager.

We note that he gave evidence after the regrettable death of DCS McBurney. The picture he painted in his oral evidence (transcript, 9 and 10.9.2009) was that DCS McBurney dominated the investigation and took all the important decisions. We invite the Inquiry to scrutinise DI Irwin's actions, rather than his words, and to draw their own conclusions as to his role.

### Submissions by John P Hagan Solicitors (Robert and Eleanor Atkinson)

Appropriately, no potential criticisms or adverse inferences are being made against Reserve Constable Atkinson in this section.

## **Submissions by the Police Service of Northern Ireland**

The roles of all of the main detectives are relatively well defined by the materials and in the evidence

The functions carried out by DI Irwin are also well described on the materials, in his evidence and in the evidence of others.

Regardless of the job description ("office manager") which appears to have given to him in the policy book when DCS McBurney and P39 led the investigation, analysis of his activities from April 1997 to the latter part of 2000 more adequately illustrates the significance of his role within the murder investigation, and within the investigation of Atkinson and others. For the avoidance of doubt it is accepted that his duties extended far beyond what one would associate with the title of "office manager".

## **Submissions by Russell, Jones & Walker Solicitors (Michael Irwin)**

Whilst named on the murder investigation file as "... Office Manager" and having a formal role in the investigation as the "... Office Manager", Michael Irwin has made a statement running to 68 pages to the Robert Hamill Inquiry which shows that he was very involved in the investigation of the murder. This does not mean that he was not at all times answerable to DCS McBurney as the Senior Investigating Officer or P39 as Deputy Senior Investigating Officer. It is clear that at all times that the command structure was respected by all detectives.

In the above respects P39 confirmed and agreed with Chris Mahaffey of the Ombudsman's Office following upon a very detailed investigation that "... Michael Irwin had not been a Detective Inspector for very long, and he made every earnest effort to investigate the murder of Robert Hamill. He went to great lengths to secure evidence and identify those who had assaulted Robert Hamill ..." P39 also agreed with the proposition that "... if McBurney gave you an order, you did it."

### Potential criticisms and adverse inferences

#### Andrew Allen

- Participated in the attack on Robert Hamill

#### Michael Bingham

- Failed to carry out an adequate search of the Hanvey home on 10 May 1997

#### Stacey Bridgett

- Participated in the attack on Robert Hamill

#### Dean Forbes

- Participated in the attack on Robert Hamill

## D

- Belonged to a group which initiated the fight leading to Robert Hamill's death
- Falsely informed the police that he and members of his family, including Robert Hamill, were set upon without warning

## E

- Belonged to a group which initiated the fight leading to Robert Hamill's death
- Falsely informed the police that he and members of his family, including Robert Hamill, were set upon without warning

## F

- Belonged to a group which initiated the fight leading to Robert Hamill's death
- Falsely informed the police that he and members of his family, including Robert Hamill, were set upon without warning

## A

- Did not respond to the complaint made when she released Wayne Lunt
- Failed to include the details of persons who complained when she released Wayne Lunt
- Failed expeditiously to report her dealings with Wayne Lunt and those complainants

## Allister Hanvey

- Participated in the attack on Robert Hamill
- Provided the RUC with a false account of his movements and his clothes
- Destroyed the clothing that he was wearing at the time of the attack

## Marc Hobson

- Participated in the attack on Robert Hamill

## Colin Hull

- Gave a false statement to Rosemary Nelson, which did not properly account for his movements and what he saw

## Michael Irwin

- Shared responsibility with Maynard McBurney and **P39** for the conduct of the investigation
- Failed to ensure that Stacey Bridgett was interviewed about his blood being found on Robert Hamill's jeans
- Failed to consider treating Timothy Jameson as a suspect
- Failed to ensure that a full and thorough briefing was delivered prior to the search of the Hanvey house on 10 May 1997

## Timothy Jameson

- Participated in the attack on Robert Hamill
- Falsely alleged DC Honeyford took a false statement from him

## P39

- Failed to carry out early arrests and searches of suspects



- Failed to start a policy book for the GBH investigation
- Omitted to determine a forensic strategy and suspect strategy

John McAteer

- Failed to carry out an adequate search of the Hanvey house on 10 May 1997

Maynard McBurney

- Failed to ensure that the investigation into the murder of Robert Hamill was conducted with due diligence and/or conducted the investigation so as to protect Allister Hanvey and Robert Atkinson.

Paul McCrumlish

- Failed to test adequately the account given at the Allister Hanvey interview on 10 May
- Forewarned Hanvey of the RUC's awareness of a conspiracy with Robert Atkinson on 10 May

Albert McIntosh

- Failed to test adequately the account given at the Allister Hanvey interview on 10 May
- Forewarned Hanvey of the RUC's awareness of a conspiracy with Robert Atkinson on 10 May

Greg Mullan

- Failed to treat the Atkinson allegation as part of the supervised investigation
- Failed to ensure that the Atkinson allegation was part of the supervised investigation

Michael Porter

- Failed to carry out an adequate search of the Hanvey house on 10 May 1997

Rory Robinson

- Participated in the attack on Robert Hamill
- Gave false evidence to the Inquiry

**P34**

- Failed to carry out an adequate search of the Hanvey house on 10 May 1997