

COLLUSION OR NEGLECT?

1. The issue arises in relation to any investigative shortcomings, whether there was evidence of any collusion between officers with the intention of protecting suspects or police officers. Put another way; were investigative failings negligent or deliberate?

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

We believe that there is evidence of deliberate collusion that goes beyond negligence. We set out our reasons below. If the Inquiry agrees with us that individual police officers and witnesses colluded with one another and/or conspired to pervert the course of justice, we invite the Inquiry to consider whether such collusion went beyond individuals to the point where it can be regarded as institutionalised collusion (in the Macpherson sense of institutionalised racism in the Stephen Lawrence Inquiry) on the part of the RUC.

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

It must never be forgotten that in this chapter that we are all examining the actions of individual officers with microscopic hindsight.

We suggest that the words "negligent or deliberate" do not adequately cover the possibilities. We go back to the analogy of counsel conducting a trial or indeed an Inquiry. Thereafter every action taken or question asked is microscopically examined by another counsel or Tribunal. It is hard to imagine that criticism would not be made as to, for example, why certain questions were or were not asked, why certain witnesses were or were not called, why one strategy was or was not engaged or employed, why something was or was not done sooner than it was.

It may well be that a subsequent counsel or Tribunal would take the view that some or all of the above matters should or should not have been done. This does not mean necessarily that what was done or not done was negligent or was deliberately intended to produce a particular outcome. It may be that there have been oversights or a strategy employed which does not accord with the subsequent reader's approval. Moreover, as in this investigation, judgment calls are required throughout the entirety of the proceedings.

In deciding whether any action or inactions were intended to produce a deliberate ulterior result, the character and demeanour of the individual police officers will be of significant assistance in deciding that issue.

Submissions by McCartan, Turkington & Breen Solicitors (Sir Ronnie Flanagan)

The terms of reference to the Robert Hamill Inquiry are as follows

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

The primary role of the Inquiry is to make findings relevant to its terms of reference, so in considering Sir Ronnie Flanagan’s position relevant to this Chapter the Inquiry panel should address the questions of whether he was guilty of any act or omission which obstructed the investigation of Robert Hamill’s death, or whether he attempted to do so, and whether any such act or omission was intentional or negligent, or whether the investigation into his death was not carried out with due diligence due in some way to an act or omission of Sir Ronnie Flanagan. We are confident that the answer will be negative. There is simply no evidence upon which such a finding can be made. Furthermore there is no evidence that Sir Ronnie Flanagan obstructed the investigation of the murder or failed to act with due diligence in relation to the investigation of the murder.

The murder of Robert Hamill was a tragedy felt not just by his family and friends but within the wider community in Northern Ireland. In approaching the evidence relating to Sir Ronnie Flanagan it is important to contextualise his position in and around 1997 and onwards. He had in 1996 been appointed as the Chief Constable to one of the largest police forces in the world. The number of serving officers was in the order of 15,000. This was a police force which by necessity had become quasi militarised by virtue of its position as the frontline defence against terrorism. Despite the peace process in Northern Ireland it remained a deeply divided country and a very dangerous place. The risk to both sides of the community remained high. This was only too well illustrated by the Omagh bomb which killed 29 people on 15th August 1998. There had been a General Election in May 1997 and the Drumcree parade tension had commenced. The IRA ceasefire broke down in February 1996 and Constables xxxxx and xxxxx were murdered as they walked the beat in Lurgan in July 1997.

One of Sir Ronnie Flanagan’s stated priorities on being appointed as Chief Constable was to rebuild trust and confidence particularly between the nationalist community and the RUC. However he continued to have to deal with national and province wide issues not least the threat of terrorism generally and the peace process.

It is clear that at all times Sir Ronnie Flanagan acted as a conscientious and professional Chief Constable. His actions can in no way be viewed as having

obstructed the investigation of the death of Robert Hamill, in fact he took all necessary and appropriate steps required of him in the exercise of his duty. At all times when it was necessary for him to become directly involved he responded in a manner designed to enable a transparent, rigorous and comprehensive investigation. The evidence confirms that Sir Ronnie Flanagan was a man who was open to and innovative in recommending and embracing change at all levels within and to the RUC. Whilst he was proud of the organisation that he led the evidence nonetheless suggests that he would act without hesitation and be unswerving in the investigation and prosecution of an alleged offender within the ranks of the RUC.

Whilst any administrative process is subject to normal human frailties is thereby open to criticism, the panel must be careful not to apply a counsel of perfection to the acts of Sir Ronnie Flanagan. They must view his acts in the context of the situation as it pertained at the time and be careful to not fall foul of the danger of hindsight. The Inquiry by design rightly concentrates on Robert Hamill and all of the issues relating to him. It is an often appealing but ultimately misguided exercise to look back and retrospectively see things as obvious without taking account of context and the volume of issues being dealt with by Sir Ronnie Flanagan on a daily basis at that time.

Sir Ronnie Flanagan's representation in this Inquiry has not been extended to nor has he been provided with all of the documentation relating to the investigation of the murder. This undoubtedly reflects the fact that he was not actively involved in the investigation or privy to the specific investigative strategy employed by and underpinning DCS McBurney acts and omissions. It is not the role of a Chief Constable to become involved in and direct the investigative strategy of an investigation. The evidence presented to this Inquiry is clearly that if Sir Ronnie Flanagan was aware that there was a potential line of investigation open then his view was that it should be pursued rigorously and without compunction.

As per the practice in British Policing the Deputy Chief Constable was the disciplinary authority and the Chief Constable would to an extent be kept clear of knowledge of all of the issues so that he might sit in an appellate capacity if required. The question of suspension was for the Deputy Chief Constable and G Department. Sir Ronnie Flanagan was briefed weekly by regional ACCs on issues pertinent to their level of responsibility.

Submissions by the Police Service of Northern Ireland

See section 4-15 below.

2. In addition to the materials referred to in parts 9 to 15 of these submissions, there was the following:
 - 2.1 9/5/97 Rosemary Nelson made a note following a call from an anonymous caller. Sgt **P89** and Res Con Murphy were cited. It was noted that Mr Hanvey was pulled off one of the injured men by Sgt **P89** and Res Con Murphy. It was noted that Res Con Atkinson knew Mr Hanvey and Mr Bridgett. It was noted

Res Con Cornett was a weak link. Con Neill, Res Con Cornett, Res Con **P40** and Res Con Atkinson were noted. Res Con **P40** was tagged with "back" 41965 at 41967.

- 2.2 11/5/97 Father Dooley received an anonymous call which stated that four officers in the Land Rover were sleeping on duty. The caller said that the officers were woken by two girls and that Allister Hanvey and Stacey Bridgett were seen jumping on Robert Hamill's head 72782.
- 2.3 16/5/97 Telephone records for Res Con Robert Atkinson were printed and sent to DCI **P39** 44931.
- 2.4 21/7/97 DI Michael Irwin reported to DCI **P39** at J Division regarding Tracey Clarke and Timothy Jameson. He noted that Tracey Clarke was the ex girlfriend of Allister Hanvey. She lived in a predominantly protestant area which had a Loyalist Volunteer Force (LVF) following and due to ongoing pressure she periodically resided with relatives. She alleged that due to this incident she had had to terminate two temporary employment posts, both in the Portadown area. She would have known the persons named, through her association with the 'Banbridge scene' her relationship with Allister Hanvey and through her girlfriends. Due to implications which made reference to a serving Police Officer, namely Res Con Robert Atkinson, who had many contacts within the Portadown Station, but who now served in Craigavon RUC Station it was felt appropriate to refrain from identifying the witness at this stage. In addition, a separate DPP file was being submitted which would include this allegation 6080.
- 2.5 9/9/97 Res Con Atkinson was interviewed by DCS McBurney. He admitted that he saw Allister Hanvey to his right on the night of 27 April 1997. He was asked specifically whether he contacted Allister Hanvey and told him to dispose of his clothing and asked whether he had telephoned him on 27 April 1997. He denied all knowledge of a call from his home. The interview was terminated and Res Con Atkinson was asked to produce his telephone account 9531 (NB This was despite the fact that they received it slightly after 16 May 1997 4493).
- 2.6 9/10/97 Res Con Atkinson was re-interviewed by DI Michael Irwin and DCS Maynard McBurney under caution in relation to the complaint of neglect of duty and allegations regarding Allister Hanvey. During interview he was shown the itemised billing referring to the call to the Hanvey home address at 08.37 on 27 April 1997 and on 2 May 1997. Res Con Atkinson explained that Michael McKee had made the call on 27 April 1997 and Eleanor Atkinson the call on 2 May 1997 9541. Immediately after the interview, Eleanor Atkinson and Michael McKee presented themselves at the police station where they were both interviewed by DI Michael Irwin and provided 'alibi' statements 9195 & 34603.
- 2.7 3/11/97 ██████ spoke to ██████ of British Irish Rights Watch, (BIRW) and told her about the anonymous call which she had received, which she believed to be from an RUC officer. ██████ recorded that ██████ told her that the

man said "we were not all like that" and that all six in Land Rover were off sick; one was working at Jameson's contractors and he had trained Stacey Bridgett 17587.

- 2.8 7/11/97 Rosemary Nelson received a second anonymous call which she believed was from the same man who had rung her on 3 November 1997 17587.
- 2.9 1/6/99 DCS Maynard McBurney reported, in response to the interim direction from the DPP to consider the comments of [REDACTED] LJ in the Marc Hobson trial, that no further lines of investigation were required 19370.
- 2.10 2/6/00 The decision to re-interview Andrea McKee was recorded by DI Irwin in message form 2416.
- 2.11 14/6/00 DI Michael Irwin liaised with DCS Maynard McBurney in relation to enquiries in Wrexham. DI Irwin and DCS Maynard McBurney spoke to Michael McKee who confirmed the evidence contained in his first statement 17427.
- 2.12 20/6/00 Andrea McKee was re-interviewed by DI Michael Irwin and DCS Maynard McBurney in Wrexham. She confirmed that the evidence in her first statement, the alibi, was false. She also said that she believed that Res Con Robert Atkinson paid for her legal representation 2397.
- 2.13 20/6/00 It was noted by the police that Andrea McKee was to be treated as a witness rather than be cautioned. The notebook entry of DCS Maynard McBurney dealt with the interview of Andrea McKee when she was not under caution and the obtaining of the witness statement to the effect that her alibi statement was untrue. She was told that she was to be treated as a witness rather than a suspect but that others might direct that she must be interviewed under caution 22150.
- 2.14 26/6/00 A meeting was held at the DPP offices with attendance by ICPC and DCS Maynard McBurney at which DCS McBurney said he had briefed fully on the outcome of the actions he had taken in relation to the McKees. It was decided to commence reinvestigation into Res Con Atkinson by DCI K under DCS McBurney. This investigation would include all issues in relation to the actions of Res Con Atkinson and the false alibi offered in his support.
- 2.15 24/7/00 On 21st July there was a meeting between Sir Ronnie Flanagan and Anthony Langdon in which the Chief Constable told Mr Langdon that he had pushed and pushed and the re-interview of Andrea McKee followed directly from that. Once interviewed he had immediately decided that she should be treated as a witness rather than the suspect (39693).
- 2.16 27/11/00 DI Michael Irwin made a statement in which he stated that on 14 June 2000, as a result of an enquiry, he travelled to the home of Michael McKee who indicated that he had nothing further to add and everything he had related in his statement earlier remained unchanged. On 20 June 2000 DI

Irwin stated that he travelled with DCS McBurney to Wrexham police station where he took a statement from Andrea McKee. On 25 October 2000, he travelled to Wrexham again with DCI K and spoke to Andrea McKee and introduced her to DCI K who recorded a statement from her. He recalled Andrea McKee telling him about Res Con Robert Atkinson ringing Allister Hanvey and telling him to burn his clothes 17427.

- 2.17 13/3/01 DI Irwin described the meeting with Andrea McKee at Seagoe. He stated that DCS Maynard McBurney directed that there be no note and no entry onto HOLMES in order to prevent information getting back to Res Con Atkinson. Further, he said that DCS McBurney advised him not to put the fact that Andrea McKee had been present when Tracey Clarke made her statement to Res Con Atkinson. One reason for not putting it to him was the presence of Res Con Atkinson's solicitor. DI Irwin added that it was DCS McBurney's decision to treat Andrea McKee as a witness. DI Irwin stated that DCS McBurney told him to tell him if he became aware of a change in circumstances of the McKees. He did so around September 1999 but DCS McBurney took no action because the inquest was due. Following the decision not to hold an inquest in May 2000, he decided to pursue the McKees 22760 at 2278.

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

There is clear evidence of collusion between RC Atkinson (2.5) and Michael McKee (2.6), Eleanor Hanvey (2.6), and Kenneth Hanvey (3.272), and by implication between RC Atkinson and Allister Hanvey, otherwise there would have been no need for RC Atkinson to have conspired with McKee and the Hanveys to concoct a false alibi about his telephone calls.

We believe there is also evidence of collusion by DCS McBurney to cover up for RC Atkinson, although whether this collusion was mutual we cannot tell. Although DCS McBurney appeared to keep information from RC Atkinson by not entering information on HOLMES (2.17) (although according to Colin Murray, DCS McBurney did put Tracey Clake's statement on HOLMES on 11.5.1997 - 3.305 - which might not have given RC Atkinson access to it, but did make it widely available to a number of RUC officers). In practice the DCS:

- 1) apparently failed to brief officers searching Allister Hanvey's house on 10th May 1997 about the clothing he was wearing on the night of the attack (please see module 12, paragraph 7);
- 2) did nothing to break Allister Hanvey's alibi (please see module 12, paragraph 28, re the party at Tracey McAlpine's house);
- 3) did nothing between May 1997, when he obtained RC Atkinson's telephone records, and September that year, when he tipped him off that he was interested in his telephone calls (2.5);
- 4) he admitted that he knew at once that McKee/Hanvey alibi was false (3.266), but he waited until June 2000 to break that alibi (2.16), having told the Crown Court in the Hobson trial in June 1999 that no further lines of enquiry remained to be examined (2.9);

5) his claim to be waiting for the McKees to split up so that he could break the alibi (3.103) smacks of both prescience unusual in a police officer and the benefit of hindsight, not to say post-hoc justification, and does not explain why he still waited eight months to interview the McKees (3.23) and then treated Andrea McKee as a witness rather than interviewing her under caution (3.18);

6) by ordering DI Irwin to take what they both knew to be a false statement from her, he turned Andrea McKee into an unreliable witness (although her own actions assisted him greatly). While she and Michael McKee paid the price for their lies in that they were convicted of conspiracy to pervert the course of justice, the case against RC Atkinson collapsed owing to Andrea McKee's perceived unreliability, a perception to which DCS McBurney contributed considerably.

Either this was negligence so gross as to constitute dereliction of duty, or it was collusion. We believe it was the latter, and that, had it not been for pressure by the Hamill family on the Secretary of State, and pressure from the NIO in turn on the Chief Constable, the police investigation would have run into the sand instead of being re-opened in June 2000. DCS McBurney fatally compromised both the police investigation and the neglect complaint when he tipped off RC Atkinson in September 1999, but he continued to obstruct both investigations after that. We also think it significant that, once PONI, which was far more independent than the ICPC, came into existence, they expressed a total lack of confidence in DCS McBurney and had him removed from the case (3.70, 3.71).

DCS McBurney was aided and abetted in his collusive acts by a failure by the ICPC to take on board the Atkinson aspect of the neglect complaint, and by a failure by the C&D department and the hierarchy within the RUC to call DCS McBurney to account, using the non-existent intervention of the ICPC as an excuse. The RUC never suspended Atkinson, and not even the Chief Constable removed DCS McBurney from the investigations until PONI insisted. The Chief Constable made perjorative remarks about the case to a senior NIO official, which he unconvincingly denied (3.200, 3.144).

When PONI bugged Reserve Constable Atkinson's home, he found the bug (3.42). PONI believed that he was told about the bug by someone within the RUC (3.89), and PONI had encountered some resistance within the RUC to the idea of bugging his home in the first place (3.85, 3.164).

Furthermore, DCS McBurney deliberately suppressed information from files passed to the DPP, with the willing participation of other RUC officers, particularly DI Irwin (3.45).

Collusion is not always a deliberate conspiracy. It can, as Judge Cory has pointed out, reside in acts of omission as well as acts of commission. To that extent, both the RUC and the ICPC, as well as individuals, must take some responsibility for collusion in this case.

We give further reasons for believing that collusion took place in response to particular comments by the Inquiry Team below.

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

It is significant to note the degree of protection that DCS McBurney was attempting to give to Andrea McKee, and this may assist the Panel in attempting to decide whether there was anything untoward about the contents of the neglect file, in relation to the suggestion that he failed to highlight Andrea's false statement. The following matters also illustrate the developing strategy of DCS McBurney,

1. After the meeting with Andrea McKee in Seagoe, DCS McBurney directed that there be no note of and no entry on to HOLMES in order to prevent information getting back to Atkinson.
2. There was no mention in the murder file that Andrea McKee had provided information to the police that Tracey Clarke was a potential witness. This was at a time prior to the time of the making of the false statement, when it could not be suggested that there was any motive other than protecting her or not regarding it as relevant for not mentioning her.
3. DI Irwin was directed by DCS McBurney not to put the fact that Andrea McKee had been present when Tracey Clarke made her statement to Atkinson in interview.
4. The evidence of DI Irwin concerning the taking of the witness statement of Andrea McKee is critical in demonstrating DCS McBurney's motivation and strategy., p96

"Q. Now, I want to turn to another, separate issue, 16 and that's the issue of how Andrea McKee was dealt with 17 in relation to the taking of -- can we call it -- well, 18 it is clearly a false alibi statement.

19 A. That's okay, sir, yes.

20 Q. Well, have you any doubt that it is a false alibi 21 statement now?

22 A. No, I have no doubt now, sir.

23 Q. Now, you will understand that one of the matters that is 24 important is trying to get into the mind of

25 Mr McBurney --

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1 A. Yes.

2 Q. -- as to what strategy or tactic he was engaging in in 3 relation to Andrea McKee.

4 A. Yes, sir.

5 Q. Am I right in saying he wasn't a man for telling others 6 really very much about his strategy?

7 A. No. He would have given you an indication what he

8 wanted, and, yes, you certainly could question him on
9 points and he would give you indications and that, but
10 he would move on very quickly, sir, and he wouldn't
11 dwell on it that much.

12 Q. Now, if we have page 81486, please. I was actually
13 looking for page 59 of this witness statement. Is there
14 another page 81486 on the system?

15 THE CHAIRMAN: What we have up is the alibi statement, is
16 it?

17 MR ADAIR: Yes. It was actually this witness' statement
18 I wanted up. 81418. Well, I will deal with it
19 without the statement.

20 A. Okay, sir.

21 Q. Mr McBurney directed you to go and take the statement
22 from Andrea McKee.

23 A. That's correct, sir.

24 Q. You discussed with Mr McBurney as to whether you should
25 confront her with her earlier actions, i.e being present

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1 when Tracey Clarke made the allegations --

2 A. That's right.

3 Q. -- whether she should be confronted with this or whether
4 you should simply take a witness statement from her?

5 A. That's correct, sir.

6 Q. So it was obviously something that was tasking the mind
7 of Mr McBurney at that stage?

8 A. Is certainly was, sir, yes.

9 Q. He directed you that you should not confront her, but
10 you should, in fact, just take the witness statement?

11 A. That's correct.

12 THE CHAIRMAN: What, draw her attention to the declaration?

13 MR ADAIR: Yes.

14 THE CHAIRMAN: If she backed out at that, leave it; if she
15 didn't, take a statement?

16 MR ADAIR: That's right, sir.

17 Now, I don't think you have said it in so many
18 words, but is this proposition a reasonable one as to
19 what Mr McBurney was doing? Did he see this, in other
20 words, Andrea McKee making a false alibi statement, as
21 the potential way to break into the conspiracy?

22 A. Sir, when Michael McKee was interviewed in Lurgan police
23 station and I had a brief word with Mr McBurney after
24 that, he was delighted that the Atkinsons had introduced
25 other people into the conspiracy, because he saw here we

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1 have a one-minute phone call between one house and
2 another house and what he had to prove -- here we were,
3 two families, both of interest, not to tell the truth.

4 What he had to prove was not only who made the phone
5 call, but what was actually said on that phone call, and
6 for any investigator that is a massive task in relation
7 to a phone call.

8 You can prove a phone contact, but who made it and
9 what was said on it -- and he saw the introduction of
10 people outside those family units as a real bonus to the
11 investigation. He believed at that stage this was
12 a bonus and an opportunity.

13 Q. Now, we all know, as lawyers, the dreaded alibi
14 witnesses --

15 A. Yes.

16 Q. -- and what they are usually like. Did he see, just to
17 put it in a nutshell, the making of a witness statement
18 by Andrea McKee, this false alibi statement, as the
19 potential breakthrough eventually --

20 A. He did indeed, sir.

21 Q. -- into Atkinson?

22 A. That's correct, sir.

23 Q. Have you any doubt whatsoever that his strategy at that
24 stage was to get this false alibi statement and, when
25 the time was right, break the alibi statement?

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1 A. I have no doubt whatsoever, sir. What I would say is,
2 after I took the witness statement off Andrea McKee and
3 we spoke about it, he certainly gave me his view at that
4 stage that now the timing wasn't right to move on,
5 because what you would simply get was Andrea McKee and
6 a statement after caution from her potentially, which
7 then could not be used against Robbie Atkinson.

8 Q. In relation to the McKees, Michael McKee and
9 Andrea McKee --

10 A. Yes.

11 Q. -- was there any discussion between you and Mr McBurney
12 as to whether he thought he might be able to break
13 Andrea McKee eventually?

14 A. Because of probably her relationship, that she'd come to
15 the police at the start, and underneath it all
16 Mr McBurney was of the view that she had been used and
17 forced into this situation and that she was the weak
18 link in the whole conspiracy.

19 Q. What about your knowledge of whether the marriage was
20 a solid one or otherwise between Michael and Andrea?

21 A. Yes. Mr McBurney had certain views on this as well. He
22 believed that it wouldn't last, so he did, sir.

23 Q. Again, I think I have used this expression before, was
24 his strategy at that stage then to get this statement
25 taken and wait in the long grass?

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1 A. That's right, sir. That was his strategy. On saying
2 that, he had to move at some stage. Obviously, with the
3 trial going on, and then the inquest, time was on his
4 side, but he had to move at some particular stage, and
5 when he moved was, you know, a choice, a judgment
6 decision for him.

7 Q. Yes.

8 THE CHAIRMAN: You say he thought Andrea McKee had been
9 forced into the conspiracy. Did he say by whom?

10 A. No. He believed that they had been introduced by the
11 Atkinsons into the whole conspiracy issue, sir.

12 THE CHAIRMAN: But you used the word attributing it to
13 Mr McBurney's view that she had been forced.

14 A. Yes, sir.

15 THE CHAIRMAN: Did he say who or what had forced her?

16 A. I think it was the case of the relationship with the
17 Atkinsons. Obviously he believed that the Atkinsons had
18 went to the McKees to help him and, because of that
19 relationship, they had certainly been forced into
20 assisting the Atkinsons.

21 MR ADAIR: Again, lest there be any doubt about it, what was
22 your impression as to whether Mr McBurney was determined
23 to try to nail Atkinson?

24 A. He was very determined, sir. The difficulty was the
25 timing of the move. He was very firm that he would

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1 move, but the timing was vitally important to that move

5. In relation to the DPP files, DI Irwin gave evidence at p102;

"2 Q. Now, I want to turn to a separate issue again. That's
3 in relation to the files that were sent to the DPP, both
4 by yourself --

5 A. Uh-huh.

6 Q. -- and both in relation to the murder investigation and
7 in relation to the neglect allegation which incorporated
8 the tip-off allegation.

9 A. Yes, sir.

10 Q. You were involved?

11 A. That's correct, sir.

12 Q. You compiled the murder file?

13 A. That's correct, sir.

14 Q. You were substantially involved in the preparation of
15 the neglect file, which incorporated the tip-off?

16 A. I was indeed, sir, yes.

17 Q. Now, in neither of those files is there any reference,
18 apart from, I think, the words -- there is mention of
19 being sceptical about the story --

20 A. Yes.
21 Q. -- but there is no mention in those files to the DPP
22 that, for example, Andrea McKee's statement should be
23 looked at in the light of the fact that she was present
24 with Tracey Clarke when she made the allegations
25 concerning the tip-off. Do you understand?

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1 A. That is correct, sir.

2 Q. It is not mentioned in either of the files.

3 A. No, sir.

4 Q. Can you help us as to why that was?

5 A. I think that was -- well, Mr McBurney's certain style,
6 sir, that the investigation, as far as he seen it, was
7 still to be investigated and he certainly wasn't -- to
8 a certain degree he became paranoid about the
9 information and he certainly wouldn't want to disrupt
10 his chances of making the progress in the investigation
11 later on.

12 Q. Well, I suppose the question might be asked: how would
13 it disrupt the progress by simply informing the DPP,
14 alerting them to this issue?

15 A. Intelligence in those days, sir, everybody dealt with
16 intelligence differently. Mr McBurney had his own style
17 in dealing with intelligence. You know, that was his
18 style. I can't really say the method of how he done it
19 or why he done it, but that was his way."

6. As highlighted at paragraph 2.17, DCS McBurney told DI Irwin to tell him if he became aware of a change in the circumstances of the McKees.

These matters are confirmed by the Inquiry interviews of DCS McBurney and his Inquiry Statement paragraphs 82 - 98

" 82. I did not think Reserve Constable Atkinson knew that Andrea had been to the police station previously and that was why he used her to confirm his alibi. This was a weakness in the story, which I believed we could exploit to our advantage. I believed Andrea McKee would talk to us, as she had before. I believed that we could make progress with Andrea McKee and use the fact that she had spoken to the police at an early stage. I knew, however, that both Andrea and Michael McKee were essential to the investigation. To bring a successful prosecution against Atkinson we needed both of them. I accept we still had Tracey Clarke's evidence available to us at that stage but her evidence was pure hearsay as the evidence she had was what she had been told by Allister Hanvey.

83. Eleanor Atkinson and Michael McKee were also interviewed on 9 October 1997 and both confirmed that the telephone call was made by Michael McKee. They said Michael and Andrea McKee had stayed at the Atkinson house the night of 26/27 April and made the call first thing in the morning. I

knew then, that there was a conspiracy between them. I knew Andrea and Michael McKee were lying but did not feel it the right time or place to put that to them. They were being interviewed in the presence of a solicitor and I knew that as soon as I raised it the solicitor would advise them not to answer.

84. I definitely did not tell Reserve Constable Atkinson where the evidence against him came from. I suspected, however, that he knew already from his associates.

85. In terms of the delay between May 1997 and October 1997 in putting the allegations to Reserve Constable Atkinson, the reason was like any other inquiry, it just fell into place at that time. In my opinion it was the first opportunity that presented itself. As for Tracey Clarke her evidence was still there for her being a witness to the murder.

86. On 29 October 1997, Detective Inspector Irwin spoke to Andrea McKee and took a statement from her. That statement contains page numbers 9200 to 9201. At that time, she confirmed the alibi account. I cannot recall why she was not interviewed on 9 October with the others. I can only speculate that we had asked her to come in but she had been unable to. Detective Inspector Irwin saw her in the presence of Sean Hagan solicitor at his offices. Initially, DI Irwin was not happy about the interview but I explained my strategy to him and he was content with that. I told him that if she raised the fact that she had been to see us in May with Tracey Clarke and was therefore giving us inconsistent accounts, he should pursue it. If she did not raise it herself, however, I told him not to. Again, I was trying to proceed gently and leave open the possibility of her talking to us later on. I guessed that she would not speak to us in the presence of the solicitor. I also believed her husband was putting pressure on her to stick to the story but I thought there was a real chance they would separate in the near future.

87. After the interviews I did consider arresting the McKees, because I knew their statements were false, but I decided against it. I believed the only real chance we had to crack this investigation was to wait for an opportunity to get between the conspirators and break their story. Quite apart from that there was no evidence to put to them. While Andrea and Michael were still together I knew I would get nowhere going after Andrea because she would not go against Michael and the others. I expected that Andrea and Michael would split up. That was simply a strong hunch based on many years of experience. I explained this to the Ombudsman when I was interviewed in 2001. That interview is now produced and shown to me and was conducted on 27 March 2001 and contains page numbers 22811 to 22860.

88. I have been asked what I was waiting for in terms of my strategy. I was also hopeful that either the murder trial or the Inquest would give us another opportunity to shake things up. Unfortunately, that did not happen. At the trial there was only one Defendant and the other issues didn't arise. As for an Inquest, I believed that this would precipitate a situation where we could speak with the McKees. I explained my rationale about an Inquest to DI Irwin and he took it upon himself after our discussion to speak with the coroner Mr Lecky.

He indeed convinced the coroner that there should be an Inquest in this instance. It later transpired that Mr Lecky had an agreement with Mr XXXXX that there would not be an Inquest.

89. On 25 November 1997, I directed Detective Inspector Irwin to visit Kenneth and Elizabeth Hanvey and ask them about their part in the telephone calls. They refused to make a statement. This is recorded on a Message Record Print containing page numbers 9903 to 9904. Kenneth Hanvey confirmed that Michael McKee had telephoned him in the morning of 27 April 1997 and asked if Tracey Clarke was with Allister Hanvey. He checked Allister's room but neither of them were there and he assumed Allister was staying with his uncle Thomas Hanvey.

90. In December 1997, I submitted my file on the complaint investigation to the DPP and recommended no prosecution. It was Detective Inspector Irwin who did most of the work on that file but the summary and conclusion were mine. I can re-state that I was, and remain, firmly of the view that the Land Rover crew did all they could reasonably have done. In my view, this is supported by the evidence of Carol Ann Woods who witnessed the incident through her window overlooking the junction. She saw her brother get into a fracas with someone, who we think was Robert Hamill, and then it all happened very quickly. I do not think the police officers could have anticipated what happened and were ill-equipped to stop it once it started. There were only four of them amidst a crowd of about 40 people. They did intervene but were outnumbered. It must have been a very frightening situation for them yet they still got involved and tried to stop it. I was entirely satisfied that the complaint was groundless.

91. I refer in that report to Colin Prunty who "outlined the good work carried out by the police who'd been in the Land Rover when they became aware of the situation. The police are not in a position to confirm this statement although they know it to be fact". I cannot recall now where I got that from but I think I may have got it from the DPP and counsel after they saw Colin Prunty in consultation. I accept, however, that there is no documentary record of that statement. Furthermore, while we were carrying out the re-construction of the Land Rover we were approached by XXXXXXX who I think was the bar man at St. Patrick's Hall. He also said the police had done a good job and had received unfair criticism. However, I made a point of getting Mr XXXXXXX, who was with us at the Land Rover reconstruction on 9 June 1997, so that he could speak to XXXXXXX and get his views. Mr XXX refused to make a statement and I understood that given where he worked at the time.

92. In my notebook for that date, a copy of which is now produced at page 73108, I recorded "Satisfied with the murder investigation. Witnesses generally the problem. Police 'iffy'. Not satisfied they haven't something to answer. Atkinson, can see problems facing investigation. Practical; not his concern." These notes relate to conversations I had with Mr Murnaghan as we walked around the town centre whilst the reconstruction was ongoing and I have recorded his comments to me.

93. I have also been asked about a reference in my notebook at page 73140 to Havelock House on 4 December 1997. This refers to a visit to the studios of Ulster Television. The Chief Constable had agreed that Michael Irwin and I would attend UTV and discuss the background of the Hamill case.

94. I have been asked if I considered it suspicious that Reserve Constable Atkinson was unable to name more people who were at the scene on 26/27 April 1997. My answer to that is; not necessarily. It must be remembered that this was a traumatic event for those officers and it may have affected their recall immediately after the event. Having said that, however, I was told that Reserve Constable Atkinson had failed to name Allister Hanvey deliberately in order to protect him. I believed that was what happened but I did not know why.

95. I have been asked to explain why, when I submitted my report to the DPP on the complaint by the Hamill family against the four officers in the Land Rover, I did not make a reference to Andrea McKee giving an alibi statement which was at odds with the information she had given to Michael Irwin on 8 May 1997. I had outlined the allegations against Atkinson as produced in pages 60551 to 60552. Essentially all that was available to me at that stage was conjecture and it was not going to make any difference to the evidence against Atkinson. In that report I was presenting facts that were going to produce evidence. The information about Andrea McKee was not evidence in my opinion at that stage. What I tried to do was protect Andrea McKee in order that we could use her as a witness at some stage. She was the only potential witness I had at that stage and I believed it was important to get her husband on line to assist the case. Michael McKee I believe did not know at that stage that his wife was the original source of the information which had led Tracey Clarke to make her statement.

96. I could have dealt with this case much quicker by arresting Atkinson and the other parties involved but I do not believe it would have produced any evidence to have assisted in charges being laid. Once I had made arrests each party would have availed themselves of legal representation which would not have produced any evidence to have assisted my enquiry. That is why I developed a strategy which would allow me to gather evidence to support Andrea McKee, in particular that of her husband Michael McKee.

97. I have been asked about an entry in my notebook dated 2 April 1999 "Meeting with XXXXXXXXXXXXXXXXXXXXXXXX was the local MP for the area and he approached ACC White to speak to me about the case. We met on two occasions I believe and the information that XXXXXXXXX gave me was not of evidential nature but that the case was being used by certain political factions for propaganda purposes.

98. After some period of time, Detective Inspector Irwin learnt from Mrs Clarke that Andrea and Michael McKee had split up as I predicted much earlier on. He advised me of this and I told him to make inquiries. He discovered that Michael was living in Cork and Andrea was living in

Wrexham. Given the amount of time we had already waited I discussed with DI Irwin if he thought that Michael McKee would return to Northern Ireland? Based on our views that he would return I believed the right thing to do was to continue to play it safe and wait for Michael to return to Northern Ireland.

99. In fact, he did return and as soon as we heard that I directed Detective Inspector Irwin to make arrangements for us to see Andrea in Wales. My intention was to call to see Michael just before and ask him if he had re-assessed his evidence. "

7. It is significant that DI Irwin on the 19th October 1999 recorded in a Message at 2395, that the McKees had separated and that DCS McBurney was informed of this development. Enquiries were being made to confirm this and the McKees' present location. It made clear in that message that in due course that both McKees were to be spoken to regarding their previous accounts. The issue of whether there would be a Inquest was not resolved until May 2002.

8 Message form at 2416 makes it clear that once DCS McBurney is informed that the Coroner is not going to hold an inquest, on the 2/6/00 a decision is made to re-interview Michael and Andrea McKee as per the plan of action referred to in October 1999. This shows that once the inquest delay came to an end DCS McBurney moved

9. Andrea McKee was interviewed on the 20/6/00 in Wrexham and she tells the truth to DCS McBurney. Thereafter she makes a statement under caution, a further witness statement and agrees to give evidence for the prosecution of the conspiracy.

DCS McBurney's strategy of waiting in the long grass succeeds, and probably would have resulted in a successful prosecution of Atkinson, but for the decision of the DPP.

Submissions by McCartan, Turkington & Breen Solicitors (Sir Ronnie Flanagan)

See previous submissions.

Submissions by the Police Service of Northern Ireland

See section 4-15 below.

3. The witnesses have principally been considered in parts 9 to 15 inclusive. In addition:

Diane Hamill

Statement

- 3.1 Para. 36: The police claimed **D**, **E** and **F** had not said anything about the police not getting out of the Land Rover in their statement
- 3.2 Para. 40: Her sister heard about a phone call between a solicitor for some of the suspects and a police officer, during which the solicitor was told the arrests were only for show and that others would be released soon.
- 3.3 Para. 41: Ms Hamill had some incidents with the police. In August 1997 she had stopped at a chip shop and a police officer came in behind her. When she went out she noticed the police had parked their car nose to nose with her car. Two police officers got out and the driver made a pointing gesture as they drove off. On another occasion, she was in the hairdressers and an officer in full uniform came in and stared at her in the mirror. At the traffic lights one night in Portadown at 23.00 the police drew up beside them. As the lights turned green, the police deliberately swerved towards them, which caused them to swerve.
- 3.4 Para. 42: She was harassed on her wedding day as she and her bridesmaids were having their hair done. She had parked in the Portadown car park. When she came out a police car was blocking her way out. They had to wait for the driver to finish reading his paper before he moved.
- 3.5 Para. 43: She did not report the incidents as she had no faith in the complaints system.
- 3.6 Para. 48: Complaints about these incidents received no response. One time she flagged down a Land Rover to ask for help with a man taunting her mother. She could see inside the Land Rover as the back door was open and she could see a police officer smoking. The Land Rover drove on. She then stopped the Land Rover later by standing in the street and asked for their help. The Land Rover drove off in the other direction. There was no response to the complaint she made about that (9001).
- 3.7 Para. 56: Told by PONI of developments in conspiracy investigation.

Father Sean Dooley

Statement

- 3.8 Para. 4: On 11th May he received an anonymous call about the Robert Hamill murder. He was not sure of the identity of the caller, or what their motives were, but he assumed it was a police officer due to the amount of information he provided. He said the four officers in the Land Rover were sleeping. They had been on duty since 16.00 and were on overtime but did not want to be there.
- 3.9 Para. 5: I wrote down what the person said and then the next morning I wrote it out in long hand.

3.10 Para. 7: These were at 72782.

DI Michael Irwin

Statement

- 3.11 81455: DC McAteer had been told by Res Con McCaw that a third party had told him that Tracey Clarke had witnessed the incident. DC McAteer interviewed Ms Clarke. When she denied this DCS McBurney ordered the third party be spoken to. DC McAteer arranged this through Res Con McCaw. DI Irwin and DC McAteer met Mrs McKee by Seagoe Cemetery. Mrs McKee was very frightened and insisted that her identity and the information she was provided would not be disclosed by police. She had concerns about her relationship with the Clarke family if her involvement became known. At no stage did Andrea McKee say that Allister Hanvey had burnt his clothes
- 3.12 81457: Tracey Clarke had made a statement which was very similar to Mrs McKee's account. The statement made no mention of Mr Hanvey having "burnt" his clothes rather he was told to "get rid of his clothes".

Oral Evidence

- 3.13 DI Irwin could not say whether consideration was given by DCS McBurney to arresting Res Con Atkinson at the same time as the murder suspects (p.62). There was no conference between the taking of Mr Jameson and Ms Clarke's statements and the searches and arrests. DCS McBurney "made the direction, obviously, not to include Atkinson" (p.63).
- 3.14 DI Irwin did not know why the tip-off was not considered part of the complaint. He thought it was all being supervised by the ICPC. DI Irwin could not help on the reason for the delay in interviewing Res Con Atkinson but said it would have been linked with the ICPC investigation (p.67). DI Irwin knew that [REDACTED] had an intelligence document in May. If telephone companies produced material it was supplied in an intelligence document and could not be put to suspects or used as evidence. `For it to become evidence, it had to be applied for or the individual had to produce the billing (p.68). There was no legal reason for the companies to respond to a request (p.69). Some phone companies would provide evidence and others would not (p.88).
- 3.15 The Atkinson tip-off allegation was still ongoing during the Hobson trial. DI Irwin believed it was relevant to the evidence he was giving (p.84).
- 3.16 DI Irwin was preparing Parts II, III and IV of the DPP file. DCS McBurney would then say he needed some items and Mr Irwin would put those in order and take them to DCS McBurney. Accordingly, DI Irwin did not compile the neglect file but some of it was similar to his DPP file and it was possible that DCS McBurney cut and pasted some of it (p.85).

- 3.17 When they met Andrea McKee at Seagoe cemetery she was very frightened and wanted to give information but she did not want her name released or for it to be known she had given the information (p.73). It was a five or ten minute interview. She seemed to be telling the truth (p.74). DI Irwin thought seeking Res Con Atkinson's phone records was a natural progression from the allegation by Mrs McKee (p.74). He said he would have loved to have made Res Con Atkinson amenable for that crime. He brought it to DCS McBurney's attention but did not make a notebook entry for the protection of the individual (p.75).
- 3.18 When he took Andrea McKee's alibi statement he was ruling nothing out as it had not been challenged. He felt Andrea was strong in her delivery and DCS McBurney said he would get a team together to try and break the alibi. DCS McBurney came back and said it was the wrong time to challenge it. DCS McBurney said if he got a team together, it would have to continue (p.77). He felt he might get Andrea McKee, but not Res Con Atkinson. DI Irwin said in all the circumstances they would be obliged to caution Andrea McKee in 2000 but DCS McBurney felt she had helped the police before and that she was in a peripheral role and he wanted to use her as a witness (p.78). DI Irwin said they would cover certain topics then get an investigation together (p.79).
- 3.19 Res Con McCaw was present at the meeting on 8th May with Andrea McKee. He was off duty. He was a tool to get the meeting arranged. It was the most practical way as he had come in with the information about Andrea McKee (p.10). DI Irwin did not think about Res Con McCaw's friendship with Andrea McKee (p.11). 8145 showed that Andrea McKee did not want to go to the police station as she was terrified of the consequences should her cooperation become known (p.13). DI Irwin thought her fears were genuine. Mrs McKee also had a fear about her relationship with the Clarke family (p.14). When Andrea McKee gave the alibi statement she was less nervous (p.20) but DI Irwin did not know why. He believed because she had spoken to her solicitor about the evidence (p.21). DI Irwin was made fully aware of the need to tell the truth in the statement (p.22). The help Andrea McKee had given the police was providing the information on Tracey Clarke (p.24). There was nothing underhand about the meeting with Andrea McKee or her involvement with the interview of Tracey Clarke (p.53). People needed to walk into the police station in Portadown. The closest someone could park was 20m and there would be a parking spot within 100m (p.54).
- 3.20 DCS McBurney would give others an indication of his strategy. He would not dwell on it if questioned. Per page 59 81486 DCS McBurney directed DI Irwin to interview Andrea McKee and not to confront her about the previous information, just to take the witness statement and draw her attention to the declaration. DCS McBurney was delighted Atkinson had introduced others into the conspiracy (p.99) as it was a bonus and opportunity (p.100) because it introduced someone from outside the two family units into the conspiracy (p.134). He saw Andrea McKee making a statement as a way to break the Atkinson conspiracy (p.100). DI Irwin had no doubt DCS McBurney's strategy was to take the alibi and then break it at the appropriate stage, which was not then as her statement under caution could not be used against

Atkinson. DCS McBurney felt Andrea McKee was the weak link in the conspiracy and that her marriage would not last (p.101). His strategy was to wait in the long grass. DCS McBurney felt McKee had been forced by the relationship with the Atkinsons (p.102).

- 3.21 Andrea McKee's position was not mentioned in the DPP files as DCS McBurney saw the issue as awaiting investigation and "to a degree he became paranoid about the information" and did not want to jeopardise the chance of making progress later (p.104).
- 3.22 DI Irwin was not aware of the special procedure within PACE 1989 which was designed to obtain confidential information (p.124). DI Irwin was familiar with a similar situation where TV footage was required, e.g. after a riot. He could not answer if they were the same as that was not the process the police went down (p.125). DI Irwin thought DCS McBurney would raise the issue in interview by saying the police "had information" but the response from Res Con Atkinson either changed his mind or prevented him from doing that (p.126). DI Irwin was not involved in the reason for the delay in interviewing Res Con Atkinson. He did not expect to be involved and had told Diane Hamill he would not be. He came to be involved as DCI P39 was not available and he was there in a "back-up." capacity. DCS McBurney and Mr Murnaghan were aware that he had told Diane Hamill this. There was a list of areas that had been agreed between DCS McBurney and Mr Murnaghan to be covered in interview (p.128). DCS McBurney had told DI Irwin to caution Res Con Atkinson for assisting offenders and withholding information prior to the interview (p.129). DI Irwin expected Res Con Atkinson to be confronted with the phone records on October 9th as he had produced them (p.130).
- 3.23 If DCS McBurney had not received the information that the McKees had split, DCS McBurney wanted an inquest to get all the information to come out (p.135). DI Irwin did not believe that DCS McBurney recommending no prosecution at 9082 meant that the issue was at an end. DI Irwin would not put in a murder file that investigations were ongoing (p.136). DCS McBurney had to put a file in about the inactivity allegation and that included the Res Con Atkinson allegation. They all needed to be concluded on the DPP file (p.137). It took 8 months from discovering the McKees had split to interview them as one person was living in the south of Ireland and both had to be interviewed. DCS McBurney could not go down to Ireland and interview a witness. DCS McBurney did not even know where he was living in Ireland (p.138). DI Irwin said he may have been aware Mr McKee was in Cork (p.139). DI Irwin found out the McKees were separated and told DCS McBurney who said it was his intention to interview them as witnesses and to try and get their addresses. DCS McBurney was in charge (p.140). The inquest decision was ongoing during the eight month delay between the message sheet and the interviews (p.140). As soon as the inquest delay came to an end DCS McBurney moved (p.141).
- 3.24 Per 2395 DI Irwin knew by 19th October 1999 that Michael McKee was in Cork (p.3). DCS McBurney wanted enquiries to be made through the Clarke family. If he had wanted to go through official channels, he could have (p.4).

DCS McBurney wanted to speak to the McKees personally and made his own assessment. Any request for Garda help would have to go through DCS McBurney and Crime Branch (p.5).

- 3.25 DCS McBurney did not want Andrea McKee's role in getting information to the police put in an evidential format. It was a deliberate decision not to include it in the file being sent to the DPP (p.36).
- 3.26 DI Irwin did not know how Mr Hanvey could be kept up to date with the investigation, per Tracey Clarke's statement. He had the utmost faith in his team but there was always chat around the station (p.152) although nothing of use to a potential suspect (p.153).
- 3.27 DI Irwin was aware there was a meeting between the Hamills and Mo Mowlam on 24th November (p.121). From his answer at point 5 of 16500, which details a specific link, it can be presumed that DI Irwin was asked about a link between a suspect and a police officer. The answer to the same point in 15376 did not deal with a specific allegation. DI Irwin sent his report in to Supt Hooke and was then finished with the request (p.123).

DS Dereck Bradley

Oral Evidence

- 3.28 Para. 8 81509 "I waited for all 4 officers [Land Rover crew] in DI Irwin's office. DCI P39 was not present during this meeting. Did not remember anything I specifically needed to address apart from Res Con Atkinson. He said something about his statement not being complete so I told him to go away and finish it. He provided his statement some time later that day." DS Bradley thought his part-finished statement was on file as only a few lines were added (p.49). That Res Con Atkinson's statement was dated 27th did not affect the validity of DS Bradley's signature at all (p.84).
- 3.29 He thought Res Con Atkinson should have known more people than were in his statement. Per Para. 32 81391 "Under instruction, by way of phone call, I returned to Portadown station and was asked to provide a statement...I believe this request was made by DC Keys or DS Bradley". DS Bradley did not call Res Con Atkinson back in (p.86). DS Bradley remembered talking to Res Con Atkinson in the CID office with three other officers (p.86). He addressed the officers as to what his role was then sent Res Con Atkinson out to complete his statement (p.87). When he spoke to Res Con Atkinson about his statement, the other three had gone (p.88).

ACC Raymond White

Oral Evidence

- 3.30 15385 was about the meeting Mo Mowlam had with the Hamill family on 24/11/1997. He did not remember being asked by the Chief Constable's office to write a memo after the meeting. It would come in written format with questions laid out and responded to in the same manner. The suspension issue was a question for G Department (p.88). Supt [REDACTED] was the deputy in charge of G department. He was ACC Hays' deputy. Mr White's staff officer would have requested from G department an update regarding suspension (p.89). It appeared there was a discussion about Res Con Atkinson's suspension (p.90). Command Secretariat was the Chief Constable's private office (p.91). It was not his responsibility to find out the status of the investigation into the tip-off allegation (p.92). There would be nothing included in 15385 which would be a discussion for the Secretary of State as to what the investigation would produce. As an officer he did not made available to any politician the content of a criminal investigation (p.93). He was not aware in detail of the contents of investigation (p.95).
- 3.31 It was not policy to tell families about lines of enquiries (p.97).

DC Paul McCrumlish

Statement

- 3.32 Para. 7-9: He interviewed Mr Hanvey on 10 May 1997 and asked him if he had been speaking to any officers. He was not briefed to avoid that line of questioning.
- 3.33 Para. 9: "I accept that by pursuing that line of questioning it was possible I alerted Mr Hanvey to the fact."

Oral Evidence

- 3.34 He refreshed his memory from his notebook and a journal entry. He recalled being handed several witness statements, which referred to Mr Hanvey being present at the attack on Mr Hamill and he was made aware of a statement that suggested a police officer had contacted Mr Hanvey shortly after the incident and had advised him to dispose of his clothing (p.54). He did not remember how many statements he got or if he had access to the statement about the officer (p.55).
- 3.35 When he started the interview, he was conscious of the tip-off allegation (p.56). He may have touched on the allegation during the interview, as he maybe was not given a full briefing because Mr Hanvey needed to be interviewed as soon as possible. He did not think he was told to ask questions that would tip off Hanvey. He assumed they were trying to identify police officer (p.58).
- 3.36 Agreed in 10083 he did not give away anything outside an ordinary interview that could alert Mr Hanvey to tip off allegations (p.72). When asked about clothing, the question was to "close the gate" saying he had not been asked the

question. He thought Mr Hanvey had maybe been educated by a solicitor to say this or that (p.73).

DC Albert McIntosh

Oral Evidence

- 3.37 Did not believe he knew who the tipper-off was when he interviewed Mr Hanvey and his parents respectively on 10 and 11 May 1997 (p.5).
- 3.38 On Saturday, the day of the interviews with Allister Hanvey, there were daily briefings first thing in the morning (p.6), the second briefing would be around lunchtime and another one would be later in the evening. DC McIntosh would record all of those. He would have them in his notebook. He had little doubt that he, or DC McCrumlish, who was with him, would have been fully briefed about Mr Hanvey's interviews. He did not remember what knowledge he had when interviewing Mr Hanvey (p.7). He feels he was properly briefed throughout the investigation (p.14).
- 3.39 Believed it was the only time he interviewed someone who may have been tipped off. He could not remember an unusual request such as "don't mention tip-off" being given in briefing. He would follow senior officer's briefing guidelines as much as possible (p.8).
- 3.40 Neither he nor DC McCrumlish asked questions deliberately tipping Mr Hanvey off about the police's knowledge of the officer tipping him off. He would say they were careful to avoid doing that (p.15).

Res Con Robert Atkinson

Oral Evidence

- 3.41 He was not a member of an Orange Order (p.141). He had no cause to march on 12 July or attend demonstrations (p.142). He was a member of the Orange Order now. He joined three years ago. His Lodge was in Loughgall so it was not affiliated with Portadown (p.143). He was a freemason at Lodge 263 Tandragee (p.144). Occasionally they would get together with other Lodges. There were police officers in these Lodges. He had never met DCS McBurney at a Lodge. He was not aware DCS McBurney was a freemason (p.145).
- 3.42 Found a surveillance device on 19/4 behind the cemented fireplace (p.151). He was looking behind the fireplace to find the 'bug' as he thought there would be one due to the manner in which he was arrested. He was not tipped off (p.152).

DCC Blair Wallace

Oral Evidence

- 3.43 Per Para. 12 81597 “Answered questions about the Robert Hamill case at police authority meetings. Questions were raised by Mrs O’Loan. She asked on at least three occasions.” At no stage did he make a reference to the tip-off allegation at Police Authority Meetings (p.26). At the time of asking questions Mrs O’Loan did not know that she was to be Ombudsman (p.71). There was no system for letting the complainant (or Police Authority) know about secondary allegation. Police Authority only knew that the ICPC was supervising it (p.28). Never had problems of confidence with Police Authority sub-committees (p.32).
- 3.44 Secretary of State was entitled to be given real information if he requested it on a matter (p.39). He could not be precise about what would be said (p.41). The precise details, and the progression, of investigations were not disclosed or would have been asked to be disclosed to the Secretary of State (p.46). Would have confirmed to the Secretary of State that there was an allegation into an officer being investigated. The question of suspension was outside the ambit of responsibility of the Secretary of State (p.48). The Secretary of State never interfered with disciplinary processes (p.49). He believed 15376 was a fair response to 60818 in that it answered the question originally posed to the Secretary of State (p.62). He believed Para. 5 15376 confirmed to the Secretary of State that this was being properly investigated by appropriate authorities (p.64). The answer DCC Wallace would have provided to the Secretary of State would be in line with Para. 5. DCC Wallace agreed that dissemination of information to the Secretary of State would have caused further spread of the allegation which would cause speculation about the name and that would hinder the police investigation (p.66). At no stage did he have problems of breaches of confidentiality with the Secretary of State (p.69). Per 60487: “I explained I could not comment on investigations into the death or the complaint themselves” (p.75).

P39

Oral Evidence

- 3.45 Para. 33 81575 “On 22/7/97 DI Irwin submitted his file on the case to the DPP (p.50). It came through me and sub-divisional officer and went to DPP via crime branch”. DCI **P39** stated she would have seen the confidential attachment (15952) as well as the crime file (p.51). Per 15952 DI Irwin said “Due to implications made reference to Res Con Atkinson, who had many contacts within Portadown station, but who now serves in Craigavon station, it was felt appropriate to refrain from identifying witness at this stage. In addition, a separate DPP file being submitted which will include this allegation”. This was consistent with DCI **P39**’s beliefs at the time. She was surprised that the file that went to the DPP was the neglect file (p.52).

DC John McAteer

Statement

- 3.46 Para. 39: On 9/5/97 he applied for phone billings in manuscript so as not to go through the typing pool.
- 3.47 Para. 40: He thought they got the result in about a week. He had to stand by fax machine because this was particularly sensitive.

Oral Evidence

- 3.48 Principals of the crime were of equal importance as those who might be accessories. Investigative team's objective was to get the persons responsible for Hamill's murder. That would include Res Con Atkinson if he was involved (p.115).
- 3.49 On receipt of the information in relation to Res Con Atkinson he arranged at the earliest possible opportunity, which was the next day, a telephone trace (p.116). 24696 requested numbers of the Hanvey house and the Atkinson house. This was countersigned by DCI **P39** and approved by DCS McBurney. The request was made before Tracey Clarke had finished making her statement (p.118). It was handwritten to speed up the operation. If it was typed up it would have to go through typing pool and signed (p.193). The trace was requested on the morning of 9 May, not the evening. Policy file 918 showed request noted at 23.50 9/5/97 (p.198). He made request in the day as the BT Unit was only open from nine to five or eight to four (p.199). Policy books would be written up later knowing documentation was in place (p.200). He was not sure if the numbers in 2723 were the numbers he requested. There were four numbers in 2723 and he only requested two numbers (p.123). He was not aware that "[REDACTED]'s" number was being analysed. He was suspected of loyalist crime (p.124). Per Para. 40 80785 "Because of the delicate situation DC McAteer had to stand by the fax machine to receive it as they did not want others in the station to read it (p.194). The request was returned about 16th May (p.201). He would then have given it to DCI **P39** or DI Irwin. The fax machine was in Portadown Communications room so it was in a public place (p.203).
- 3.50 He visited the Hamills on four or five occasions, accompanied by DCI **P39** (p.195). They did not go more often as if detectives went to a house in that area then they required armed uniformed cover. They did update the family as the investigation progressed (p.196).

Robert Macauley

Oral Evidence

- 3.51 73303 established the ICPC (p.10). Mr Macauley agreed with the literal interpretation of the Order (p.11). He agreed that the only way a new allegation emerging in the course of an investigation could get to the ICPC within the order was for the Chief Constable to refer it as one of the matters he had discretion over (p.27).

- 3.52 Per 81770 Para. 4 “Role as Supt New Complaints was to receive and process all new complaints made against officers within the RUC. I was responsible for recording and allocating complaints to Investigating Officers. An investigating officer would be at least two ranks above the officer who was the subject of the complaint”. The public could bring a complaint by coming to the station and making a statement or through intervention of solicitor (p.16). If there was evidence that showed an officer had committed a crime but there was no complaint, then that would be dealt with through internal Discipline (G Department). Something amounts to a complaint if the person bringing it to the police’s attention intended the force to do something about it. “On receipt of the complaint, it would be recorded on a 17(2) and recorded in a register (p.17). It was given a unique number. A ‘resolve by’ date was given to the complaint and an investigating officer was then appointed.” (p.18).
- 3.53 When information went to G Department, if the complaint was already under investigation it would possibly, and probably, be taken on board in that investigation without further reference unless there was something peculiar about the information. He would expect the same Investigating Officer to be involved. If something came out of the blue, that had to be referred to G Department (p.18). He believed that if, during an investigation, the police came across information that suggested an officer had committed an offence, that had to go to D Division. “They would not investigate a complaint investigation. They would start an investigation.” That would bypass the form 17(2) system (p.19).
- 3.54 He did not process the complaint in 63695. It was a colleague of his (p.19). It was directed to DCS McBurney. “Reference above complaint” was the neglect complaint. Mr Macauley was appointed IO. The assisting officers were Supt Anderson and CI Bradley. They were from G Department. It was common that they would be appointed as assistants as they had experience of G Department. “If in doubt seek advice Supt C&D”. That was Supt Anderson (p.20). “ICPC may supervise the investigation. The Commission’s decision regarding supervision will be notified to you when known” He thought the ICPC was notified on 8/5, which was why they may not have felt there should be mandatory supervision (p.21). Para. 8 told DCS McBurney what he had to do: “a) Prepare file for DPP which must be submitted not later than 8 weeks before summary proceedings become statute barred; b) Prepare i) a discipline file for ICPC ii) a discipline file for ACC ‘G’.” The reasoning was to look at crime and secondly look at discipline (p.22).
- 3.55 Per 63695 about 17(3)s. “a) It was a legal requirement that the member subject to investigation was served with 17(3) as soon as possible to be interpreted as meaning within days of the IO receiving the directive from ACC ‘G’ to investigate the matter unless to do so would prejudice the investigation of the matter”. Mr Macauley thought ten days was mentioned somewhere “b) IO will personally serve the original 17(3) on the member and have him acknowledge receipt on the form” (p.23) “c) a further 17(3) should be served as and when fresh criminal or discipline matters arise during the course of an investigation. If the member was no longer the subject of investigation, the IO will inform him so in writing” (p.24).

- 3.56 If the ICPC were supervising an allegation and a more serious allegation was discovered, there was an obligation on an investigating officer to serve a 17(3), if practicable. The ICPC would send out a standard letter to the investigating officer stating that all significant events regarding the investigation should be brought immediately to their attention (p.25). He would expect the supervisor would give certain directions on how the investigating officer was to proceed or agree with the procedures the investigating officer was proceeding with (p.26). He would not have expected DCS McBurney to serve Res Con Atkinson with a tipping off 17(3) as it may have prejudiced the investigation. He would have expected DCS McBurney to serve a 17(3) when he interviewed Res Con Atkinson in September 1997 (p.30).
- 3.57 Stated in this case, he expected that if the complaint had not been supervised, it was unlikely that it would have come to the notice of ICPC (p.27).
- 3.58 He understood DCS McBurney told the ICPC about the new matter on 12 May. He was not certain he would have expected G Department to have brought it to attention of the Chief Constable so that he could have made a referral to the ICPC as the ICPC already knew about it (p.28). He could not help about who would be expected to inform the Chief Constable of the new matter (p.29).
- 3.59 C&D at Gough Barracks received the letter of complaint on 6 May. The head at that time was Supt Anderson (p.32). The allegation of criminal conduct by Res Con Atkinson was made on 9th May by Tracey Clarke. That would not be deemed a complaint as Tracey Clarke did not intend to make a complaint. He did not know if the order mentioned intention in relation to whether an allegation should be treated as a complaint (p.33). He believed the tip-off allegation was treated as a continuance of the actual complaint (p.35). He believed DCS McBurney did the right thing telling by C&D (and ICPC p.36) about the further complaint even though the ICPC were there to supervise the neglect complaint (p.35).
- 3.60 Mr ██████ would have made his views about DCS McBurney's actions known. ██████ and Mr Mullan would have told the Chief Constable's office if they thought DCS McBurney was not doing a good job. There would have been letters and memos to the Chief Constable if that was the position (p.37). He did not realise the ICPC took it as being outside their remit per 27209 "Investigation team intended to re-interview Res Con Atkinson about his alleged involvement with Mr Hanvey. I advised this aspect was outside the Commission's remit" (p.38).
- 3.61 It was the responsibility of the head of C&D to refer complaints for Article 8 complaints (p.40). With hindsight, the complaint should have been passed up the chain to made them aware of the significant development (p.41).
- 3.62 The complaint should have been passed on to the ICPC, which was why it was referred under Article 8 (p.42).

- 3.63 Thought if someone in G Department knew Mullan had taken the view that the allegation was outside the ICPC's remit, they may have taken the view on whether or not the ICPC should supervise (p.45).
- 3.64 It was not very common to have the investigating officer into the crime out of which the complaint arose to be the investigating officer of the complaint. He only came across it on a few occasions. He would not say that was it not appropriate (p.51).

John Leckey

Statement

- 3.65 Para. 52: He advised DI Irwin on 1/6/00 about his definite decision not to hold an inquest (454).

David Wood

Statement

- 3.66 Para. 2: He commenced work with the Ombudsman designate on 25 September 2000.
- 3.67 Para. 3: PONI supervised the investigation into the conspiracy as the case had commenced with ICPC and they decided to continue to supervise rather than begin an independent investigation.
- 3.68 Para. 4: He became involved in November 2000. Appointed Chris Mahaffey as investigating officer as he was the most experienced senior investigating officer. He retained strategic oversight due to the importance of the case. If there was a particular problem he would intervene, whether it was with Chief Constable or anyone else.
- 3.69 Para. 5: On 5/12/00 Chris Mahaffey met DCI K and DCS McBurney. DCI K raised certain issues about the handling of Andrea McKee, which raised Mr Mahaffey's own concerns. Accordingly, Mr Wood scheduled a meeting with the Chief Constable.
- 3.70 Para. 6: At a meeting on 13/12/00 with the Chief Constable he raised significant flaws in the investigation. His main concern was the approach to the taking of the alibi statement from Andrea McKee. He expressed in the strongest terms that he had no confidence in DCS McBurney.
- 3.71 Para. 7: As a result Colville Stewart replaced DCS McBurney.
- 3.72 Para. 8: The investigation into Andrea McKee's treatment occurred under s.55(6) powers. The Chief Constable did not put up any resistance. The

weakness of PONI's powers was that they could only investigate the actions of police officers. There was no power to look at civilians.

- 3.73 Para. 10: On 2/3/01 the Ombudsman and Mr Wood met the Chief Constable and raised concerns about repeated delays in the investigation. On 10/4/01 suspects were arrested. PONI wanted to use intrusive surveillance and they believed the RUC were resisting it.
- 3.74 Para. 13: Chris Mahaffey submitted his report regarding DCS McBurney and DI Irwin. There were no misconduct outcomes available against DCS McBurney as he had retired. He concluded there was no evidence or any allegation that he had perverted course of justice; rather he had not done his job very well.

Oral Evidence

- 3.75 Mr Wood stated that the police never came up with a viable strategy for how to place intrusive surveillance prior to the arrests. Mr Wood rejected that surveillance would be useless in Res Con Atkinson's home as he was a technophile and he was alert to the prospect of being bugged, as the police could not substantiate that (p.4). "The reality was he was a Reserve Constable. Intrusive surveillance was at the Special Branch end of anti-terrorist work". The police had never used intrusive surveillance operationally for evidential purposes and so he did not think "there were any grounds that a Reserve Constable would for a moment dream" that he would be subjected to that surveillance (p.5).
- 3.76 Mr Wood saw resistance in the culture of the police. "It was about the stomach to do this to their own". He felt the senior officers were fearful of how the community would interpret surveillance of Res Con Atkinson, who was part of the community and perhaps part of the Loyalist side of the community. He did not feel that these were viable objections from the Police Service. He did not feel they were protecting their own (p.6). Those officers he was dealing with, Colville Stewart and DCI **K**, were the ones who were resistant (p.17). He felt the Chief Constable was supportive as he had to authorise the surveillance under RIPA. The Chief Constable did not sort out the issue with hardware immediately, but he did so once the issue was brought to his attention a second time (p.18). The issue was that using surveillance in this case could raise community tensions (p.68). There was also a concern that using surveillance on Res Con Atkinson could lower morale in the local police (p.73). He did not know himself about Res Con Atkinson having Loyalist connections. He did not know that his house had been attacked by Loyalist gunmen. He was surprised by that as DCI **K** told him that Res Con had a Loyalist connection (p.80). If he had known that he would have challenged DCI **K**'s view (p.81).
- 3.77 He felt that the investigations conducted by DCS McBurney suffered from some aspects of cultural difficulties in confronting what needed to be done and that it was a poor investigation done with absolute neglect. It was neglect of duty, not something more sinister (p.7).

- 3.78 Mr Wood agreed that nothing was done between receiving Res Con Atkinson's phone records on 16th May and interviewing Res Con Atkinson on 9th September. He did not agree that a reasonable SIO would not tackle the tip-off allegation as it might cause Tracey Clarke's evidence to be compromised. He believed it was potentially quite important to the murder investigation to pursue Res Con Atkinson (p.8). The police would not necessarily, when dealing with Res Con Atkinson, disclose Tracey Clarke. Her evidence was hearsay. The police could have said that there was information and there were phone records corroborating that information. There would be significant evidential advantages in doing that swiftly and fairly quickly (p.9). He felt that it was a possibility that those involved could determine the information came from Res Con Atkinson, but "the murderers were arrested in any event" (p.10). DCS McBurney and DI Irwin never raised that issue (p.11). Mr Wood could not conceive of a reason why more, such as that done in 2000 and 2001, was not done to break the alibi (p.12). He believed that it was as likely that the identity of the witness would come out from the arrests of those who were named in the statement as fighting (p.41). Mr Wood accepted that there was a distinction in that the incident had many more witnesses than those who knew of the telephone call (p.42). Today Mr Wood would have detained Res Con Atkinson and done his best to ensure that his witness was not immediately exposed. It was a matter of timing as she would be exposed eventually (p.43).
- 3.79 Mr Wood started working in the Ombudsman's Office before it became fully operational (p.12). The ICPC and the Ombudsman were very different organisations. The Ombudsman's office was much more "tooled up" for carrying out investigations and supervising those that were ongoing (p.13). The relationship between the RUC and the Ombudsman required the police to undergo a culture shift. The Hamill case was a significant case for the Ombudsman (p.14), in particular for community confidence. By December 2000 Mr Wood had no confidence in DCS McBurney's ability to conduct the investigations and he reported that concern to the Chief Constable who took the concerns seriously (p.15). He agreed to replace DCS McBurney immediately and within 24 hours a new investigator was appointed for the Res Con Atkinson inquiry, who the Ombudsman also appointed to be the SIO of the murder investigation. Mr Wood did not think the Chief Constable could have done any more (p.16).
- 3.80 There was no suggestion on Mr Wood's, or the Ombudsman's Office's, part that DCI K and Colville Stewart were other than determined to pursue the investigations. Mr Wood did not interpret the reluctance to be an attempt to protect Res Con Atkinson or due to sympathies with the Loyalist community. It was a reluctance to agree a strategy (p.23).
- 3.81 Mr Wood did not understand why the pre-surveillance on the properties was not done before such intrusive surveillance was to be used (p.24). He did not find the reason lack of equipment acceptable as there must be occasions when emergency surveillance was required (p.25). He felt there was resistance to using intrusive surveillance at all (p.32).

- 3.82 The Ombudsman had decided to supervise the investigation and in theory could have decided to carry out the investigation themselves, but there would be practical difficulties as their powers extended only to investigating police officers (p.25). This would have led to a split inquiry with the RUC in this case. In addition, the Ombudsman did not have the powers of intrusive surveillance (p.26).
- 3.83 Mr Wood agreed that the timescales that PSNI and the Ombudsman were working on were different (p.25) but PONI were not “looking for things to be done tomorrow”. Mr Wood accepted that there were issues the police faced that he did not (p.26). He believed December to April was a reasonable period of time and that things were done far more expediently than that in lots of circumstances (p.39).
- 3.84 Mr Wood stayed with the Ombudsman for five and a half years and left in January 2006 (p.27). He believed that the PSNI was now a more professional policing service, to which PONI made a valuable contribution (p.28). The police were absolutely receptive to working very closely and cooperating with PONI (p.29).
- 3.85 Mr Wood felt that Colville Stewart and DCI **K** were not keen or did not wish to deploy intrusive surveillance (p.29). The strategy DCS Stewart and DCI **K** wanted to use was flawed as they had done no lifestyle surveillance. The view was expressed to him to put in surveillance before an arrest (p.35). It was not put as clearly as saying “the dogs in the street” would know surveillance had been installed (p.36).
- 3.86 Mr Wood arrived in Northern Ireland in September 2000. He had never been there before. He had virtually no experience of Northern Ireland policing (p.30). He came to lead the Ombudsman office (p.31).
- 3.87 Mr Wood did not recall if DCI **K** had already given consideration to intrusive surveillance before the appointment of DCS Stewart (p.31).
- 3.88 Mr Wood did not recall who said “sledgehammer to crack a nut” but it was made to his SIO, Chris Mahaffey. He did not hear the expression from either DCS Stewart or DCI **K** (p.32). He thought they heard it more than once (p.33). Chris Mahaffey reported the use to him and it came from members of the investigating team (p.34).
- 3.89 Mr Wood said that Res Con Atkinson and others were told their house was bugged. He did not know by whom but it was his belief that it was someone within the RUC (p.37).
- 3.90 Mr Wood had over 30 years of policing, the vast majority of which was as an investigator or leading teams or departments of detectives (p.44). He had direct experience as a superintendent in the Metropolitan Police of investigating police corruption. He was then promoted to chief superintendent and led a branch containing 300 detectives who proactively tackled corrupt officers and those who sought to corrupt them. This was his role immediately

- before taking over at PONI (p.46). He had experience with intrusive surveillance as it was often used in England and Wales for evidential purposes (p.47).
- 3.91 The aim of installing at the time of arrest was to provoke discussion of issues about the arrest. He had deployed that tactic in the past and it was an often used tactic (p.48).
 - 3.92 Mr Wood thought from reading the ICPC file that the investigation into Res Con Atkinson was dilatory and poor (p.49).
 - 3.93 Some of the failures mentioned in 75206 were no more than allegations (p.50).
 - 3.94 PONI had the power to investigate a former police officer about a matter whilst they were serving (p.53).
 - 3.95 Mr Wood thought it would have been a better strategy when dealing with Res Con Atkinson to have confronted him with the knowledge of the phone call between his house and the Hanvey house (p.57). It did not sound a wise investigative move to allow Res Con Atkinson to create an alibi which could be investigated (p.60) but acknowledged that that was the view DCS McBurney took. He agreed that the police must have known the alibi was false when it included Andrea McKee (p.61).
 - 3.96 Tracey Clarke's evidence would have to be tested in January or February 1998 due to committal time limits (p.64).
 - 3.97 75208 dealt with DCI K's views on intrusive surveillance. He had a meeting with DCI K as well as the views being passed through Chris Mahaffey (p.65).
 - 3.98 Mr Wood did not believe that either DCI K or DCS Stewart wanted to do anything other than bring Res Con Atkinson to justice. In particular DCI K had concerns about the effect on the local community and the local force (p.74). The team that were working with DCI K and DCS Stewart also had these concerns (p.75).
 - 3.99 From memory Mr Wood believed that the police believed there was a compromise from within the organisation, hence starting an investigation (p.76).
 - 3.100 Mr Wood's views on putting the telephone records to Res Con Atkinson was based on them being in evidential format (p.78).
 - 3.101 Mr Wood was only told by DCI K that Res Con Atkinson was a local hero. He had no independent knowledge of his community standing (p.79).
 - 3.102 Mr Wood did not know how long the misconduct investigation took. It was a thorough investigation, which was headed by Chris Mahaffey who reported to Mr Wood. Mr Wood agreed entirely with Mr Mahaffey's report (p.84). The report did not recommend misconduct proceedings against DI Irwin but it

raised concerns about his actions (p.85). The concerns were with his dealings with Andrea McKee but DI Irwin was following orders from DCS McBurney (p.86). Disciplinary action was completely dispelled (p.88). The standard of proof for disciplinary matters was still beyond reasonable doubt (p.90).

- 3.103 DCS McBurney's strategy was to wait for the alibi to break as the McKees separated (p.91).
- 3.104 Before any step was taken that might lead to the discovery of Tracey Clarke's identity a plan should have been in place to provide adequate protection. The police should have done a full risk and threat assessment in respect of her being a witness. That would be the basis of providing adequate protection. There were expert people who would create such a report. DCS McBurney would have been in a position to have made such a assessment if he had access to all the indices (p.93).
- 3.105 The telephone records would have been insufficient to make a case of a tip-off. The crucial piece of evidence might have been obtained through interview and admissions and secondly to investigate the alibi (p.95). There would then be an issue with showing it was an act to pervert the course of justice. The mere fact that there was a conspiracy would be sufficient to show that. The police would still however be reliant on getting an admission that would really have to come from Res Con Atkinson or Allister Hanvey (p.96).
- 3.106 Mr Wood did not accept that it required lots of personnel to insert equipment. He had seen it done by two men with a holdall who had been dropped nearby and proceeded on foot (p.98).

Sir Ronnie Flanagan

Statement

- 3.107 Para. 3: CID was with C Department. That had an ACC in charge. Portadown was in South region and there was a DCS in charge of all CID resources in the region. There was also an ACC in charge of South Region. Regional head of CID therefore reported to two ACCs. He would be in daily contact with the regional ACC and would be in regular contact with ACC Crime.
- 3.108 Para. 5: He was briefed from time to time on the Robert Hamill case because he had regular operational meetings with all ACCs. This would have included the Hamill incident. He would have read the daily report which covered the Hamill incident, both on the day he was attacked and the day he died.
- 3.109 Para. 6: He was aware DCS McBurney was investigating the complaint and the murder. It was not unusual for the same officer to investigate both.
- 3.110 Para. 8: On 18/12/97 he was briefed by ACC Crime following the withdrawal of charges against those on remand and to respond to the letter from the Secretary of State.

- 3.111 Para. 9: On 29/9/99 the Office of the DPP [“ODPP”] directed no prosecution against the officers at the scene. He did not review the file and it would not be normal for that to happen. ODPP directions go to ACC Crime, not the Chief Constable.
- 3.112 Para. 10: He became aware of the allegation that a Reserve Constable had assisted a suspect around June 2000. He could not remember precisely but recalled that DCS McBurney briefed him about a “development”. The extent of the briefing was that DCS McBurney wanted to interview the female member of a couple who had split up. Sir Flanagan then contacted the Director of Public Prosecutions as he wanted someone from ODPP to work with DCS McBurney on the strategy. Any future briefings would go through the ACC.
- 3.113 Para. 11: He recalled during the briefing that DCS McBurney had been unable to undermine the alibi and that the billing evidence had added little because there was no record of the conversation and therefore there was no record of what was said. He was not briefed that Andrea McKee had previously given contrary information.
- 3.114 Para. 12: He believed he was given a detailed briefing from ACC Crime on DCS McBurney’s return from Wales.
- 3.115 Para. 14: If there was an assisting an offender allegation matter, then that would be passed to G Department, which was headed by ACC. The ACC then considered referral to the ICPC. DCC was the disciplinary authority, which enabled the Chief Constable to consider appeals afresh.
- 3.116 Para. 15: He could not comment on DCS McBurney’s investigation. Due to PONI’s reservations, he asked DCS Colville Stewart to conduct an overview of the case. He felt Colville Stewart’s concerns must be investigated under PONI’s supervision.
- 3.117 Para. 16: He met the Ombudsman and David Wood on 2/3/01. His role was to sort out adequate technical surveillance resources.
- 3.118 Para. 17: On 14/05/02 Chris Mahaffey sought clarity on: (1) the delay between October 1997 and June 2000 in dealing with the alibi witnesses and (2) whether there were other motivating factors.

2nd Statement

- 3.119 Para. 3: He had regular Monday morning meetings with all his Chief Officers. This alternated with one week being for operational matters, the next week being for different matters. ACC for South Region had an office in Mahon Road, Portadown.
- 3.120 Para. 5: He also received information from the daily incident sheet. He would certainly have been informed of the Robert Hamill incident by this sheet by Monday 28/4/97.

- 3.121 Para. 6: Uncertain how he was briefed about the Hamill incident. When what might have been an attempted murder became a murder, it would certainly have been brought to his attention.
- 3.122 Para. 7: He was aware that DCS McBurney recalled that Sir Flanagan called twice on 10/5/97 regarding Hamill incident. This sounded appropriate. The Chief Constable would have wanted to know what state the enquiry had reached.
- 3.123 Para. 9: Unable to recall the conversation but the second call would have been to see what progress had been made. It would not have been unusual to speak directly to SIO on a serious case. He saw it as his role to ensure there were sufficient resources as well as being briefed by him.
- 3.124 Para. 10: Had no recollection of being briefed on 10/5/97 by DCS McBurney about a Res Con making a phone call to a suspect.
- 3.125 Para. 12: It was his belief the alibi had been produced immediately. It caused some surprise that there was some delay in pursuing the matter.
- 3.126 Para. 13: Would have expected an investigation into an allegation of serious misconduct by an officer to be conducted either overtly or covertly, depending on which option would bring the better chance of success. Would have expected consideration to be given to arresting the officer. This should be undertaken by SIO in consultation with the regional ACC.
- 3.127 Para. 14: He would expect an experienced detective to have been taking great care not to do anything to compromise the chances of a successful murder investigation. Consideration should be given to immediate suspension of the officer.
- 3.128 Para. 15: When the officer was interviewed and asked for an itemised bill in September 1997 the officer should be served with a 17(3) because, although he would not wish to forewarn the officer, you have shown your hand by requesting an itemised bill.
- 3.129 Para. 16: Following a briefing in June 2000 from DCS McBurney he contacted the number two at ICPC and asked them to supervise the renewed investigation into the allegations against the officer.

Oral Evidence

- 3.130 Sir Flanagan did not recall a specific briefing about Res Con Atkinson but accepted that he could have been (p.190). He had no reason to dispute 74231 or Mr Hall's recollections of the meeting (p.191).
- 3.131 Sir Flanagan accepted the accuracy of 39623 apart from "admitted" as at that stage he did not feel the RUC's reputation would be harmed by an inquiry and he was not resisting it. He would never have requested such a decision by the Secretary of State (p.193). He would never sack anybody because he had been

asked by a Permanent Secretary and did not agree with that section of the note. There was one instance where an officer was cleared of a very serious offence on a technicality and he was dismissed from the police; despite that it was an unfair dismissal (p.195).

- 3.132 From 39623 Sir Flanagan would not be involved in discipline as he was the ultimate appeal. That was standard policy in British policing (p.195). He could not comment on whether the decision not to suspend was the right balance. That was for G Department (p.196).
- 3.133 Sir Flanagan believed ICPC were supervising the Res Con Atkinson allegation (p.194).
- 3.134 Per 39693, Sir Flanagan remembered the meeting with Anthony Langdon. The “snowball” comment related to Sir Flanagan thinking that the officer with the most service facing a charge was not appropriate because he did not have supervisory responsibility over the other officers. If there should be an inquiry “so be it” was Sir Flanagan’s reaction. His main concern was that it would be inappropriate for an inquiry to be initiated while an investigation proceeded (p.199). Sir Flanagan did not understand the section containing “gem” as he would not use the word and did not understand it in that context. If it was “gen”, meaning information, then he would have used that word. The driving force was created by DCS McBurney briefing Flanagan about the new information (p.200). The briefing DCS McBurney gave the Chief Constable was that he had been waiting for the McKees to split up and that then there would be an opportunity. Sir Flanagan contacted the DPP and ICPC to get them involved (p.201). DCS McBurney saw Sir Flanagan before he went to see Andrea McKee. Sir Flanagan pushed DCS McBurney to seek advice from the Director of the DPP about how to treat McKee (p.202). Sir Flanagan did not have to push DCS McBurney to interview the McKees. DCS McBurney was delighted to have the opportunity (p.223).
- 3.135 In 1996 police reversed a decision not to allow a Parade to proceed down Garvaghy Road. That caused very serious damage to the relationship between the police and the Nationalist community (p.203).
- 3.136 There was a close organisational relationship between the RUC and the Garda. Locating an IRA suspect would be an appropriate exchange of information (p.215).
- 3.137 Sir Flanagan was not aware that the police knew about the McKee split in October 1999. If he had known, he would have pressed for action immediately, unless there was some part of the investigative strategy he was not aware of (p.226).
- 3.138 DCS McBurney was a hard working, highly experienced and very honest officer (p.233). He would not have tolerated Res Con Atkinson’s behaviour in an organisation he was very proud of (p.235). He did not have any sectarian feeling and was so tenacious and hardworking it probably affected his health (p.262). Sir Flanagan refuted that DCS McBurney was tipping off Res Con

Atkinson when he asked for his phone records. Such a scenario was ludicrous (p.263).

- 3.139 DCS McBurney did not tell the Chief Constable about the tipping-off on the 10th May. He would have wanted to know about the accusation if it had occurred (p.234). DCS McBurney would not have looked for guidance from the Chief Constable. Sir Flanagan did not think it was helpful to speculate on the reasons why DCS McBurney took the decisions he did but provided reasons that would support DCS McBurney's actions (p.235).
- 3.140 Sir Flanagan did not know what weight the officers would be attaching to Tracey Clarke as it depended on the probity of the person (p.237). He was confident the priority was present and the investigation was being conducted by very experienced, dedicated and professional people. He did not recall the briefing that ACC Hall gave him on 13 May. He thought it was entirely appropriate that the police would want to confirm the allegation (p.239). The chain of command was in place for people to receive updates on the investigation (p.239).
- 3.141 Sir Flanagan reached a point of knowledge about the case that if there were disciplinary proceedings, he would have debarred himself from the proceedings. He understood that Res Con Atkinson went off sick and Sir Flanagan wanted to know should he be attempting to return to duty (p.242). There was also the investigative strategy to consider before criticism can be made of not suspending Res Con Atkinson (p.243). It would be improper to suspend someone before the allegation had been properly investigated (p.264). There was a fast track procedure if clear evidence had been found supporting a serious allegation where the Chief Constable sits at the first hearing. There was a procedure where that can be passed to another Chief Constable if it would be improper for the original Chief Constable to sit (p.265).
- 3.142 Sir Flanagan did not accept that he should have asked about the Res Con Atkinson allegation or that he knew and did not need to ask. He had trust in his people in the relevant positions (p.250).
- 3.143 The response to the Secretary of State would be set out with headings she had adduced to relate the response to the letter. The phrase used was the Secretary of State's phrase so it was used when referring back to her query (p.251). Sir Flanagan denied he was being economical with the detail as it was not their role to get into the detail of the investigation. If she had wanted more information she could have had it (p.252).
- 3.144 Sir Flanagan completely refuted there was disinterest amongst senior ranks (p.256). Per 39692 he was not in a defensive and critical mood. If he was defensive it would be about the police's reputation. To achieve that aim he was rigorous about ruling out anyone who would damage that reputation. Sir Ronnie thought it was a disgraceful record to say "he commented Hamill's death could have been caused by his own family cradling his head...that led to oxygen starvation" (p.257). To suggest his death was caused by anything other than the beating was disgraceful. He did not say that Diane Hamill had her

own agenda to discredit the RUC. He believed Ms Hamill had never had an agenda to discredit the RUC but had an agenda to find out what happened to her brother (p.258).

- 3.145 18977 was incorrect as “changed his story” was wrong as Res Con Atkinson had been re-interviewed. In addition, the “innocence of the phone call” was not accepted by police. There was not the evidence to prove it was not innocent (p.267). The police were responsible for all operational decisions. Police could go to the DPP for legal advice on prosecutorial matters but lines of investigation remain the responsibility of the police. If anyone suggested differently to the director they would very quickly be put right (p.270). It was not a surprise that the DPP told the police that a decision as to whether someone should be interviewed as a witness or a suspect was entirely for the police (p.271).

Chris Mahaffey

Statement

- 3.146 Para. 4: On commencing work with the Ombudsman, he was identified as the person who would have responsibility for Hamill investigation.
- 3.147 Para. 11: The outstanding matter with CI Bradley’s file was the disciplinary recommendation for neglect against Con Neill made by the ICPC which was being contested by DCC. The matter was discussed with David Wood and, at his suggestion, they obtained Counsels opinion on neglect. Counsel felt there was insufficient evidence to substantiate a charge under the Disciplinary Code. That was the same opinion DCC received and so it was agreed no action against Con Neill would be taken.
- 3.148 Para. 13: On 23/11/00 he met DCS McBurney and DCI **K** at Gough and was briefed by DCS McBurney on proposals for the arrest of Michael McKee and searches of the relevant houses. He returned and discussed the case with Mr Wood and formed a view that this was not the way forward but more positive action should be taken and the parties should be arrested. They discussed the insertion of covert equipment at one address.
- 3.149 Para. 16: At the meeting on 12/12/00 DCS McBurney was not agitated or obstructive and understood that there was a need to investigate the handling of Andrea McKee and Timothy Jameson.
- 3.150 Para. 18: On 13/12/00 he went to see Sir Ronnie Flanagan with David Wood. After a discussion about the handling of witnesses, Mr Wood proposed DCS McBurney could no longer continue as SIO. It was agreed to conduct an investigation under s.55(6) into the handling of Mr Jameson and Mrs McKee whilst continuing to supervise the Res Con Atkinson investigation.
- 3.151 Para. 20: David Wood and he discussed DCS McBurney’s pending retirement and came to conclusion there was nothing to recommend his retirement should

be deferred. Offences being investigated were not criminal and they did not object as they thought it would not impact on their investigation.

- 3.152 Para. 22: The investigation into witness handling took three years. Report at 26884.
- 3.153 Para. 31: The handling of Mrs McKee and this part of the investigation did cause concern. DCS McBurney's explanation did not make sense and DI Irwin in interview expressed his own disbelief in being asked to "go get statement and not to challenge her".
- 3.154 Para. 32: He did not think Mrs McKee should have been allowed to make her statement on 29/10/97; there should have been a separate officer or team to investigate false alibi evidence.
- 3.155 Para. 33: He could not understand why a witness statement was taken from Mrs McKee on 20/6/00. He was shocked DCS McBurney went down that route without seeking any advice whatsoever. He understood the position of the DPP at the time was only to give advice on receipt of the file. He was certain a report could have been submitted to allow for advice to be taken, given the delays.
- 3.156 Para. 34: He did not believe DCS McBurney should have been SIO on all elements of the Hamill case. He was unable to find evidence of control of investigations by senior officers within the RUC by way of direction or support. He met [REDACTED] who showed him correspondence which showed that the Chief Constable had been putting pressure on at very high political levels to try and drive the investigation forward.
- 3.157 Para. 35: When dates were put around the strategy, it did not make sense. How could DCS McBurney be certain in 1997 that the McKees would split up.? His view was that DCS McBurney was wholly incompetent at conducting an inquiry with so many contentious strands. He also believed the murder investigation was poorly resourced. The investigation would not have gone anywhere until DCI K was appointed.
- 3.158 Para. 36: If DCS McBurney had still been serving he would have recommended a misconduct charge regarding the neglect investigation handling, primarily the lack of supervision and failing to keep records.
- 3.159 Para. 37: He felt DI Irwin was put in a very difficult position and he took Mrs McKee's statement only because he had been ordered to. He did not think there was sufficient evidence to discipline him.
- 3.160 Para. 41: Ombudsman agreed to supervise an internal investigation by C&D of the issues raised by Colville Stewart.
- 3.161 Para. 42: He agreed with the contents of the Kennedy report and its recommendations.

- 3.162 Para. 44: On 29/2/01 he attended a presentation by DCI **K** on the evidence available with Mr Kitson. It was proposed to deal with Mrs McKee through the courts and how she could be used for a witness was fully discussed.
- 3.163 Para. 45: PSNI encountered difficulties mounting surveillance operation and this delayed the arrest phase of the operation.

Oral Evidence

- 3.164 Mr Mahaffey remembered DCI **K**'s strategy about intrusive surveillance but it was not his recollection that he suggested covert evidence gathering (p.151). As the police were preparing for intrusive surveillance DCI **K** and Colville Stewart became increasingly uneasy about what they were trying to achieve. The "local hero" was one of the factors they raised. He thought they felt uneasy about using investigative means they had not used before. Mr Mahaffey did not agree with Mr Wood that there was a lack of appetite to tackle Res Con Atkinson. He felt the police made every effort to investigate (p.176).
- 3.165 DCI **K**'s concerns, per Para. 15 81910, were accurately represented by the action log entry for 12 December 2000 in 71927. DCS McBurney at that meeting was resigned to there being an independent investigation as a result of what Mr Mahaffey was told by DCI **K** (p.153). Mr Mahaffey thought **K**'s commitment and attention to detail was of a very high standard (p.154).
- 3.166 The investigation was not poorly resourced. The numbers initially were quite adequate but perhaps officers were re-directed quite quickly (p.156). The statement reference to "poorly resourced" was more towards a distraction of resources in a very short period of time. This was normal. The comment was not a specific criticism (p.157).
- 3.167 Mr Mahaffey did not believe it was appropriate to compare Northern Ireland murder investigations to those in England (p.158).
- 3.168 The phrase "do not believe that Andrea McKee should have been allowed to make her statement on 29 October 1997" was due to the fact he was confused as to the approach taken to Andrea McKee and the whole alibi issue. That was his judgement. DI Irwin's drawing her attention to the declaration was perfectly proper (p.160). Mr Mahaffey understood there was not a role for the DPP in directing operational matters although he believed DCS McBurney should have shared his intentions in taking Andrea McKee's statement as a witness in 2000 and he should have sought advice from somewhere such as the police legal department (p.161). Mr Mahaffey understood that cautioning Andrea McKee may have elicited a completely different response. "It was a constant dilemma" as the witness may have been more reluctant to assist from the outset (p.162).
- 3.169 Mr Mahaffey never fully understood DCS McBurney's strategy in waiting to crack the alibi and waiting to develop a witness. Mr Mahaffey felt no action was taken once the statement had been made (p.168). Waiting for the trial and

the Inquest was neither here nor there (p.169). There was no attempt made to crack the alibi (p.171).

- 3.170 The police should have made a production order to be able to use the Res Con Atkinson phone records as evidence after receiving them. Mr Mahaffey was sure that asking Res Con Atkinson for his phone records alerted him (p.170).
- 3.171 Mr Mahaffey approached the Chief Constable to have DCS McBurney removed to allow the police to carry on with their investigation into Mr Hamill's death. He did not then start an investigation into why DCS McBurney acted as he did (p.173).
- 3.172 Mr Mahaffey's investigation took three years and was as thorough as he could have made it. He had a reasonably robust interview of DI Irwin. Para. 37 contains his view of DI Irwin's position (p.183).

Ken Armstrong

Oral Evidence

- 3.173 The police tried to protect all people in Northern Ireland (p.168). There was no tolerance given to corrupt police behaviour. If it was found out, it was rooted out (p.169).
- 3.174 The statistics in 75409 about the prosecution of Loyalists supported Mr Armstrong's views on the PSNI viewing all sides of the community as equal (p.178).

Simon Rogers

Statement

- 3.175 Para. 8: The file note 39256 showed that he was aware of ICPC supervision and he was seeking assistance from the Irish side in encouraging witnesses to come forward for interview.
- 3.176 Para. 9: It would not have been appropriate to disclose operational and prosecutorial information.
- 3.177 Para. 15: After the meeting Dr Mowlam wanted to inform the family.
- 3.178 Para. 18: The reply from the Chief Constable (15375) was fulsome and covered the issues raised by the family.
- 3.179 Para. 21: Mr Rogers assumed the ICPC would be supervising the Res Con Atkinson allegation.

- 3.180 Para. 22: It was not for the Government to intervene in the detail of investigations.
- 3.181 Para. 26: There was not a duty on the Chief Constable to advise the Secretary of State of the Res Con Atkinson allegation.

Oral Evidence

- 3.182 Mr Rogers agreed with Para. 26 of 82060 (p.108). Para. 29 was a fair comment and reflected what Mr Rogers said in Para. 27 of his own statement (p.109).
- 3.183 In 1997 Mr Rogers was advising the Secretary of State on issues surrounding police complaints (p.110). He had very little involvement in the political side of the Northern Ireland Office (p.111). The political issues around policing fell to the head of the division and not to Mr Rogers (p.112).
- 3.184 Mr Rogers drafted 60488 (p.116). The Secretary of State had a statutory power to seek a report (p.119). There was a regular flow of correspondence between the police division and the police service and so the power was never resorted to (p.120).
- 3.185 In 15378 the relationship between an officer and the defendants had been brought to the Secretary of State's attention (p.120). They were working on the assumption on receipt of the Chief Constable's letter that the aspects would go to the DPP (p.124). He expected the ICPC to be supervising that aspect. He did not advise the Secretary of State on that issue as Mr Rogers thought it was being supervised (p.125). He would have expected the Chief Constable, if he was aware of the allegation at the time, to have informed the Secretary of State (p.126).
- 3.186 The Secretary of State kept a watching brief on the case (p.128).

John Steele

Statement

- 3.187 Para. 3: "In 1997, I was Director of policing and security in the NIO and that was coupled with being Senior Director of Belfast. In other words, I was the administrative peak of the Belfast operation for the NIO as well as being concerned with policing and security."
- 3.188 Para. 26: "I think that the final response from the Secretary of State to the Hamill family relying on the information provided by the chief constable was actually quite helpful. I have been asked to consider point 5, which the family had raised in their letter of 21st November relating to the links between some officers and some of the defendants and the response of the chief constable. 'This allegation had been included in the criminal investigation and will be considered by the Director of Public Prosecutions'. In particular, I have been

asked if I would have expected in the reply from the chief constable to the Secretary of State to set out that there was only one alleged link so as not to misinform the family. I would not. He was responding to the point and he was saying if there's that allegation, it was included in the investigation and that's all there was to it. It went as far as he could possibly go without infringing his independence. He wanted to provide the Secretary of State with whatever information he could factually. This would have been usual.”

- 3.189 Para. 29: “I have also been referred to a document dated 21 June 2000 (39675). I had, of course, been retired for a number of years at this point. I have been asked to comment on the fourth line down: 'It was alleged that an officer phoned the individual and advised him how to go about destroying forensic evidence and thus avoid detection'. I have been informed that this was the link between the police officer and the defendant referred to at point 5 of Diane Hamill's letter and I have been asked if I would have expected the chief constable to provide the Secretary of State with these details of the allegation either privately or in correspondence at the point when she was writing to the Hamill family. Again, my response was, when an arrest or an investigation was carried out, that was purely a police matter, perhaps with ICPC involvement. Once the papers were submitted to the DPP that was the police role completed unless the DPP put out a request for more information or better particulars. They'd have done the job and then the DPP swings into action and takes his decision on whether the information that the police had provided them was likely to sustain a conviction.”

Anthony Langdon

Statement

- 3.190 Para. 8: The reasons the ICPC gave for not supervising the Res Con Atkinson allegation were at Para. 46 of his report.
- 3.191 Para. 9: DCS McBurney explained at a meeting on 15th August 2000 that his strategy was waiting for the McKees to separate, giving him the opportunity to expose the false alibi.
- 3.192 Para. 11: He relied on his note (39693) that said that the Chief Constable had made the decision to treat Andrea McKee as a witness. He could not remember if DCS McBurney said anything about the Chief Constable's involvement.

Oral Evidence

- 3.193 Comparing 39672 and 39692, Mr Langdon believed that the collapse of the inquest was the starting point. He could not remember, if he ever knew, what precisely influenced them. He had no reason to distrust his note (p.4).
- 3.194 Per Para. 9 82065 Mr Langdon could not recall if the collapse of the inquest was what DCS McBurney and DI Irwin were waiting for (p.5).

- 3.195 On 22nd March 1999 he was engaged by the NIO, per 39511 (p.6) to report on cases that attracted the attention of the Patten review. He was engaged on a different case and was asked to report on the Hamill case in 2000 (p.7).
- 3.196 Per 39692 Mr Langdon had a clear memory that he was at pains to show he was energetic in pursuing the Res Con Atkinson allegation (p.10).
- 3.197 In 1999 Mr Langdon met Sir Ronnie Flanagan twice in relation to the case he was reporting on (p.11).
- 3.198 When 39694 was written he had not yet formulated an account of what had happened. His role was to prepare an account of what had happened and what the outstanding issues were and what the points of controversy were (p.14).
- 3.199 The “defensive” nature of police, per the Permanent Secretary’s note, was that initially the police felt it was not a murder and was a routine riot in Portadown (p.17).
- 3.200 The meeting on the 21st was only with Sir Ronnie Flanagan. The note 39692 would have been done as soon as possible afterwards. He would have jotted some aide-memoires in the meeting (p.19). The date it went into the system would have been the Monday, as the meeting was on a Friday (p.21). Mr Langdon had a memory of the Chief Constable saying that about the cradling of the head as he made a cradling gesture. He remembered the Chief Constable saying his force was being “unfairly pilloried” but did not recall him specifically mentioning Mr Hamill’s sister (p.22). Mr Langdon did not remember the cradling discussion referring to anyone other than Mr Hamill’s family (p.24). Mr Langdon did not challenge Sir Flanagan as he did not see that as being his job (p.26). The first two paragraphs were defensive and the last two as critical. As far as the riot was concerned Sir Flanagan felt his force had done its best (p.27), as it turned out an inadequate best. Mr Langdon remembered distinctly that the Chief Constable mentioned Con Neill. He went out of his way to say Neill was a decent and reliable officer. Sir Flanagan also went to great pains to show he was as concerned about the Res Con Atkinson allegation as anyone else (p.28). He had no reason to believe anything in his report was inaccurate (p.29). Mr Langdon did not dispute that the word “gem” may be “gen” but he did not think he could have misunderstood that whatever the coroner had said to the Hamill family was an important factor (p.30). The Chief Constable was indicating that he would prosecute any wrongdoing officer (p.33).
- 3.201 Para. 32 38492 could only come from the people he interviewed: the Chief Constable, ICPC, DCS McBurney and DI Irwin, and the material he looked at in the ICPC offices (p.35). He was there to point out where the conflicts lay. Some he commented on, others he did not (p.36).
- 3.202 He was to advise the Secretary of State about approaching appointing a public inquiry (p.36). He was not the fact-finder (p.37).

DCS Colville Stewart

Oral Evidence

- 3.203 DCS Stewart would have reported Res Con Atkinson to the Deputy Chief Constable to consider suspension. The report would have gone in after they knew the phone call had been made to the Hanvey house as it supported the allegation made by Tracey Clarke (p.133). DCS Stewart would have done it on paper but he understood that DCS McBurney did it verbally (p.134).
- 3.204 DCS Stewart believed that questioning Res Con Atkinson after getting Tracey Clarke's statement and confirmation of the call would have hampered the murder investigation as they could have worked out that Tracey Clarke was the source and there would be a chance pressure would be put on Tracey Clarke not to give evidence (p.135).
- 3.205 DCS Stewart did not recall if there was consideration given to putting up all the crime files on the McKees, Hanveys and Atkinsons to the ODPP at the same time (p.136).
- 3.206 DCS Stewart had a conversation with Sir Ronnie Flanagan when he started and Sir Flanagan suggested DCS Stewart "gets on with things" and "to look at the big picture". Sir Flanagan wanted to be kept aware of everything that was necessary and there was an "open door" to him if officers needed to speak to Sir Flanagan (p.142).
- 3.207 DCS Stewart knew DCS McBurney but did not especially get on with him. He was not a friend. If he was asked what day it was, he would probably want to know why you wanted to know what the day was (p.176). DCS Stewart did not think DCS McBurney would write down deciding not to arrest Res Con Atkinson. He suspected DCS McBurney may have referred it up to the ACC and he certainly would have talked about things. There were certain things DCS McBurney would not have shared with anybody. If he felt comfortable, he would have shared it with his deputy but that was all (p.177). DCS Stewart found nothing to suggest DCS McBurney was anything other than enthusiastic in pursuing Res Con Atkinson (p.178). DCS McBurney would have been totally determined to arrest a bad police officer. He would have viewed such a person with absolute disdain (p.179). DCS McBurney liked to be out on the street (p.181) and would have seen paperwork as an impingement (p.182).
- 3.208 The decision to prosecute remained with the DPP and immunity from prosecution would automatically go from the Director to the Attorney General for approval (p.180).
- 3.209 DCS Stewart did not know why Andrea McKee was not interviewed under caution after admitting her part in the conspiracy. The aim of interviewing Andrea on 10th April 2001 was to get her interviewed under caution (p.183). She knew their intentions on that date. Those officers who interviewed her were impressed by her admission. He had never in his 32 years in the police had a witness cooperate in agreeing to be interviewed under caution when they

have admitted a crime not under caution. Andrea McKee was very cooperative (p.184).

ACC Fred Hall

Statement

- 3.210 Para. 1: He was ACC South in 1997 and was based at Mahon Road.
- 3.211 Para. 16: Crime files did not go via his office.
- 3.212 Para. 18: He was briefed weekly, if not more frequently, by head of CID as to the progress of investigations.
- 3.213 Para. 25: He did not take decision about DCS McBurney per policy file 32255 at 11.00 9/5/97. He may have been consulted to see if he was free.
- 3.214 Para. 27: He believed the tip-off allegation was formally referred to the ICPC and they agreed to supervise. His understanding was, and still was, the ICPC were supervising that aspect as they saw it inextricably linked.
- 3.215 Para. 28: The perverting course of justice allegation should have been referred formally in writing by SIO and then worked up the chain through G Department.
- 3.216 Para. 29: He did not recollect DCS McBurney having a strategy as to how to deal with the officer allegation. It was not ACC Hall's role to be involved in that strategy.
- 3.217 Para. 31: It would be very wrong to embroil himself in the mechanics of the investigation as it was under the supervision and direction of ICPC.
- 3.218 Para. 40: He suspected there was no reason why the incident involving Robert Hamill would have been any different from other public order incidents.
- 3.219 Para. 61: Some time shortly after he became aware of the allegation against Res Con Atkinson, he telephoned [REDACTED] to confirmed he was aware of the allegation and that it would be included in his remit of supervision. He could not remember the date of the call. ACC Hall did not recall if [REDACTED] knew of the allegation but [REDACTED] said "you never know what comes up in investigation, we will see what the evidence was".

K

Statement

- 3.220 Para. 2: He was appointed Deputy SIO by DCS McBurney on 26/6/00. He commenced the investigation into the Res Con Atkinson conspiracy.

- 3.221 Para. 5: On appointment, he was briefed by DCS McBurney. He said he had recently been to see Andrea McKee with DI Irwin and she had provided a witness statement that led to the investigation being taken forward.
- 3.222 Para. 11: He was in charge of the day to day operational decisions for the investigation and consulted with DCS McBurney. He believed DCS McBurney briefed ACC Ray White and the Chief Constable as the investigation progressed.
- 3.223 Para. 12: He was joined in investigation by DS **H** and he brought in other officers from Regional Crime Squad. He deliberately kept the team small to protect covert strategy.
- 3.224 Para. 13: There was limited access to HOLMES to keep the investigation as covert as possible.
- 3.225 Para. 17: He started again with the telephone analysis to ensure that all evidence was produced.
- 3.226 Para. 33: He did not know why DCS McBurney left the meeting with Mr Mahaffey on 12/12/00.
- 3.227 Para. 36: He did not express concern about the conduct of the investigation or DCS McBurney and DI Irwin at the meeting on 12/12/00, per 26878. DCI **K** said it was a matter for Mr Mahaffey as supervising officer if he had any concerns.
- 3.228 Para. 37: He was aware DCS McBurney was replaced as SIO by DCS Colville Stewart on 14/12/00. He did not consider this to be a direct result of the meeting with Mr Mahaffey on 12/12/00.
- 3.229 Para. 45: On 6/3/01 there was a meeting with David Wood, Chris Mahaffey PONI, DCS Stewart and DCI **K**. It was agreed that intrusive surveillance would be implemented on the arrest of suspects.
- 3.230 Para. 50: Intrusive surveillance was implemented after arrests occurred. The equipment was new so the phase was delayed whilst it was being delivered. He felt the surveillance was compromised by Res Con Atkinson being paranoid about surveillance. Upon his release Res Con Atkinson asked friends about the number of officers and vehicles who had attended his house.

Oral Evidence

- 3.231 There was disagreement over how the intrusive surveillance would be conducted. There was agreement that it was a good investigative option. He considered trying to break the conspiracy between the Hanveys and the Atkinsons. He decided to run an overt investigation and continue with the murder HOLMES account due to the interplay between the tip-off and the murder investigation (p.11). Prior to PONI being involved he put supporting

elements in place to develop intelligence leads. He did not feel he could run intrusive surveillance until he had got a firm intelligence foundation and an understanding of their lifestyles. By 5 December DCI **K** thought they should move on to Michael McKee (p.12) as the overt investigation was making progress about e.g. taxi logs. They needed permission for covert investigation as RIPA had come into force in October 2000. The results from the overt investigation may have supported the covert RIPA application (p.14). There was also the balancing considerations of installing the equipment covertly against installing at a time when the suspects will be talking about the incident. The bigger issue was covert installation. Installing at the time of arrest can raise the risk to a point where it will fail (p.15). If the overt investigation reached a dead end, DCI **K** felt they should move on to a totally covert phase. It was not correct that intrusive surveillance had not been used before, as Mr Wood said (p.16). At the meeting with PONI on 5 December Mr Mahaffey told them that PONI would take direct investigation and that all arrests would be done at one time and as soon as possible. DCI **K** briefed him about the status of the covert investigation, but had reservations about installing at the time of arrest, but they agreed it was an option (p.17). As Mr Hanvey was moving into new accommodation with Tracey Clarke they had to wait until that settled as they wanted to install equipment in that house as they were still trying to get evidence about the murder (p.18). The degree of installing the device was higher at the time of arrest as the risk was higher (p.19). DCI **K** met Mr Wood three times and in the conversations agreed it was a worthwhile strategy. The concern was over the level of risk doing it at the time of arrest. There were other priorities, such as counter-terrorism, and they had to get more equipment. Mr Wood agreed with the time frames and did not say that the police were dragging their heels (p.20). Both DCS McBurney and DCI **K** were in agreement about the intrusive surveillance strategy (p.21).

3.232 DCI **K** remembered that Res Con Atkinson was suspicious of intrusive surveillance when he returned home and asked his neighbours and he had a cursory search of his house that night and that continued for ten days (p.47). There was no evidence to suggest that Res Con Atkinson had been tipped off prior to the operation. Mr Wood raised the issue due to the visit of an officer to Res Con Atkinson's house during the operation. That officer was interviewed and the police were satisfied he was not previously aware of the bugging (p.48). 14502 showed there was an investigation. DCI **K** said that the investigation was into the visitation. The indications were Res Con Atkinson told the visitor his house was bugged. DCI **K** did not believe Res Con Atkinson was tipped off (p.50)

3.233 Per 75208 DCI **K** said he did not meet Mr Wood until 6th March. DCI **K** had a meeting with Chris Mahaffey on 23rd February about the risks of failure. At the time he was meant to be on leave but went in to help interview DCI **P39**, (p.59). DCI **K** was not convinced that the operation would succeed. He did not say Res Con Atkinson was a local hero. He said that those who had been charged in 1997 were seen as local heroes. DCI **K**, DCS McBurney and DCS Colville Stewart did not want Res Con Atkinson to be seen as a local hero in the community (p.60).

- 3.234 That the police had not prepared and did not have the equipment in place for intrusive surveillance was wrong (p.129). No-one said using intrusive surveillance was like “using a sledgehammer to crack a nut”. DCI **K** did not say that vigorously investigating Res Con Atkinson would cause problems with one side of the community (p.131). There would have been no backlash from the local police. There were maybe three or four officers who were very friendly with Res Con Atkinson and felt he was being persecuted. Those officers did not know of the tip-off allegation. They thought it related to the neglect issue (p.132). The police wanted to get evidence to show that he was a corrupt officer (p.133).
- 3.235 DCS McBurney had indicated that his intention was to monitor the McKees and his strategy was to take advantage of the separation. He therefore approached the McKees when they split (p.5). DCI **K** thought it was a useful strategy to try and break one of the conspirators to tell the truth (p.6).
- 3.236 DCS McBurney was a detective’s detective and DCI **K** had no doubts over his commitment or his effectiveness. At times he took too much on and liked to do things by himself (p.7).
- 3.237 DCS McBurney was committed to getting Res Con Atkinson (p.125). DCI **K** thought he was always determined to get him (p.126). At the alibi interview of Andrea McKee DCI **K** would have got the officer to draw her attention to the declaration and if they do not want to made a statement, then withdraw. If she did then the officer would take the statement. There was the Article 2 issue that Andrea McKee had helped the police (p.128).
- 3.238 The investigation into the officer visiting Res Con Atkinson was conducted by an independent team (p.129).

DC Edward Honeyford

Oral Evidence

- 3.239 DCS McBurney was “hands on” who worked to get the job done. He put his heart into investigations and DC Honeyford thought there were times when he did not cover in writing what he should have. He did not discriminate between Catholic or Protestant victims (p.13).

DCS Maynard McBurney

Statement

- 3.240 Para. 15: Res Con McCaw told him about Andrea McKee. He told DI Irwin to meet her that evening as they needed to go then, not the next day.
- 3.241 Para. 16: He was briefed on the meeting when they returned. Andrea McKee said that Tracey Clarke had seen what happened. She said Tracey Clarke could

identify the perpetrators and Res Con Atkinson had assisted one of the perpetrators. Both DI Irwin and DC McAteer thought that she was telling the truth.

- 3.242 Para. 29: He made arrangements to have Tracey Clarke brought into the station. According to Andrea McKee, Michael McKee persuaded Tracey Clarke to give evidence.
- 3.243 Para. 30: DI Irwin and DC McAteer interviewed Tracey Clarke, who requested to be accompanied by Andrea McKee. At some point DC McAteer came out of the interview room. He believed Tracey Clarke was telling the truth but she was unwilling to give evidence. She finally gave a statement.
- 3.244 Para. 32: DCS McBurney directed that the statements of neither Witness A or B should be typed or entered on HOLMES.
- 3.245 Para. 35: Months down the line he discovered that Tracey Clarke had talked quite openly about her statement. She told the police that some girl had advised her that if she wanted to retract her statement she should see [REDACTED].
- 3.246 Para. 44: He thought [REDACTED]'s name was put forward for phone record search as a result of possibly the search of Mr Hanvey's house.
- 3.247 Para. 46: He did not put statements putting Mr Hanvey at the McAlpine party to Thomas Hanvey to rebut his evidence as DCS McBurney did not consider it important to put it to him.
- 3.248 Para. 53: On 12/5/97 he had a meeting with Ray Kitson and the Deputy Director at ODPP. Note was at 31613. He believed the purpose was to verbally update ODPP on the charges and the general case progress. He accepted that there was no mention of Res Con Atkinson.
- 3.249 Para. 54: On 12/5/97 he had a meeting with Supt Anderson, DCI P39 and Greg Mullan. He provided near enough complete documentation to allow the ICPC to supervise the complaint. They were aware of witnesses A and B and the Res Con Atkinson allegation. ICPC did not want to supervise the Res Con Atkinson allegation and they were not asked to supervise it by the Chief Constable's office.
- 3.250 Para. 55: He briefed the Chief Constable's office regularly on the Res Con Atkinson allegation, e.g. spoke to ACC South on 9/5/97. He briefed ACC Crime regularly and spoke to the Chief Constable directly on a few occasions. The Chief Constable telephoned twice on 10 May for an update. If he did not tell the Chief Constable then about Res Con Atkinson, he told him shortly afterwards. ACC South and ACC Crime would brief Chief Constable regularly.

- 3.251 Para. 56: The ICPC would bring the Res Con Atkinson allegation to Chief Constable's attention. At some stage suspension was considered. This was up to DCC through C&D.
- 3.252 Para. 57: Supt Anderson of C&D attended some meetings with ICPC so he was aware of the Res Con Atkinson allegation. DCS McBurney thought he discussed it with him as to whether Res Con Atkinson should be suspended.
- 3.253 Para. 58: ACC Hall would not be directing the investigation.
- 3.254 Para. 59: He believed he told Ray Kitson about Res Con Atkinson on 13/5/97 (31603). He could not be certain he told Mr Kitson that Andrea McKee was the source of the allegation.
- 3.255 Para. 60: He believed he would have told ODPP at the meeting what the strategy was for investigating the Res Con Atkinson allegation but he could not be certain. He did not think he would have discussed why Res Con Atkinson was not involved in the murder investigation. ODPP had no involvement in the investigation process and were only concerned with the evidence presented to them.
- 3.256 Para. 61: Met with ICPC on 13/5/97 to brief them about investigation.
- 3.257 Para. 63: He did not believe the Res Con Atkinson investigation should have been run as part of the murder investigation. He discussed with ACC C&D about suspension of Res Con Atkinson.
- 3.258 Para. 69: On 19/5/97 he had a further meeting with ICPC. It was recorded (936) that the ICPC's primary role was to supervise the inactivity complaint and that people should be made aware that the ICPC were not investigating the murder or the allegations contained in Tracey Clarke's statement. He discussed the strategy, which was set out at policy decision 22.
- 3.259 Para. 70: The ICPC suggested the police write to everyone who may have seen something on the night of the assault. DCS McBurney thought that solicitors should be written to if necessary as there was a better chance of success if a solicitor received the letter, because they would make contact with the client and they would be happy to attend the station so statements could be taken.
- 3.260 Para. 74: On 30/5/97 DCI **P39** went on leave. DCS McBurney had brought DI Irwin in at the beginning as DCI **P39** had said she would be attending promotion boards in the summer. DI Irwin was familiar with the area. DI Irwin was not happy to get involved at that stage as he was local. DI Irwin knew DCS McBurney would take responsibility for decisions and that he would cover DI Irwin.
- 3.261 Para. 75: DCS McBurney did not have a great deal to do with the Crime File submission other than the summary. After the file was submitted, DI Irwin was the point of contact between ODPP and Crime Branch on the murder.

- 3.262 Para. 76: He questioned whether Mr Jameson's allegation of DC Honeyford putting words in his statement amounted to a complaint and he decided it must not have been because if it was, it would have been referred to him by ODPP to investigate as it was ODPP's responsibility.
- 3.263 Para. 78: On 9/9/97 Res Con Atkinson was interviewed. He did not put the allegation to him as the interview was confined to the subject of the inactivity complaint. DCS McBurney asked him to produce telephone records. It was put deliberately as a side issue as he wanted to see what Res Con Atkinson would do when asked for the account.
- 3.264 Para. 80: On 9/10/97 DI Irwin and DCS McBurney re-interviewed Res Con Atkinson. ICPC were not represented as it was concerned with the tip-off allegation, not the inactivity complaint.
- 3.265 Para. 82: He did not think Res Con Atkinson knew Andrea McKee had been to the police station and that was why he used her as his alibi. DCS McBurney knew that Andrea and Michael McKee were key and to bring a successful prosecution against Res Con Atkinson he needed both of them.
- 3.266 Para. 83: He knew when Eleanor Atkinson and Michael McKee provided an alibi that there was a conspiracy but it was not the right time to say that they were lying and if he raised it then the solicitor would have told them not to answer.
- 3.267 Para. 84: He did not tell Res Con Atkinson where the evidence against him came from. He suspected that Res Con Atkinson already knew from his associates.
- 3.268 Para. 85: The reason for delay in the Res Con Atkinson inquiry was "it fell into place". The opportunity to interview Andrea McKee was the first opportunity that presented itself.
- 3.269 Para. 86: On 29/10/97 DI Irwin spoke to Andrea McKee. He could not recall why she was not interviewed on 9 October with the others. Initially DI Irwin was not happy about conducting the interview but DCS McBurney explained the strategy to him and he was content with that. DCS McBurney told him that if Andrea McKee raised the information she had already given, then DI Irwin should pursue that. DCS McBurney was trying to leave open the possibility of Andrea McKee talking to the police later. He guessed she would not speak in the presence of her solicitor. DCS McBurney thought there was a real chance they would separate in the near future.
- 3.270 Para. 87: After interviews he considered arresting the McKees but decided against it. He believed the only chance was to get between the conspirators and break their story.
- 3.271 Para. 88: He was hopeful either the murder trial or the Inquest would give another opportunity to shake things up, but that did not happen. He explained

the rationale about the Inquest and he took it upon himself to talk to Mr Leckey.

- 3.272 Para. 89: On 25/11/97 he directed DI Irwin to visit Mr Hanvey. Kenneth Hanvey confirmed Michael McKee had called in morning of 27/4/97 and asked if Tracey Clarke was with Allister Hanvey. Kenneth Hanvey checked Allister Hanvey's room and neither was there. He assumed Allister Hanvey was staying with Thomas Hanvey.
- 3.273 Para. 90: In December 1997 he submitted the complaint file to ODPP. DI Irwin did most of the work but the conclusion and summary were DCS McBurney's. He did not think the police could have anticipated what happened and they were ill-equipped to stop it once it started. This was supported by the evidence of Carol Ann Jones.
- 3.274 Para. 91: He refers in his report to Colin Prunty who "outlined the good work carried out by police who had been in the Land Rover when they became aware of situation. Police were not in a position to confirm this statement, although they know it to be fact." He thought he got that from ODPP and Counsel after Mr Prunty's consultation. The bar man at St Pats came up to the police during the Land Rover reconstruction. He said the police had done a good job and had received unfair criticism. He refused to make a statement.
- 3.275 Para. 92: He recorded Mr Murnaghan's comments when they walked around town in 73108 "Satisfied with murder investigation. Witnesses generally problem. Police 'iffy'. Not satisfied they have not something to answer. Res Con Atkinson, can see problems facing investigation. Practical; not his concern".
- 3.276 Para. 94: Did not necessarily consider it suspicious Res Con Atkinson was unable to name more people at the scene.
- 3.277 Para. 95: Did not made reference to Andrea McKee's alibi statement as all the evidence available at that stage was conjecture and it would not have made a difference to the evidence against Res Con Atkinson. He was presenting the facts that would produce evidence. The McKee information was not evidence. He tried to protect Mrs McKee to use her as a witness at some stage.
- 3.278 Para. 96: He could have dealt with the case much quicker by arresting Res Con Atkinson and others but he did not believe that would produce any evidence that would have assisted in charges being laid. He developed a strategy which would allow him to support Andrea McKee.
- 3.279 Para. 98: After some time DI Irwin learnt from Mrs Clarke of Andrea and Michael McKees' split. He believed the right thing to do was wait until Michael McKee returned to Northern Ireland.
- 3.280 Para. 99: As soon as they heard Michael McKee had returned he made arrangements to see Andrea McKee in Wales.

- 3.281 Para. 101: When he went to see Andrea he had made a decision not to arrest her. He wanted a witness statement from her.
- 3.282 Para. 103: When he returned to the police station he realised he had to involve the ICPC and DPP. He was reminded that he briefed the Chief Constable upon his return, who then briefed the DPP (per 18977). Had a meeting with Greg Mullan on 22 June 2000 (14702). In the note DCS McBurney had clearly advised ICPC of Mrs McKee's new evidence, which necessarily meant Res Con Atkinson was guilty of conspiring to pervert course of justice.
- 3.283 Para. 104: On 26/6/00 he attended a consultation with Ray Kitson, Deputy Director ODPP. He went to confirmed that the ODPP were happy with the way Andrea McKee was treated and whether Michael McKee should be treated in the same way. He was advised Michael McKee should be re-interviewed under caution but before that took place further evidence had to be obtained to corroborate what Andrea McKee said. Mr Kitson advised it would not be appropriate to give Michael McKee immunity from prosecution.
- 3.284 Para. 105: Andrea's statement of 29/10/97 was not fully discussed with ODPP or ICPC until the meeting of 26/6/00. He was looking for advice from ODPP but they were content to leave it to him to gather evidence.
- 3.285 Para. 106: He was advised that the ODPP felt another DCI should be appointed to ensure all loose ends were tied up. The ODPP and ICPC left that decision to him. He therefore brought DCI **K** in.
- 3.286 Para. 107: DCS McBurney did not instruct DCI **K** on the use of policy books. He was not concerned about him keeping policy books as he did not feel there were the same issues regarding secrecy.
- 3.287 Para. 110: In November 2000, after ICPC had been replaced by PONI, Mr Mahaffey proposed a new and immediate arrest strategy. DCS McBurney disagreed strongly as he believed patience was needed with Michael McKee.
- 3.288 Para. 111: On 12/12/00 he did not remain for the whole meeting with Mr Mahaffey and DCI **K** but he expressed his view about Mr McKee.
- 3.289 Para. 112: on 13/12/00 he was replaced as SIO following representations made to the Chief Constable by David Wood about the handling of Andrea McKee and Timothy Jameson. He did not believe that the murder investigation was hampered in any way by the initial handling of scene.
- 3.290 Para. 113: He did not share Supt Kennedy's criticisms of the debriefing of the officers and the record keeping.
- 3.291 Para. 114: He had absolutely no intention to protect anybody. It was not true that he re-opened the investigation to divert a public inquiry.

Colin Murray

1st Report

- 3.292 Para. 18.16: The questioning of Allister Hanvey about speaking to a police officer merely served to advise him that the RUC were aware of an allegation about Res Con Atkinson. It was unclear why the officers did that.
- 3.293 Para. 20.23: There can be no credible excuse for conducting the Res Con Atkinson interview on 9/9/97 so passively without introducing the telephone records.
- 3.294 Para. 20.25: It was not acceptable for a police officer to inform a suspect he knew he had done nothing wrong when there was evidence to the contrary.
- 3.295 Para. 20.48: Mr Murray believed the omission [to tender the alibi statements of Andrea and Michael McKee] of DCS McBurney and DI Irwin was deliberate and was intended to protect Res Con Atkinson.
- 3.296 Para. 20.51: The following actions should have taken place following the allegations by Tracey Clarke:
- 3.297 An independent SIO should have been appointed with a team drawn from officers outside Portadown. This could have been undertaken by C&D.
- 3.298 Res Con Atkinson should have been arrested when the phone records corroborated Tracey Clarke's account.
- 3.299 The home addresses of Res Con Atkinson and Allister Hanvey should have been searched to prove an association.
- 3.300 Had Res Con Atkinson been arrested at an early stage, Mr Murray did not believe he would have been able to furnish an alibi.
- 3.301 Attempts should have been made to prove a jacket as described by Tracey Clarke existed.
- 3.302 Para. 21.3: In the report of DCS McBurney he said he did not have any evidence to substantiate the allegation made by Tracey Clarke (60551 Para. 135). That was not true.
- 3.303 Para. 22.49: Mr Murray did not find the account of DCS McBurney credible. He did not believe a senior officer can do nothing for three years and call it a strategy. This was based on:
- 3.304 Nothing was done beyond getting phone records of Res Con Atkinson even though there were significant lines of enquiry that could have been undertaken.

- 3.305 The statement of Tracey Clarke was put on HOLMES on 11/5/97 which allowed a wide circle of officers to have knowledge of the Res Con Atkinson phone call.
- 3.306 DC McCrumlish's interview of Allister Hanvey on 10/5/97 alerted Mr Hanvey that the police suspected he had been in contact with an officer.
- 3.307 Prior to the Res Con Atkinson interview on 9/9/97, Res Con Atkinson's solicitor was advised of the phone call. Res Con Atkinson was cautioned for assisting offenders. During the interview DCS McBurney did not put the phone records to Res Con Atkinson.
- 3.308 The account given by Res Con Atkinson on 9/10/97 was tacitly accepted, given that no efforts were made to prove or disprove the alibi.
- 3.309 No issue was raised in the report to the ODPP and ICPC about the police considering Michael McKee's statement to be false.
- 3.310 DCS McBurney failed to disclose in his report the knowledge and significance of Andrea McKee and no challenge was made of her alibi statement.
- 3.311 When Andrea McKee admitted making a false statement, it was taken as a witness statement. This could seriously have compromised any later prosecution.
- 3.312 He did not believe either DCS McBurney or DI Irwin expected a sudden admission by Andrea McKee. Mr Murray based that on their lack of preparation prior to interview e.g. there was no consultation with ODPP on how to treat Andrea McKee and that DCS McBurney and DI Irwin had to consult privately when Andrea McKee made the admission.
- 3.313 Mr Murray recognised the same errors in the murder investigation, as were noted by DCS Stewart.
- 3.314 DCS McBurney did not recognise those failings, or if he did he chose to ignore them.
- 3.315 Para. 23.25: Mr Murray believed the investigation into the alleged misconduct by Res Con Atkinson was criminally negligent.
- 3.316 Para. 23.26: DCS McBurney did not conduct a meaningful investigation.
- 3.317 Para. 23.27: The tip-off allegation should have been run alongside the murder investigation as evidence of the contact by an officer would be compelling evidence in the murder investigation.
- 3.318 Para. 23.28: He believed there was no strategy on DCS McBurney's part.
- 3.319 Para. 23.29: Concluded DCS McBurney protected Res Con Atkinson by failing to investigate. The reason was unclear.

- 3.320 Para. 23.30: DCS McBurney was assisted by DI Irwin. It was difficult to determine whether DI Irwin's actions were a result of being junior or wilfully assisting.
- 3.321 Para. 23.31: There was evidence that DI Irwin was reluctant to be a part of neglect investigation.
- 3.322 Para. 23.32: Mr Murray concluded DI Irwin acted as he did as a result of being junior in rank to DCS McBurney.
- 3.323 Para. 23.34: DCS McBurney's report was part selective and part misleading.
- 3.324 Para. 23.35: Mr Murray believed DCS McBurney suspected all those engaged in the conspiracy yet their accounts were put forward as statements of truth as at no time did DCS McBurney point out his concerns over their content. He believed DCS McBurney felt an investigation would rest following his recommendation of no further action.
- 3.325 Para. 23.36: Failure to investigate the Res Con Atkinson allegation significantly impacted on the murder investigation.
- 3.326 Para. 23.37: The Res Con Atkinson allegation only began when DCI K took over. His investigation was extremely thorough and conducted professionally.
- 3.327 Para. 25.44: Nothing made Mr Murray believe a determined effort was made by DCS McBurney to investigate the tip-off allegation.

Statement

- 3.328 "In compiling my report under section 20, the management and effectiveness of the investigation into the alleged misconduct of Res Con Atkinson, I place significant emphasis on the failure to challenge in the interview of the Res Con the initial account of the telephone billing. I was unaware that a number of telephone service providers would not assist with evidential telephone billing due to the security situation prevailing at that time."
- 3.329 "In my report at Paragraph 23.17 I stated I believed DI Irwin assisted Andrea McKee in perverting the course of justice. I do not stand by that comment. Having listened to the evidence, I believe DI Irwin was reluctant to take that statement and only did so because he was ordered to."
- 3.330 "I do believe there was a strong desire to bring the suspects to justice. I do however stand by the observations I made into the initial actions and investigation."
- 3.331 "I accused DCS McBurney of being criminally negligent. I wish to revise that conclusion. I have listened to evidence whereby he conducted the investigation into the alleged misconduct of Res Con Atkinson as a 'wait and see' strategy. I could not understand that strategy nor do I consider that to be

appropriate in the circumstances. I conclude that the investigation into the alleged misconduct was negligent rather than criminally negligent.”

- 3.332 2I acknowledge the high regard that officers held for DCS McBurney. I am also mindful of the comments of Sir Ronnie Flanagan in regard to DCS McBurney.”
- 3.333 “I do accept that in the early stage of the investigation a major priority for the RUC was the safety of Tracey Clarke.”
- 3.334 “I do acknowledge the unique position the RUC were in and the difficulties they faced due to the security situation. I have not served within the RUC. However when considering the many actions undertaken by the RUC following the murder of Robert Hamill the fact was they were able to undertake a significant number of actions that would have been conducted elsewhere in the UK.”

Oral Evidence

- 3.335 Mr Murray thought DI Irwin was very thorough in what he did. He worked diligently (p.48). Mr Murray stood by his conclusion at 24.1 74507 (p.49).
- 3.336 Mr Murray believed the RUC wanted to bring the offenders to justice (p.70).
- 3.337 Mr Murray did not accept that DCS McBurney in his report expressed misgivings and doubts. Those should have been specifically outlined (p.86). Mr Murray thought Andrea McKee’s alibi statement was put forward as a statement of truth as there was no indication that DCS McBurney did not believe it (p.87). The statement that he was sceptical was insufficient for that purpose (p.88). He was very surprised that it was not in the file (p.5).
- 3.338 Mr Murray was an accredited senior investigative officer. He trained senior officers across the UK in best practice (p.1).
- 3.339 It was essential that someone suspected of assisting murder suspects should be brought under the umbrella of the murder investigation (p.2).
- 3.340 Mr Murray could not now understand DCS McBurney’s strategy (p.7) but understood there was one from listening to DCS McBurney and DI Irwin (p.6).
- 3.341 The telephone records, even if they were not evidential, could and should have been put to Res Con Atkinson in interview as an intelligence document (p.12).
- 3.342 Destroying the alibi would be of little value unless one or both of the McKees could be used as witnesses against Res Con Atkinson. It would be important to destroy the alibi in a way that would not be beneficial to the defence when cross-examining the accomplices. Mr Murray was not sure that could ever have been accomplished but it should have been attempted (p.14).

- 3.343 Per 4.26 74400 there had been nothing he had heard in the Inquiry to dissuade him from saying that Res Con Atkinson was the most active officer at the scene (p.16).
- 3.344 Mr Murray heard those witnesses that he wished to hear give live evidence. He also read statements of some of the witnesses (p.17). He was in the chamber for Tracey Clarke. He believed he listened to Andrea McKee from the Inquiry office (p.19). He was at the Inquiry for the evidence of the Atkinsons but did not know if he was in the chamber or the office (p.20). He read the transcript of Christine Smith and Gerald Simpson. He took into account Ms Smith's view of Andrea McKee's credibility (p.21). He did not think her evidence of the surgery was very significant as her credibility was already tarnished by the guilty plea (p.22). He found nothing to criticise in the evidence of Ms Smith and Mr Simpson (p.23).
- 3.345 Putting the Clarke allegation to Mr Hanvey and Res Con Atkinson would not reveal Ms Clarke as she did not need to be introduced at all. The police could have asked for phone billing from all suspects. Unless Mr Hanvey or Res Con Atkinson admitted the call, the case would not proceed (p.69). There would then have been other strands to look at e.g. covert listening or enquiries about the coat. He did not find the strategy credible as he did not know of a perverting the course of justice investigation that did nothing for three years (p.72). He agreed that the DCS McBurney approach could have worked (p.73). By the 27th October Tracey Clarke would not need to be used because Andrea McKee could have been challenged about the account she was putting forward (p.10).
- 3.346 Internal communication between SIO and other detectives appeared to be good (p.65) as there were regular meetings (p.70). Mr Murray commented that Hanvey should not have been asked if he had been in contact with an officer as, unless directed by DCS McBurney, it was not for the officers to do so (p.66) as Mr Hanvey had not been interviewed or arrested for conspiracy to pervert the course of justice. He should have been arrested if DCS McBurney was able to adduce evidence of the telephone billing (p.67) and consideration should have been given to arresting Res Con Atkinson (p.68).
- 3.347 Mr Murray had equated criminal negligence to perverting the course of justice. He saw it as negligent and had an improper or illegal motivation (p.59). Now he did not believe that. He had taken into account the comments of other officers. He did question what DCS McBurney's motive was (p.60). He still believed that DCS McBurney was negligent (p.61).

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

We hope that the Inquiry will have proper regard to the intimidation suffered by Diane Hamill and the incidents involving the police (3.3, 3.4 and 3.6). She was the main protagonist in seeking justice for her brother. She and her family have been failed by the criminal justice system, which has produced a failed police investigation, a failed trial and a failed inquest. If it had not been

for Diane Hamill keeping up the pressure, it is very unlikely that the police investigation would have been re-opened in 2000, or that this Inquiry would ever have taken place. That Diane Hamill pursued justice for her brother so courageously must have annoyed many RUC officers, whose collective view was that Robert Hamill had got what he deserved (Per Paul McCrumlish at page 64 of 80893 “I recall that the general feeling of the whole investigation team was that Robert Hamill had been the author of his own misfortune”.) In our experience, intimidation of the bereaved, and blaming those who have been murdered for their own deaths, commonly accompanies collusion and cover-up in Northern Ireland. The intimidation and harrassment of Diane Hamill was a warning to her to keep quiet, and it is to her credit that she refused to do so, especially when her own solicitor, Rosemary Nelson, was brutally murdered in circumstances that Judge Cory also found prima facie to suggest collusion.

Diane Hamill was not a campaigner before her brother was killed. She was not political. After Robert Hamill's death, she was very upset when people tried to carry his photograph on banners at Drumcree in July 1999, and she let it be known that any attempt to politicise her brother's murder was unwelcome, because her brother had not been political either. She was not involved in a campaign to denigrate the RUC - indeed, the evidence showed that she passed on every scrap of information she came across to the police - although she did lack faith in them, with, as can be seen with the benefit of hindsight, every justification.

Nevertheless, she was subjected to sectarian abuse and harrassment, some of it completely unacceptable behaviour by RUC officers, after his death. We believe the Inquiry should take that fact into account when determining whether the wholesale failures of the criminal justice system in Robert Hamill's case amounted to negligence or collusion.

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

Brief comments regarding Mr Murray starting at 3.292

- 3.292. DC McCrumlish must have been aware either from a briefing or a reading of a statement, of the allegation. He was obviously not briefed to avoid that line of questioning. He asked the question and did not pursue it. If no mention had been made of it, he was equally liable to be criticised for failing to ask it.
- 3.293. Mr Murray originally placed significant emphasis on the failure to challenge Atkinson with the initial account of the telephone billing. This criticism was made at a time when he was unaware of the policy concerning telephone service providers.
- 3.29. This type of comment often forms part of an interviewing technique.
- 3.295. Mr Murray no longer adheres to the concept of criminal negligence. The criticism now is in relation to strategy, rather than motivation.

- 3.296. No comment.
- 3.297. The two investigations were inextricably linked. It was proper and appropriate for the same SIO to conduct both. It probably would have been preferable if a team drawn from officers from outside Portadown was appointed.
- 3.298. Already dealt with.
- 3.299. Once a strategy was formulated, not to arrest to arrest Atkinson and Hanvey, the searching of their homes did not arise. It is hard to envisage what "association" a search of their homes would have produced in any event.
- 3.300. We do not accept this. The likelihood is that if the telephone records had been put to Atkinson at an early stage, her would have denied any knowledge of the call and subsequently produced the alibi.
- 3.301. Already dealt with.
- 3.302. This is not correct. What the report says is at (60552) para135, it states "Having found no evidence other than the telephone billing to substantiate the allegation of Witness A one can remain sceptical but there is absolutely no other evidence to substantiate the allegation b y Witness A. I therefore recommend `No Prosecution "'
- 3.303. Already dealt with.
- 3.304. Already dealt with.
- 3.305. This statement was headed "Witness A". It probably would have been better if it had not been put on the HOLMES system. The fact that it was is another demonstration that DCS McBurney was attempting the allegation against Atkinson.
- 3.306. Already dealt with.
- 3.307. Already dealt with.
- 3.308. It was never "accepted". DCS McBurney was waiting in the long grass to disprove the alibi.
- 3.309. It was by the use of the word "sceptical".
- 3.310. Already dealt with.
- 3.311. Surely this demonstrates the determination to pursue Atkinson. Andrea McKee was a small cog in the wheel. The taking of the witness statement was the start of the process which led to Atkinson being charged. It may well have compromised any prosecution against

her, but there was a bigger picture which concerned the pursuit of Atkinson. As Mr Mahaffey stated at p162, cautioning Andrea McKee may have elicited a different response from her. "It was a constant dilemma" as the witness may have been more reluctant to assist from the outset"

- 3.312. This is just pure speculation.
- 3.313. Already dealt with.
- 3.314. We do not accept this belief.
- 3.315. Subsequently amended to "negligence". We do not accept that it was negligent
- 3.316. Already dealt with.
- 3.317. The tip-off was a hearsay allegation supported by the fact of a call or calls being made. Even if Tracey Clarke had given evidence of what Hanvey had told her, this was not evidence against Atkinson. If Tracey Clarke had given evidence, this would have been compelling evidence against Hanvey.
- 3.318. Already dealt with.
- 3.319. No longer alleged.
- 3.320. No comment.
- 3.321. No comment.
- 3.322. No comment.
- 3.323. We do not agree with this. We have already dealt with the protection of Andrea McKee. The investigation against Atkinson was still ongoing, and the trial of Hobson and Inquest still had to take place.
- 3.324. This is not correct. DCS McBurney expressed his scepticism over the accounts given by the McKees. Moreover at (60549), when dealing with the tip-off in the crime file, DCS McBurney stated the following..

"In addition to the Hamill complaint of inactivity is an allegation based on hearsay and contained in the statement of Witness A, "I remember 's name coming up and Allister (Hanvey) said that had been very good to him because on the Sunday morning after the incident in the town centre he rang him at about 8 00 am and told him to get rid of the clothes he was wearing the previous night He also told me that was ringing him everyday to keep him up to date with the police investigation".

This aspect of Witness A's statement cannot be taken lightly and in

many respects has a ring of truth to it ."

What in effect DCS McBurney is indicating to the reader is the likely truthfulness of Witness A's allegation regarding the tip-off and his scepticisms of the McKees' account.

Furthermore, when the murder file was submitted in July 1997, which included the allegation by Witness A concerning the Atkinson tip-off, it was made clear that both DCS McBurney and DI Irwin had no doubt that Witness A's statement was truthful and correct (06134)

- 3.325. This is simply not correct. There is no evidence of this.
- 3.326. This is not correct. The breakthrough in fact came when Andrea McKee was visited by DCS McBurney and DI Irwin.
- 3.327. The evidence of K should be remembered here when he stated at p4..
"A. In terms of what I was briefed by Mr McBurney, and on my
12 appointment he had indicated to me that his intention
13 was always to monitor the McKees, and he briefed me that
14 they had subsequently separated and he briefed me that
15 his strategy always was that he may have been able to
16 penetrate this conspiracy by taking advantage of that
17 separation, and, consequently, when he found out that
18 they had separated and were both living apart, he took
19 the decision at that point to approach both of them.
20 Q. Obviously I am sure you are aware there is a fair amount
21 of controversy about the strategy over the McKees.
22 Sadly, of course, Mr McBurney is unable to answer for
23 himself now.
24 A. Yes.
25 Q. What I am exercised about is to try to get everybody's

5

1 impressions, as best I can, of how he acted.

2 When you were briefed about that and his, as it
3 were, long-view strategy, how did that strike you at the
4 time?

5 A. I had no difficulties with that.

6 Q. So not so exceptionally mad as to be impossible?

7 A. No. He had to penetrate a conspiracy, which is very,
8 very difficult to do in terms of criminal investigation,
9 and, I mean, I think that his strategy, which was
10 discussed with me, which was that, really, to break
11 a conspiracy, you have to penetrate it and get one of
12 the conspirators to come out and tell the truth about
13 it, I think that, certainly in my view, was a useful
14 strategy.

15 Q. Okay. Had you worked with him before?

16 A. Yes.

17 Q. We have had the advantage of seeing Colville Stewart
18 give evidence, and, if I may say so, the impression
19 being given is that Mr McBurney is very old school.
20 Colville Stewart, new broom, very aware of new policing
21 techniques and investigative techniques and so on and
22 making thorough records of everything.
23 Would that be a fair impression of the distinction
24 between these two?
25 A. Yes, I think that is fair. Mr McBurney was a very

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1 hardworking detective. He was a detective's detective.
2 You know, he headed up a region through many years which
3 encountered many, many murders and he headed up a lot of
4 very serious criminal investigations and he brought
5 a lot of people to book.
6 So in terms of his commitment to his work, I would
7 have had no doubt about that.
8 Q. Or his effectiveness?
9 A. Absolutely. At times maybe he took too much on and he
10 would have liked to have done things himself."

K further gave evidence at p124...

"15 Q. Now, Mr Underwood has already said to you that it is
16 important that the Panel get an impression from people
17 as to what they think about some of the issues that this
18 Panel has to decide.
19 What was your impression between June 2000 and
20 December 2000 as to whether Mr McBurney was determined
21 to nail Mr Atkinson? What was your impression about
22 that?
23 A. I was under no doubt at all that Mr McBurney was
24 absolutely committed to getting Atkinson. I have no
25 doubt at all that's what he wanted to do from the

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1 beginning, and, when I was brought into the inquiry into
2 2000, he still had that same level of commitment.
3 Q. Now, you also told us that when you joined the inquiry
4 in June 2000, that Mr McBurney explained to you what his
5 strategy had been from the start. I am not going to go
6 through it, but, essentially, it was waiting in the long
7 grass for one of the conspirators to break. Is that
8 paraphrasing what you were saying?

9 A. Yes.

10 Q. You have also told us that you had no problem with his
11 thoughts on that and strategy.

12 A. No.

13 Q. We know that you carried out a number of enquiries which

14 I think Mr McGrory has dealt with that Mr McBurney did
15 not. Isn't that right?
16 A. That is correct.
17 Q. Taking that into account, and taking everything you know
18 about this entire inquiry into account, can you tell the
19 Inquiry what your impression is as to whether
20 Mr McBurney was determined from the very start before
21 June 2000 to nail Robert Atkinson?
22 A. I think he was always determined to nail
23 Robert Atkinson.
24 Q. What do you say -- I mean, the Panel have to deal with
25 the fact that you did a number of matters which weren't

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1 done by Mr McBurney. Have you any comment about that
2 or ...?
3 A. It's difficult to put yourself in any person's
4 circumstances, because I cannot understand the issues
5 that Mr McBurney would have been dealing with at that
6 time, but as regards the beginning of the investigation,
7 this was a difficult one, because he simply had a bit of
8 hearsay in relation to this tip-off.
9 At that point in time, the McKee issue had not come
10 into it. He had very complex issues to deal with around
11 the murder, but he looked at the billing. The search
12 would have been very important in terms of seeing
13 whether there was evidence that could have corroborated
14 that in terms of the destruction of forensic evidence,
15 and the issues then kick in, how does he progress this?
16 Now, it is difficult at that point. He wasn't to
17 know, of course, that the McKees were then at some stage
18 later in the year to come forward and be offered as
19 an alibi. At the moment that we reached that point
20 I have to say that if I was in those circumstances, that
21 would have intrigued me as to why this alibi was being
22 offered by this individual. You --
23 Q. Just to stop you there, would you have done something
24 more proactive at that stage? What do you say?
25 A. The point is, I think, at that minute, because that

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1 appears to be -- it would have appeared to me to be very
2 intriguing, you are immediately starting to strategise
3 around that interview.
4 THE CHAIRMAN: This is the alibi interview?
5 A. The alibi interview, Mr Chairman.
6 You would have had to send an officer to do it. You
7 would have given that officer directions in relation to
8 how to proceed with that. If it had been me, I would
9 have had to say to the officer, "Put the person on

10 notice of the declaration", and bring attention to this.
11 MR ADAIR: This is Andrea McKee?
12 A. Yes, absolutely.
13 Q. If, at that point, they don't want to make a statement,
14 to then withdraw at that moment. If Andrea McKee wanted
15 to make a statement, to take the statement, because the
16 other factor that we have to think about is that
17 Andrea McKee also was instrumental in bringing important
18 information into the hands of the police. So I would
19 have been considering Article 2 issues. The officer who
20 would have done that, I would have expected to do what
21 had been directed.
22 The issue then is, whenever that statement gets
23 back, what happens from that moment? That's where I can
24 no longer comment"

One of the critical issues that the Panel has to decide, whether or not it agrees or disagrees with his strategy, is whether DCS McBurney was determined from the outset to pursue Atkinson. Mr Murray had no personal knowledge of DCS McBurney, or of his characteristics and methods of investigation, which have been variously described by both senior and junior officers. He had his own way of getting things done. On the contrary, K was intimately involved in the investigation and knew the characteristics and mindset of DCS McBurney. K, we suggest, is a man of integrity and professionalism. We submit that his opinion of DCS McBurney's determination to get Atkinson, should carry significant weight with the Panel in its determination of this issue.

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

The matters herein refer to the issues dealt with in Part 8

Submissions by McCartan, Turkington & Breen Solicitors (Sir Ronnie Flanagan)

See previous submissions above.

Submissions by the Police Service of Northern Ireland

See section 4-15 below.

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

3.19:

There is a typographical error here, line 11 of paragraph 3.19 should read: "... Andrea McKee was made fully aware of the need to tell the truth." Not "... DI Irwin."

Comment

4. It was very regrettable that the untimely death of DCS Maynard McBurney denied him the opportunity of explaining to the Panel the bases upon which a number of his investigative decisions were made. Now that those investigative decisions can be viewed in the round and with the advantage of hindsight, it is arguable that they were designed to protect Robert Atkinson. The Panel may be reluctant to attribute such a design to the late DCS McBurney, but nonetheless it may be necessary to consider it.

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

It is indeed very regrettable that DCS McBurney is not alive to defend himself against very serious accusations. However, the Inquiry cannot allow the unhappy timing of his death to influence their deliberations. As we have set out at the end of paragraph 2 above, DCS McBurney did everything he could to frustrate the bringing of Reserve Constable Atkinson to book, and in the end he was successful in doing so. In our opinion, the Inquiry must judge DCS McBurney by his actions rather than his words, or anyone else's words about him.

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

It is regrettable that the Panel has not had the opportunity of seeing DCS McBurney give evidence. It has had a limited insight through hearing his interviews with the Inquiry team. An important part of any judicial process is an assessment of a witness's demeanour and response to questioning. The Panel has been denied this by the untimely death of DCS McBurney. It is our submission that the various assessments of DCS McBurney's character and motivations by those who knew him become all the more important and should weigh heavily with the Panel.

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

Further the Panel may wish to consider whether the actions of DCS McBurney from June 2000 onwards, in relation to Andrea McKee, were attributable to undue, inappropriate pressure, howsoever arising, that there be a "lust" to be satisfied that Reserve Constable Atkinson to be prosecuted.

Submissions by McCartan, Turkington & Breen Solicitors (Sir Ronnie Flanagan)

Sir Ronnie Flanagan's representation in this Inquiry has not been extended to nor has he been provided with all of the documentation relating to the investigation of the murder. This undoubtedly reflects the fact that he was not actively involved in the investigation or privy to the specific investigative strategy employed by and underpinning DCS McBurney's acts and omissions. It is not the role of a Chief Constable to become involved in and direct the

investigative strategy of an investigation. The evidence presented to this Inquiry is clearly that if Sir Ronnie Flanagan was aware that there was a potential line of investigation open then his view was that it should be pursued rigorously and without compunction.

DCS McBurney was that he was an experienced detective and Sir Ronnie Flanagan had no reason to doubt his ability or determination. DCS McBurney would not have tolerated the alleged behaviour of Reserve Constable Atkinson within the organisation that he was very proud of (p. 238).

Submissions by the Police Service of Northern Ireland

The PSNI welcomes this opportunity for the Inquiry to examine and analyse the allegations of collusion.

The Cory Collusion Inquiry Report (at 2.222) examined the extent to which it might be argued that there was collusion in the circumstances of the attack on Mr. Hamill and in the investigative aftermath. The use of the word 'collusion' in these contexts suggests an unlawful coalescence between the interests of those whose responsibility it should be to uphold the law, and those whose conduct has breached the law.

The PSNI reject any suggestion that the word 'collusion' has any applicability to the work of DCS McBurney or any other senior officer of the RUC. It is accepted, however, that there is clear evidence that the actions of Res. Con. Robert Atkinson fall squarely within the category of collusive activity. It is equally clear that Atkinson acted alone without official sanction or approval, and without any direct or indirect support from any police colleague.

Atkinson's activities went beyond the pale. It is submitted that the evidence establishes that he used his position, knowledge and experience as a police officer to protect a suspect in a murder investigation. In particular he knowingly failed to disclose Hanvey's presence at the murder scene and he failed to account for what he knew of Hanvey's conduct at the scene. He telephoned Hanvey with a view to counselling him to destroy evidence and he prevailed upon others to construct a screen around that collusion in order to impede the police from discovering the truth.

It is submitted that these were the activities of a man who was motivated by a misguided sense of loyalty to a member of a murderous mob. Res. Con. Atkinson abrogated his responsibilities as a police officer in exchange for the squalid personal satisfaction of keeping an acquaintance out of jail.

It is submitted that it stretches credulity to suggest that DCS McBurney allied himself to this cause. What possible interest would he have had in doing so? It is one thing to suggest that there were investigative opportunities which weren't taken by DCS McBurney, or which he delayed taking; but it is quite another to infer from these omissions that he was prepared to corrupt his office in order to protect Atkinson and the information that Atkinson had on Hanvey.

It is important to be clear that the only evidence which is put forward to suggest collusion between McBurney and Atkinson is the presumption of questionable investigative decisions. There is no smoking gun here. The Inquiry is being invited to impute to those investigative decisions a pernicious intent when it is not even clear that many of those decisions were wrong or negligent (in the wider sense that this word has been used).

It is problematic that DCS McBurney did not use a policy file. He did not make records. Accordingly, any insight into his thinking is necessarily difficult. The absence of records provides a fertile environment in which rumour and speculation can flourish.

It is also problematic that what is now being suggested about DCS McBurney was never suggested to him in his lifetime to quite the same degree. In the interests of transparency and in order to ensure that all relevant questions are asked at this public hearing once and for all, it is not argued that the Inquiry should refuse to consider these matters. Indeed the PSNI takes the view that the circumstances of the Inquiry provides a welcome opportunity to analyse and finally put to bed many of the wilder allegations and insinuations which have been made about the role of the police in the investigation of Mr. Hamill's murder.

It is important that in its approach to the task that the Inquiry weighs in the balance the fact that DCS McBurney has been deprived of the opportunity to answer for himself and nor has the Inquiry been afforded the opportunity to assess his demeanour and his veracity directly and at close quarters in the witness box.

In these circumstances the Inquiry must assess the evidence of those who knew him best and worked with him in policing and in the criminal justice system generally. A number of witnesses in their oral evidence described his utter integrity and dedication to his duty, and the Inquiry will be in a position to form some impression from this: see in particular the oral evidence of DI Irwin, P39, DC Honeyford, Mr. White, Mr. Kitson, Sir Ronnie Flanagan.

The officer who was appointed to lead the investigation into the tip off after DCS McBurney was removed from this role was Mr. Stewart. He is perhaps in a better position than most to give an impression of McBurney's work because he was able to review all of the steps which McBurney's investigation had taken. Mr. Stewart opened up investigative lines which McBurney had failed to open up. He wasn't particularly close to McBurney and seemed to regard him as an awkward character. He would not have described McBurney as a friend (p. 175).

Notwithstanding these factors which might have made him antagonistic to DCS McBurney, Mr. Stewart was able to provide a balanced view. Referring to McBurney's work in the Atkinson investigation he was in no doubt that "he [McBurney] would have been absolutely determined to bring that person to

justice, totally determined. He would have viewed such a person with absolute disdain (page 178)."

Such views have to be set against the opinions expressed by Mr. Murray. He described himself as an independent policing expert, who was an accredited senior investigative officer. He highlighted in his report his concerns about the investigation conducted by DCS McBurney into Atkinson. He believed that McBurney had no strategy (para 23.28) and had failed to conduct a meaningful investigation (para 23.26). He characterised McBurney as being "criminally negligent" (para 23.25).

However, after listening to all of the evidence Mr. Murray was prepared to concede that he was wrong to reach these views. He accepted that DCS McBurney had adopted a "wait and see" strategy. He professed (in his statement and in his oral evidence) that he still could not understand that strategy (page 5-6, day 68). However, he also acknowledged the complexities which detectives faced in implementing any strategy to bring Atkinson to justice.

If the objective was to target Atkinson the detectives needed to work to destroy the alibi but at the same time preserve the confidence of one or both of the McKees as well as their inherent credibility so that they could be used as effective prosecution witnesses against Atkinson (page 13).

The Inquiry is asked to consider what would have been the likely outcome if McBurney had in 1997 adopted the strategy of confronting Andrea McKee about the alibi she was providing to Atkinson. The answer appears to be given in the letter which Mr. Stewart submitted to the Presiding Judge for the sentencing of Andrea McKee in 2002 (14463): "I am satisfied that this backward step was taken out of misguided loyalty to her husband, which was to change when she and her husband split up and she left the Portadown area."

It is submitted that if Andrea McKee had been confronted in 1997 the likely outcome would have been further denials and obfuscation and this would ultimately have left the police with a less credible witness by the time she decided to co-operate.

In his oral evidence Mr. Murray explained that his reference to "criminal negligence" was used in the sense of perverting the course of justice (page 57). In other words he had at one point formed the view that DCS McBurney had perverted the course of justice by the manner in which he had conducted (or failed to conduct) the investigation of Atkinson. He elaborated by saying that it was his initial belief that McBurney had an illegal or an improper motivation in the steps he took in the investigation (page 58-9). He is now of the view (set out in his statement) that DCS McBurney was merely negligent in the design and the execution of his strategy and the investigative steps which he took.

However, it is submitted that even this concession does not go far enough. It is submitted that the clash between Murray's view of what the strategy should have been, and the strategy applied McBurney, is a difference of two judgment

calls. Mr. Murray is quite entitled to put forward his own strategy and to suggest that it would have been the more efficacious, but he is not entitled to throw words like negligence at McBurney's strategy just because he doesn't agree with it or understand it.

Still less should the Inquiry be prepared to entertain argument which seeks to suggest that collusion can be inferred from mere differences of opinion. Even if the Inquiry was to conclude that with the benefit of hindsight certain investigative decisions were wrong or ill conceived, this ought not to be enough to establish an improper motive. It is submitted that before the Inquiry could reach the grave conclusion that collusion was at work, those who might make the allegation should be expected to point to clear and unambiguous evidence of wrongdoing.

5. It was by no means inevitable that the allegation of a tip-off would be treated as part of the neglect investigation rather than as a component of the murder investigation. A number of witnesses have said that they would have expected Res Con Atkinson to be treated as an accessory, and the complainant in the neglect allegation was never informed that her complaint had been expanded so as to include Res Con Atkinson. By excising the tip-off allegation from the murder investigation it became possible for the allegation to be downplayed and for its investigation to escape the degree of supervision that the murder was likely to receive. The Panel may need to determine whether there was any such sinister motive.

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

We believe that DCS McBurney was not only wrong in taking on both roles, but that he did so deliberately in order to have control over the inter-relationship between the murder investigation and the neglect complaint. Diane Hamill believed from the outset that the police investigation into her brother's murder was flawed, but she did not know at the time that RC Atkinson had assisted one of the suspects. However, DCS McBurney knew very early on about Tracey Clarke's allegations. As soon as he knew about them, he should have urged the ICPC to appoint another officer to conduct the investigation into the Atkinson allegations (something which PONI eventually did). Instead, he took on both roles, failed to act promptly on the information that corroborated Tracey Clarke's evidence (RC Atkinson's telephone records), and then gave the game away by alerting RC Atkinson to the allegations, thus compromising both investigations. DCS McBurney was an experienced police officer. It is not possible to credit that he alerted RC Atkinson accidentally. DCS McBurney's own explanation that he "deliberately put [the matter of the telephone records] as a side issue to see what RC Atkinson would do when asked for the account [his own telephone bills]" (3.263) is inherently incredible. DCS McBurney was investigating a vicious murder, not conducting a social experiment. His actions had very serious consequences for both investigations, of which an officer of his experience would have been aware. He himself had told others to keep information from RC Atkinson, yet

here he was alerting that officer to something which he had not need to mention and when he [DCS McBurney] was already privy to the content of the telephone records. As PONI considered when they later came on the scene, DCS McBurney already knew, and had known for some time, what was in the telephone company's records, and he could and should have obtained a production order so that they could be used in evidence against Atkinson (3.170).

Even were the Inquiry to take an exceptionally lenient view of DCS McBurney's alerting Atkinson, we believe that, when all his actions are considered, it is impossible to see this episode as anything other than sinister.

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

As we have stated before, one strategy could have been to include the tip-off allegation as part of the murder investigation. It is hard to see how this would have advantaged the murder investigation. If Tracey Clarke had given evidence along the lines of her statement, this would have been compelling evidence against Hanvey. We have already referred to the potential disadvantages to the murder investigation of treating Atkinson as an accessory, and the remote possibility of either Hanvey and Atkinson admitting what they had done.

The suggestion that the tip-off allegation was downplayed, or there was any sinister motive, is not borne out by the following;

1. Immediate efforts were made to obtain the phone records.
2. ACC Hall was informed of the allegation.
3. ACC Hall took steps to ensure the ICPC was aware of the allegation.
4. C&D were informed of the allegation.
5. DCS McBurney informed the ICPC of the allegation and discussed it with it's members.
6. DCS McBurney directed that the contents of that meeting with the ICPC be recorded in the Policy File.
7. The Chief Constable was informed of the allegation.
8. The DPP was aware of the allegation
9. The ICPC were present at the first interview of Atkinson in September 1997 when he was cautioned for assisting offenders.
10. The Secretary of State was informed of the fact that there was an investigation into police officers.

In considering the issue as to whether the Atkinson allegation was downplayed or that there was anything sinister involved, the Panel will also place considerable weight on the evidence of K and others who attested to DCS McBurney's determination to pursue Atkinson.

Submissions by Gus Campbell Solicitors (Marc Hobson)

The police accept that the files to the PPS should have properly included principals and accessories and was misleading in its detail concerning the telephone records and search for further supporting evidence and that DCI K investigations in 2000 evidenced that this original investigation was lacking in ambition to resolve the issue and obtain evidence of the existence of a tip of which allowed for that allegation to maintain a low profile not only in the public sphere but within the considerations of the ODPP in relation to Con Atkinson's involvement as a witness against Hobson to corroborate Con Neill that the police were out of the Land Rover before any fatal attack occurred . The allegations against the Land Rover crew as to their credibility was therefore never allowed to have been tested by the only other available means within the investigation of the tip off allegation.

Submissions by McCartan, Turkington & Breen Solicitors (Sir Ronnie Flanagan)

Sir Ronnie Flanagan's representation in this Inquiry has not been extended to nor has he been provided with all of the documentation relating to the investigation of the murder. This undoubtedly reflects the fact that he was not actively involved in the investigation or privy to the specific investigative strategy employed by and underpinning DCS McBurney acts and omissions. It is not the role of a Chief Constable to become involved in and direct the investigative strategy of an investigation. The evidence presented to this Inquiry is clearly that if Sir Ronnie Flanagan was aware that there was a potential line of investigation open then his view was that it should be pursued rigorously and without compunction.

Submissions by the Police Service of Northern Ireland

If DCS McBurney wanted to down-play the tip off allegation he went the wrong way about it from the beginning. He wasn't quite shouting about the allegation from the roof tops but he certainly informed everybody who needed to know. Almost immediately he set about informing Mr. Hall (who communicated with other senior officers), the ICPC, Complaints and Discipline and the DPP. It is submitted that this was not the behaviour of a man who wanted to downplay the issue or to bury it. By informing these diverse constituencies McBurney could have guaranteed for the tip off allegation a high degree of scrutiny and interest.

It is submitted that if there was any deficit in the level of supervision of the tip off complaint this was primarily the responsibility of the ICPC. The ICPC could have easily broadened the scope of their supervision without formality, but failed to do so (see the discussion at Chapter 14, section 9, above, and at 7 below).

To take another example, the DPP could have suggested to DCS McBurney that the murder and the tip off investigations should be amalgamated but again they did not do so (Mr. Kitson, page 89). There does not appear to have been

any concern (or "wonderment") at the DPP end about how DCS McBurney went about his work. It is accepted that to be absolutely accurate Mr. Kitson's evidence showed that the DPP would defer to the RUC and the ability of police to manage and organise their own investigations, but they did not perceive that there was anything particularly odd or unusual about McBurney's approach.

It is agreed, therefore, that separating the tip off allegation from the investigation of the murder was in no sense inevitable. The connection between the murder and the tip off complaint would have been obvious to everyone in the audience who was consulted by McBurney. However, nor was it remarkable that the investigations were not run together. Those who were exposed to the tip off allegation through McBurney would have had ample opportunity to suggest certain courses to him or to make criticisms of his approach if they were unhappy. If the tip off allegation did not get the degree of supervision which it warranted this was not as a consequence of DCS McBurney's role in separating it from the murder investigation.

Finally, it is suggested that Diane Hamill (the complainant in the neglect complaint) should have been advised that the parameters of her complaint had been expanded. This is not accepted.

DCS McBurney had operational responsibility for a highly sensitive and delicate investigation. It cannot be doubted that Ms. Hamill had an interest in any issue touching upon the death of her brother, but it is another matter entirely to suggest that she had an entitlement to be told about the allegation while the investigation remained live. DCS McBurney had to be alert to any prejudice which could be caused to that investigation by releasing information. It is noted that the ICPC, for example, did not make any suggestion that Ms. Hamill should have been informed.

6. The Panel will reach a view about the search of the Hanvey home on the 10th May 1997. The reason why Mr Hanvey was being arrested that day was that Tracey Clarke had signed her witness statement naming him as a murderer early that morning. It was in that same witness statement that she had set out the tip-off allegation and her evidence that Mr Hanvey had told her of being warned to destroy his clothes. No other search was cut short in the same way as that of Mr Hanvey. The Panel will reach a view whether the compromised nature of the search was due to incompetence or something worse.

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

As has already been seen (Per 51350) the first search of Allister Hanvey's home (on 10th May 1997) which was very short, lasting under half an hour, was confined to his bedroom, did not include searching for evidence of burning or otherwise destroying clothes, and did not deal with conflicting accounts of what type of jacket he was wearing. The second search on 13th May 1997 also bears criticism in light of the fact that only three out of the

standard six officers (two teams of three) were present for this search (page 50). Had any evidence of the burning of clothing been found, it would not only have corroborated Tracey Clarke's allegations, but it would have strengthened the case against RC Atkinson. If the Inquiry agree with us that DCS Burney set out to protect Atkinson, then the perfunctory nature of the search of Alister Hanvey's house must be seen as part and parcel of that plan.

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

We have dealt with this previously.

Submissions by McCartan, Turkington & Breen Solicitors (Sir Ronnie Flanagan)

Sir Ronnie Flanagan's representation in this Inquiry has not been extended to nor has he been provided with all of the documentation relating to the investigation of the murder. This undoubtedly reflects the fact that he was not actively involved in the investigation or privy to the specific investigative strategy employed by and underpinning DCS McBurney acts and omissions. It is not the role of a Chief Constable to become involved in and direct the investigative strategy of an investigation. The evidence presented to this Inquiry is clearly that if Sir Ronnie Flanagan was aware that there was a potential line of investigation open then his view was that it should be pursued rigorously and without compunction.

Submissions by the Police Service of Northern Ireland

It is accepted that the first search (10 May) of the Hanvey home could have been better conducted. This is evident from the search documentation.

Only one bedroom was searched, although in fairness to the search team this may not have been unusual in itself. In his oral evidence Charles Andrews referred to one room being searched at Bridgett's premises, for example (page 16). However, it is conceded that there was no apparent attempt to look for evidence of burnt or discarded clothing and there were limited seizures.

The reason(s) for these failings are not entirely clear. There may have been problems in the briefing or the preparation for the search (which was of course hastily arranged), or the fault may lie in the actual execution or management of the search.

Much focus has been placed on the fact that the search team were not briefed to look for a grey jacket. The only information that he had been wearing such a jacket was contained in the statement of Res. Con. Warnock. Hanvey had himself described another coat to police (a black zipped CAT jacket at 00561). Moreover, it is noted that the immediate reason for the search of Hanvey's home and his arrest was the information contained in Tracey Clarke's statement and she did not describe the clothing worn by Hanvey. Jonathan Wright's statement referring to a light grey track suit type garment was not available to police until the 11 May.

As a criticism, "incompetence" may be to exaggerate the extent of the search team's failures, but it is agreed that the search could have been better carried out.

If the search was undermined for sinister reasons it might be considered surprising that those who were responsible for this would leave the proof behind them in the documents which show the limited nature of the search.

Equally, if the suggestion is that the search was deliberately compromised to protect Hanvey, it is difficult to follow why the police would decide to go back to conduct a thorough second search. It can hardly be suggested that they were simply going through the motions to cover their tracks.

It is submitted that the only proper construction to put on these facts is that the police were determined to find evidence to connect Hanvey to the murder. They appear to have realised that the first search did not extend far enough and they decided that this mistake had to be quickly rectified.

Police officers, as with other professionals, are quite capable of making errors. There is probably no such thing as the perfect investigation. The important thing is to recognise mistakes and to take steps to redress the damage. That the police took remedial steps to address the inadequacy of the first search is worthy of positive comment.

7. The ICPC could have asked the RUC to refer the tip-off allegation to it, and it seems obvious that it would have supervised had that referral been made. Senior officers appear to have believed that the ICPC would have supervised the tip-off allegation as a matter of course. ACC Hall specifically raised the matter with Mr Murnaghan yet the ICPC took no action. The Panel will need to decide whether to accept Mr Mullan's explanation why the ICPC stood back. If it does not it may go on to consider whether it can discern the true reason. Equally, was there some sinister reason why the RUC failed to ensure that a referral was made?

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

The ICPC was a weak and ineffectual organisation which came in for harsh criticism from many quarters when the former Local Government Ombudsman, Dr xxxxx, carried out the consultation which ultimately led to the formation of PONI. Its greatest weakness was that it had no independent investigators and had to rely on the RUC to, in effect, investigate itself. Its second greatest weakness was that it tended to allow the RUC to take control of those investigations. DCS McBurney's argument that the murder investigation and the neglect complaint were inextricably linked was accepted by the ICPC even though the claim does not stand up to close inspection. In reality, a relatively mild complaint from the Hamill family about the dilatory pursuit of the GBH investigation had turned into a very serious complaint, even though at that time the Hamills were unaware of the fact, that an RUC

officer had advised one of the perpetrators of what had become a murder on how to dispose of evidence. Although that allegation was certainly linked to the murder, it was linked to its aftermath rather than to its execution.

ACC Fred Hall, who commanded the RUC's South Region, testified that he believed that the allegations about Atkinson had been referred to the ICPC and that they were supervising the investigation (3.214). However, DCS McBurney said that, although the ICPC were aware of the allegations, they did not want to supervise the investigation into them and had not been asked to do so by the Chief Constable (3.249). In fact, the ICPC took the supine view that this aspect of the case did not fall within their remit (3.60, 27209), presumably because no-one had referred it to them. For once, DCS McBurney was totally accurate in his assessment that the ICPC did not want to take on allegations of collusion by an RUC officer, although they could have done had they wished to do so. In failing to do so, they played straight into DCS McBurney's hands, whose conduct of the allegations proceeded without any effective supervision of any description.

The Inquiry Team has invited the Inquiry to consider why the ICPC did not supervise the investigation into these allegations, and why the RUC did not ensure they did so. We do not consider that either the ICPC or the RUC held back from doing so for sinister reasons, but we do suggest that their actions aided and abetted DCS McBurney and thus amounted to collusion by omission.

In the case of the RUC, the matter is relatively straightforward. DCS McBurney had told the ICPC all about the allegations; in his own statement, as paraphrased by the Inquiry Team, he said, that he had given the ICPC "near enough complete documentation to allow the ICPC to supervise the complaint" (3.249). ACC Hall assumed that the ICPC were supervising (3.214), and Sir Ronnie Flanagan did as well (3.133). ACC Hall's use of the phrase "inextricably linked" suggests that DCS McBurney gave them that impression in his many briefings referred to below. The fault of the Chief Constable and the ACC lay in their not checking that this was in fact the case. Of course, they had no incentive for doing so, because the exposure of collusion on the part of an RUC officer in the run-up to Drumcree could not possibly be a welcome development. However, in fairness to both senior officers, the culture within the RUC at the time was such that they would have been very unlikely to do anything but take the impression given them by DCS McBurney on trust.

The ICPC's failure is less easily explained. It has to be considered that their record on upholding complaints against the RUC was extremely poor. They were altogether too lenient towards the RUC and bought in too easily to the prevailing - and in many ways true - sentiment that the RUC had a very difficult task to perform and often risked their lives in doing so. This was not noticeably the case on the night of Robert Hamill's murder, but that did not dent the overall perception. The ICPC was not known (in the way that PONI was to become known, at least in certain high-profile cases) for rocking the boat. The ICPC could recognise a hot potato when it saw one, and accusing

an RUC officer of collusion in the run-up to Drumcree would take a far braver organisation than the ICPC, unless absolutely driven to do so, and, or course, no-one was driving them to do so. Some clues to this can be found in remarks that Colville Stewart and DCI K made to PONI officers in their later investigation into the allegations in 2000. David Wood said that he formed the conclusion that these senior officer were fearful of how the local community would interpret surveillance on RC Atkinson, as he was a member of that local community "and perhaps the loyalist side of the community" (3.76). Chris Mahaffey said that RC Atkinson was described to him by DCI K as a "local hero" (3.164), a claim that DCI K refuted (3.222). There is no reason why the PONI officers should have lied about this. If RC Atkinson was indeed described to PONI officers in those terms, it is not difficult to imagine the conversations between RUC officers and the ICPC about RC Atkinson, and the sensitivity of pursuing him. Even absent of any such conversations, ICPC members and officials would have been as aware as the next person of such sensitivities. However, while the ICPC's failure can be explained, it cannot be excused.

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

In relation to Mr Mullan it is a matter for the Panel as to whether it accepts his explanation. It is hard to imagine a sinister reason as to why the RUC failed to ensure that a referral was made, when we know that ACC Hall and DCS McBurney had told them of the allegation and the higher echelons believed it was in fact being supervised by the ICPC.

Submissions by McCartan, Turkington & Breen Solicitors (Sir Ronnie Flanagan)

It is submitted that the terms of the Article 8 referral allowed the ICPC to investigate the tip off allegation. In any event the actions of ACC Hall in telephoning Mr Murnaghan to ensure that he was aware off the allegation and supervising it were sufficient to expand the terms of reference if necessary. That the tipping off and murder investigations were difficult to disaggregate is evidenced by the reference in the synopsis to Mr Mullan's report to the tipping off allegations. The circumstances of the relationship between Reserve Constable Atkinson and an alleged assailant are directly relevant to both investigations. Mr Donnelly indicates that he cannot answer why the decision was taken not to supervise the tip off allegations; the correct question is why Mr Murnaghan and Mr Mullan having considered that the tipping off allegation was outside the terms of reference failed to have regard to the practice of the ICPC and either treat the referral as encompassing the tip off allegation or ask for it to be referred.

There is no evidence of a sinister reason why the RUC failed to ensure that a referral was made. The Chairman of the ICPC confirms Sir Ronnie Flanagan's practice was to refer all matters of public interest to the ICPC and that had he approached Sir Ronnie Flanagan he would have "jumped" to refer the matter. Sir Ronnie Flanagan's approach was not only to ensure effective supervision of investigations but that they were transparent and would enjoy general

public confidence. This would have been clear to the ICPC, officers of the RUC and public.

Submissions by the Police Service of Northern Ireland

This issue has been dealt with in submissions at chapter 14 (The RUC Response to the Tip Off Allegation) at section 9.

It is a matter for the Inquiry to decide whether Mr. Mullan genuinely understood that the ICPC could not have supervised the tip off complaint in the absence of an Article 8 referral or a specific complaint (para 14). This was not Mr. Donnelly's understanding of the practice at that time.

Having been advised by DCS McBurney on the 12 May 1997 of the tipping off complaint, it is unclear how the ICPC did not see an overlap with the neglect complaint given that Atkinson was a central character in both issues. Even if Mr. Mullan was interpreting the the legal niceties restrictively, permission to expand the terms of the ICPC supervision was at worst, probably only a phone call away.

It is submitted that even a phone call was unnecessary. As Mr. Donnelly has discussed in his second statement (see chapter 14 below) where there is already a supervised complaint that police failed to intervene, a second allegation that an officer assisted an offender ought to have been regarded as the other side of the same coin. It is submitted that the ICPC could have supervised the tipping off allegation on the straightforward basis that it was merely a new development of their involvement in the neglect investigation.

It is submitted that this was the assumption of the RUC. Senior officers did not make a referral because they genuinely believed that the matter was being supervised already. This ought to have been a safe assumption. It is regrettable that nothing was said to ACC Hall by Mr. Murnaghan, for example, which served to correct this misunderstanding.

8. The purpose of involving senior C&D officers in the neglect complaint was to ensure that disciplinary proceedings would not be prejudiced by anything done in a criminal investigation. At the very least that entailed the service of a form 17/3 prior to Res Con Atkinson being interviewed about the tip-off. They appear wholly to have neglected to do their duty, and the Panel will no doubt reach a view about CI Bradley's explanation in evidence. The Panel may consider whether at least the C&D officers were motivated by a desire to ensure that tip-off allegation retained a low public profile.

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

C&D Department must also bear responsibility for collusion by omission. Both ACC Hall (3.215) and the Chief Constable (3.127) referred to the failure to follow correct procedures and serve RC Atkinson with a form 17/3.

However, this was in reality a get-out clause for the RUC, in that C&D could claim that they had not been involved because the normal procedures had not been followed. C&D had to be the most unpopular department with the RUC, given their role, and they were as aware as anyone of the sensitivities of pursuing RC Atkinson. They were no doubt relieved not to have been involved. Had they been a proactive department, they would and should have taken firmer steps, not only to ensure that RC Atkinson was referred to them but also that he was suspended during the investigation.

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

Whilst it may be, that as a matter of strict procedure a 17/3 form should have been served on Atkinson prior to his September 1997 interview, it is hard to see how there could have been any sinister motive for not doing so. The purpose of service of a 17/3 form, which is an internal disciplinary notification, is to notify the officer (not the public) that he is now the subject of an investigation. There is no consequential effect of raising the profile of the allegation by service of such a form. What in fact would potentially give the allegation a higher profile, is an interview under caution for assisting offenders.

Submissions by Gus Campbell Solicitors (Marc Hobson)

The attitude taken in relation to the Hobson trial regarding the Atkinson tip off allegation and that particular collusion allegation investigation and prosecution unwinding the Hobson trial is further accentuated when one considers that the day Tracey Clarke made her statement alleging Atkinson tipped of Hanvey the search of Hanveys house was cut short unlike any other search. Atkinson was never suspended when the Chief Constable told the Permanent Secretary that he had sacked officers when serious allegations could not be proven. No senior officer stated that suspension had been a consideration as evidenced from a witness whom the PPS regarded as truthful in relation to her naming the murder suspects and therefore also in relation to the tip off allegation and whom they were prepared to present before the court in a murder trial of the only suspect save for her refusal to give evidence. This allowed for the ODP never to ascertain the true picture concerning a main prosecution witness in the Hobson murder trial.

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

This is a matter for the Panel. At all times Reserve Constable Atkinson complied with all requests made of him

Submissions by McCartan, Turkington & Breen Solicitors (Sir Ronnie Flanagan)

Sir Ronnie Flanagan's representation in this Inquiry has not been extended to nor has he been provided with all of the documentation relating to the investigation of the murder. This undoubtedly reflects the fact that he was not actively involved in the investigation or privy to the specific investigative

strategy employed by and underpinning DCS McBurney acts and omissions. It is not the role of a Chief Constable to become involved in and direct the investigative strategy of an investigation. The evidence presented to this Inquiry is clearly that if Sir Ronnie Flanagan was aware that there was a potential line of investigation open then his view was that it should be pursued rigorously and without compunction.

Sir Ronnie Flanagan's approach of referring all public interest matters to the ICPC was not only to ensure effective supervision of investigations but that they were transparent and would enjoy general public confidence. This would have been clear to the ICPC, officers of the RUC and public. His willingness to address difficult and controversial issues within the RUC and to effect change as evidence by his Fundamental Review of Policing and implementation of the changes suggested by the Patton Report. It would have been clear to both the public and to all officers under his command that he would not have shirked from meeting difficult issues head on.

Submissions by the Police Service of Northern Ireland

At Chapter 14 (section 8) it has been accepted that Complaints and Discipline ought to have taken a more proactive approach to the discipline aspect of this case.

The failure to serve a 17/3 appears to have been justified by CI Bradley on the grounds that it either wasn't a complaint per se, or because it was one which lacked substance in that it was grounded on hearsay. The Inquiry will have to consider whether either explanation is particularly convincing.

More persuasively, perhaps, CI Bradley spoke in his oral evidence (see page 92) about his assumption that the tip off allegation was being investigated by DCS McBurney in tandem with the ICPC. He probably believed (with good reason) that if there was any validity to the complaint, together they would expose it.

Another relevant factor may be the evidence which the Inquiry has heard about cases where a 17/3 won't be served in order to protect the ongoing criminal investigation. The applicability of this consideration to the circumstances of McBurney's investigation isn't clear, but if it was a factor it is submitted that it would have been a valid reason for not serving the 17/3.

It is submitted that very little turns on the relative inactivity of Complaints and Discipline for the simple reason that C&D could not have enjoyed any control of the public profile of the tipping off complaint.

The criminal investigation took priority and C&D effectively occupied the back seat until that investigation took its course. The publicity trigger would be activated depending upon the outcome of the criminal investigation and C&D would have no say in this.

If a criminal prosecution of Atkinson was going to be the result, C&D were going to be powerless to prevent adverse publicity regardless of any improper motivation on the part of the officers in that department.

9. Suspension of Res Con Atkinson should have been considered as soon as the tip-off allegation was made. As the Chief Constable subsequently told the Permanent Secretary, he had sacked other officers against whom serious allegations had been made but could not be proven. No explanation for a failure to consider suspending had been advanced. The Panel may want to consider whether it was due to incompetence or worse.

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

Normally it would be expected that any police officer facing such a serious allegation would be suspended, not only because of any damage he might already have done to the police investigation, but because of any future damage he might do to that investigation or to any other investigation in which he might become involved. DCS Stewart was of the opinion that he should have been suspended (3.203). We believe he was not suspended because DCS McBurney was protecting him and because DCS McBurney was under no proper supervision or control by either the RUC or the ICPC.

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

We have already dealt with this.

Submissions by McCartan, Turkington & Breen Solicitors (Sir Ronnie Flanagan)

The responsibility for disciplinary action or suspension in British Policing lies with the Deputy Chief Constable because the Chief Constable may be required to sit in an appellate capacity. Reserve Constable Atkinson went off sick the day following his interview in September 1997. This was the position when some time later the Chief Constable became aware of all of the issues relating to Reserve Constable Atkinson. Documentation suggests that at that stage he indicated that should Reserve Constable Atkinson attempt to return to duty that he should be informed.

Sir Ronnie Flanagan has been consistent in that if officers had failed to perform their duties that that he would not want the officers “within a million miles of his force” (39693). He has not hesitated to dismiss an officer in circumstances where it was necessary even though the dismissal might be unfair in relation to the Employment legislation (p. 194).

Submissions by the Police Service of Northern Ireland

It is clear from the evidence which the Inquiry has heard that the suspension of police officers is a vexed question and one which has to be handled with care

and sensitivity: see for example the evidence of Sir Ronnie Flanagan (page 195). There are various factors to be taken on board before a decision to suspend can be made including the strength of the evidence against the officer and the seriousness of the allegation.

It is accepted that in this case issues and decision making around the question of suspension has hardly been a beacon of clarity. Mr. Wallace has said in his statement (para 13) that where the officer has a case to answer the IO would refer it to ACC C&D for consideration of suspension. However, the issue does not appear to have reached the desk of ACC C&D (Mr. Hays).

For his part Mr. Hays has explained (para 37) that the ultimate decision on suspension lay with the Deputy Chief Constable (Mr. Wallace), but Mr. Wallace, like Mr. Hays, was not aware of the tip off allegation.

In that DCS McBurney as the senior investigating officer referred the issue of the tip off to Superintendent Anderson (C&D) from the earliest stage, it might appear surprising that the issue of suspension does not appear to have featured.

However, the answer to this conundrum may lie in the fact that as the IO, DCS McBurney did not make any argument in favour of suspension. Applying Mr. Wallace's approach, DCS McBurney would have had to argue that Atkinson had a case to answer before suspension was considered. It is unclear whether McBurney was aware of that test.

Rather we can speculate that McBurney might well have considered that so long as there was no risk that Atkinson could meddle with his investigations there was no need to call for suspension. We know that Atkinson did not return to work from sick leave after the 10 September 1997.

In all of the circumstances it is agreed that given the nature of the allegation which was raised against Atkinson there should at least have been an early consideration of whether a precautionary suspension was appropriate. Regrettably, it is difficult to precisely account for this omission.

10. It seems to be common ground among police that the DPP should have been given a crime file or files which permitted it to consider the murder charges both in relation to principals and accessory together. That did not happen, and Res Con Atkinson had not even been interviewed when the crime file was given to the DPP.

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

DI Irwin's explanation that Andrea McKee's position was not mentioned to the DPP because DCS McBurney saw the issue as "awaiting investigation" and "to a degree he [McBurney] had become paranoid about the information" (3.21) just about sums it up, in our view. DI Irwin also confirmed that DCS McBurney deliberately withheld information about her from the DPP (3.25).

DCI P39 also justified not identifying Tracey Clarke to the DPP (3.45), although we cannot imagine that the DPP would have alerted either RC Atkinson or Allister Hanvey to her allegations. We can only conclude that DCS McBurney kept the DPP in the dark because otherwise the DPP would have asked awkward questions and probably directed DCS McBurney to take actions he was deliberately refraining from pursuing.

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

At the time the murder file was submitted in July 1997, there was no evidence capable of sustaining a charge against Atkinson as an accessory. Attached to the murder file was the confidential report concerning Witness A and Witness B. It made clear a separate file was to be forwarded to the DPP which would include the tip-off allegation. When the murder file was submitted, the investigation against Atkinson was still ongoing. The DPP must therefore have been aware that Atkinson was a potential accessory.

Therefore in July 1997 the DPP had been made aware that Witness A was a witness of truth.

Submissions by Gus Campbell Solicitors (Marc Hobson)

Had the evidential matters been established the weight attached to the evidence of Con Atkinson in support of Con Neill and the landrover crew exiting before the fatal assault could have been so damaged as to have been withdrawn by the PPS or at the very least necessitating a reconsideration or reassessment of the evidence of Con. Atkinson and prosecution file note marking to that effect so as prosecuting QC would be fully informed as to any witness change form the disclosure schedule of witnesses served with either the PI papers or bill of indictment or reassessment of that witnesses credibility as with a civilian witnesses requiring disclosure to the defence team who would therefore have been able to challenge Con Neill on the basis that both failed to mention Hanvey despite what P89 stated and further there exists evidence that one of the crew has prima facie evidence against him that he is a liar and an accessory to murder. This may have unwinded the trial of Hobson.

Submissions by McCartan, Turkington & Breen Solicitors (Sir Ronnie Flanagan)

Sir Ronnie Flanagan's representation in this Inquiry has not been extended to nor has he been provided with all of the documentation relating to the investigation of the murder. This undoubtedly reflects the fact that he was not actively involved in the investigation or privy to the specific investigative strategy employed by and underpinning DCS McBurney acts and omissions. It is not the role of a Chief Constable to become involved in and direct the investigative strategy of an investigation. The evidence presented to this Inquiry is clearly that if Sir Ronnie Flanagan was aware that there was a potential line of investigation open then his view was that it should be pursued rigorously and without compunction.

Submissions by the Police Service of Northern Ireland

It is noted that by the time the murder file had been lodged with the ODPP, Res. Con. Atkinson had not been interviewed in respect of the allegation which identified him as an accessory to the murder of Mr. Hamill.

However, this fact simply underlines the priority which DCS McBurney afforded to the murder investigation. In hindsight the compartmentalisation of the three strands might not have been the most constructive approach but DCS McBurney appears to have taken the view that each strand required separate consideration, and there was also the issue of investigative priorities. This is further discussed at chapter 14, section 4.

It is submitted that the mere fact that two separate crime files were produced and submitted to the DPP several months apart does not imply that the murder and the tip off ought necessarily to be considered separately at the important stage when prosecutorial decision were to be made.

The ODPP had been advised by police from the outset that of relevance to the murder investigation was an inquiry into the activities of a police officer who may have assisted an offender. When the ODPP received the murder crime file it was specifically advised in a "sensitive report" that the overlapping allegation against Res. Con. Atkinson would be the subject of a separate report which was to follow.

It was the function of the ODPP to consider police files and to verify whether there was sufficient evidence to mount a prosecution. It was the task of the ODPP to determine whether additional information was required from police in order to conclude on an issue (per Mr. Roger Davison at paras 7 and 8). It is tolerably clear that in the exercise of its functions, and subject to considerations such as bail, the ODPP was not required to move on the murder file until it had received the neglect/tip off file. The ODPP could certainly have waited to consider both together if this was considered important.

Mr. Davison expressed the view (in his oral evidence) that this was the approach that he would have adopted, the more so because Atkinson was likely to be a witness in the murder prosecution and he was also a police officer (p2).

That the ODPP did not proceed in this way is a matter which was outside the control of the RUC. Certainly, it cannot be suggested that DCS McBurney or anyone else could have assumed that the ODPP would run with the murder file without waiting so that it could cross reference with the neglect file.

The RUC gave the ODPP all of the information which it needed to determine how it should proceed. In particular armed with the information that Atkinson was being investigated for both neglect of duty and assisting an offender and that a separate report would follow, it was plainly a matter for the operational independence of the ODPP whether it could usefully proceed to examine the murder file.

11. DI Irwin took what both he and DCS McBurney believed to be a false alibi statement from Andrea McKee. It is difficult to say now whether a challenge to Andrea McKee at that stage would have broken the alibi, but Mrs McKee's evidence suggests that it would have done. Mr Murray was extremely critical of the decision to take and then advance her alibi statement as a statement of truth, and the Panel will reach a view about that.

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

We agree with Colin Murray's criticisms (3.311 - 312) and those of PONI (3.153 - 3.155). DCS McBurney knew for certain that her alibi was false and that she had committed the crime of attempting to pervert the course of justice. It is possible that by telling her that he was treating her as witness, DCS McBurney was hoping to trick her into an admission (which would in itself have been an improper course of action, especially as he could prove that her alibi was false without needing any admission from her), but if so he had no guarantee that she would repeat her admission under caution. Perhaps he was hoping that she would be advised by her lawyer not to repeat her admissions under caution, so that the case against RC Atkinson would collapse (please see 3.266 for some support for this contention). After all, the telephone records only showed that calls had been made between the Atkinson and the Hanvey households; they did not prove who spoke or what was said. The fact that the case against RC Atkinson did eventually collapse is immaterial to consideration of whether DCS McBurney's treatment of Andrea McKee as a witness rather than a suspect was intended to wreck the case against RC Atkinson.

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

We do not accept that a challenge to Andrea McKee, at the stage she made the false statement would have broken the alibi. Is it seriously suggested that, if challenged, she would have broken down, refused to make the alibi statement, and volunteered to make a witness statement against Atkinson and her husband with whom she was living at the time?

We have already dealt with the allegation that here alibi statement was advanced as a statement of truth.

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

Comments in relation to Andrea McKee are dealt with in Section 8

Submissions by McCartan, Turkington & Breen Solicitors (Sir Ronnie Flanagan)

Sir Ronnie Flanagan's representation in this Inquiry has not been extended to nor has he been provided with all of the documentation relating to the investigation of the murder. This undoubtedly reflects the fact that he was not

actively involved in the investigation or privy to the specific investigative strategy employed by and underpinning DCS McBurney acts and omissions. It is not the role of a Chief Constable to become involved in and direct the investigative strategy of an investigation. The evidence presented to this Inquiry is clearly that if Sir Ronnie Flanagan was aware that there was a potential line of investigation open then his view was that it should be pursued rigorously and without compunction.

Submissions by the Police Service of Northern Ireland

This issue has been canvassed extensively elsewhere in these submissions: see section 4 above which deals in particular with Mr. Murray's concerns about the strategy, and chapter 14, section 5.

It is disputed that Andrea McKee's evidence suggested that had she been challenged in 1997 the alibi would have been broken. The evidence that she gave (at page 95) suggests otherwise, as does the document which Mr. Stewart prepared on her behalf and which was considered by the Presiding Judge before she was sentenced (see 14463). Even if the alibi could have been broken, the key question becomes whether it could have been broken in such a way as to bring the bits and pieces together in a viable prosecution of Atkinson? This question does not admit of a straightforward answer and detectives at the time appear to have been alive to that issue.

12. The file which eventually went to the DPP dealing with the tip-off was misleading. In particular, it claimed that the telephone records were revealed in October 1997, when of course DCS McBurney knew what they said in May 1997. Moreover, the file claimed that efforts had been made to check for further supporting evidence. That was untrue. As was shown by the work done by DCI K in 2000 and 2001, it was possible to establish that Mr Hanvey had at least two jackets in early 1997 and that his claim to the contrary when interviewed under caution was a lie.

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

Please see our comments at 8 above.

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

This is correct. What possible difference could this make to any decision making process for prosecution? We have dealt with the rest of this comment earlier.

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

We would refer to submissions in Section 8 under the heading "The Jacket"

Submissions by McCartan, Turkington & Breen Solicitors (Sir Ronnie Flanagan)

Sir Ronnie Flanagan's representation in this Inquiry has not been extended to nor has he been provided with all of the documentation relating to the investigation of the murder. This undoubtedly reflects the fact that he was not actively involved in the investigation or privy to the specific investigative strategy employed by and underpinning DCS McBurney acts and omissions. It is not the role of a Chief Constable to become involved in and direct the investigative strategy of an investigation. The evidence presented to this Inquiry is clearly that if Sir Ronnie Flanagan was aware that there was a potential line of investigation open then his view was that it should be pursued rigorously and without compunction.

Submissions by the Police Service of Northern Ireland

It is submitted that the description of the crime file (dealing with the tipping off complaint) as "misleading" considerably overstates the position.

It is submitted that a fair reading of the file (9028) points to the conclusion that its author (DCS McBurney) was deeply suspicious of Atkinson and wanted the reader to know this. He had received an allegation (albeit one which was hearsay) which was corroborated by telephone records. Hanvey could be put at the scene and he had described contact with an officer at the scene which matched Atkinson's description (para 126). He explained that Tracey Clarke's allegations "had the ring of truth" to them (para 125). He concluded by telling the reader that having investigated the matter one could remain "sceptical" (para 135).

However, McBurney was entitled to reflect the real difficulties which stood in the way of a prosecution. Crucially, a number of people were prepared to explain away the telephone calls (para 135). There was also dispute about the clothing worn by Hanvey (para 130). No other evidence had come in pointing either way.

It is accepted that phrases such as "every effort was made to prove or disprove its authenticity," (para 125) "the truth could not be established" (para 131), and "having found no evidence other than the telephone billing" (para 135) might suggest that a proactive approach had been taken to searching for other evidence to make good Tracey Clarke's allegation. It is also accepted that more investigative efforts could have been made along the lines advanced by Mr. Stewart in 2000 and 2001. However, these matters do not make for a misleading report.

A misleading report would have suggested that DCS McBurney was entirely satisfied with the exculpatory account which McBurney and his associates had provided. McBurney's conclusions highlighted that he was not so satisfied.

It is important to consider when analysing the crime file that the audience was the ODPP. It is submitted that the important factor for the ODPP - and the

purpose of the report - was to clarify the status of the investigation and to inform the ODPP whether (in the view of the police) it could form the basis for a workable prosecution. There is no doubt that for the reasons stated by DCS McBurney in that file, a prosecution would not have been successful at that time.

It is submitted that the Inquiry is being asked to examine the crime file from a rather different perspective. It is being asked to scrutinise it to determine whether every factor was fully and accurately explained to the reader. In particular it is being suggested that if DCS McBurney was genuinely sceptical about Atkinson he should have disclosed his thinking in full. However, that was not the purpose of the report, and nor would it necessarily have been appropriate to do so to that forum. It is submitted that it was sufficient at that time that the reader was aware that the senior investigating officer continued to have misgivings about Atkinson and this was accurately pointed out in the file.

Submissions by the Public Prosecution Service

1. The ODPP made its decision on the basis of the evidence provided to it. However, in addition to the points noted in §12, above, DI Irwin has since testified that a deliberate decision was taken not to include reference to the fact that Andrea McKee had been present at the initial interview of Tracey Clarke on 10 May 1997 in the investigation file submitted to the ODPP (10.9.09, Day 61, p34).
13. The department of which ACC White was the head had the responsibility to check crime files. As DCS McBurney must have known, that checking process did not involve investigation, but restricted itself to a check of the materials contained in the file. So, any misleading claim could only have been tested by reference to the contents.

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

Not only was there no mechanism that allowed for independent checks of crime files, there was no system for holding senior officers to account. DCS McBurney had complete control of the investigation. He chose what to put - and, more importantly what not to put - on the file or on HOLMES, and he decided what to tell his superiors, the ICPC and the DPP. DI Irwin gives a telling description of what it was like working for DCS McBurney when he says, "DCS McBurney would give others an indication of his strategy. He would not dwell on it if further questioned." (3.20) DCS McBurney's failure to use policy books put his investigation even further beyond any meaningful control.

Submissions by McCartan, Turkington & Breen Solicitors (Sir Ronnie Flanagan)

Sir Ronnie Flanagan's representation in this Inquiry has not been extended to nor has he been provided with all of the documentation relating to the investigation of the murder. This undoubtedly reflects the fact that he was not actively involved in the investigation or privy to the specific investigative strategy employed by and underpinning DCS McBurney acts and omissions. It is not the role of a Chief Constable to become involved in and direct the investigative strategy of an investigation. The evidence presented to this Inquiry is clearly that if Sir Ronnie Flanagan was aware that there was a potential line of investigation open then his view was that it should be pursued rigorously and without compunction.

Submissions by the Police Service of Northern Ireland

Mr. White's description of the role performed by his department is not disputed. It follows that there was no active scrutiny of the analysis contained within crime files. The process was one based on trust. Detectives were expected to act with integrity and to present their analysis in a careful, considered and honest fashion.

14. If the RUC, and DCS McBurney in particular, wished to protect Res Con Atkinson it was in a cleft stick. On the one hand it had to be seen to be doing something to prosecute those named by Tracey Clarke. On the other hand, to do so with vigour would mean exposing Res Con Atkinson by reason of what Clarke's statement said about him. A dilemma of that sort may explain some otherwise inexplicable decisions. Firstly, no effort was made to bolster the case against suspects named by Ms Clarke by way of confrontation evidence. Remarkably, that was restricted to the one suspect against whom there was independent police evidence. Secondly, there was reason to believe that the RUC never intended Timothy Jameson to be giving supporting evidence. His evidence against Mr Allen was ignored and with the consequence that any attempt to use Jameson as a primary witness against Mr Hanvey would have been undermined. Defence counsel would have challenged his evidence on the basis that the RUC did not consider it reliable in relation to Mr Allen. Thirdly, Ms Clarke was never asked to elaborate on what she said about the tip-off, even though she apparently told the detectives who interviewed her what Mr Hanvey had been wearing. Fourthly, the failure to re-interview Mr Bridgett about his blood being found on Robert Hamill's jeans was unfortunate. The dilemma facing DCS McBurney if he wanted to protect Res Con Atkinson can be argued to have led to the case preparation against those suspects whom Tracey Clarke named in her statement being severely compromised.

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

We agree with this analysis. We would also draw attention to the fact that DCS McBurney took no steps to break Allister Hanvey's alibi by using the many witness statements that put him at the party at Tracey McAlpine's house

rather than at his uncle Thomas Hanvey's home. In his statement DCS McBurney said that he did not put those statements to Thomas Hanvey because "he did not consider it important" (3.247). We believe his real reason for not doing so was to undermine Tracey Clarke and Timothy Jameson's evidence. His ultimate aim was to protect RC Atkinson, the by-product of that aim was to destabilise the entire murder investigation.

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

We do not accept that there was any attempt to protect Atkinson. The use of the words "seen to be doing something to prosecute those named by Tracey Clarke" flies in the face of the overall evidence. Every witness, ranging from junior police officer to senior police to counsel, who has been asked about the efforts of police involved in the murder investigation to bring the suspects to justice, has attested to their determination and vigour to do so. Even Mr Murray, despite his other criticisms, believed there was a strong desire to bring the suspects to justice.

Consequently there was no dilemma of the sort suggested. Primacy was given to the protection of Tracey Clarke and the pursuit of the murder suspects.

As we have stated before it is not clear who it is suggested should have been confronted by whom, and even if a confrontation or confrontations should have been held it is difficult to see how, by doing so, this would have exposed Atkinson.

There is no evidence that the RUC never intended to use Timothy Jameson as a witness. He was interviewed immediately on police becoming aware that he had information, and a witness statement was taken from him. The police took steps to protect his identity by naming him "Witness B". His evidence against Mr Allen was not ignored. On the contrary, as stated before, Mr Jameson thereafter refused to attend an identification parade to identify Fonzy. It is hard to see how any blame can be placed at the door of the police for this refusal. If Timothy Jameson refused to attend a confrontation or identification parade with Allen, for whatever reason that, he could not be forced to do so. Without him identifying Allen as the person he named as "Fonzy" in his statement, there was no evidence against Allen. The issue therefore does not arise as to what Defence counsel may or may not have done.

We do not understand how Tracey Clarke could have elaborated on what she said about the tip-off. The evidence of DC McAteer will be remembered, p102....

"25 Q. You go on then in paragraph 32 to say:

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1 "From what I recollect, Tracey gave us a description
2 of what Allister Hanvey had been wearing on the night,

3 but I accept that this does not appear in the
4 statement."

5 How clear are you now that she did give you
6 a description?

7 A. What I'm clear about now, having read that, is, if she
8 had given me a detailed description, and she identified
9 a specific garment or clothing or whatever, I would have
10 recorded that in the statement that I took from her, as
11 you would from any witness.

12 The fact that I didn't record that would appear to
13 me that what she gave me was a description that was
14 quite vague or whatever. It was just a vague
15 description. It certainly wasn't a detailed description
16 or I would have recorded it.

17 Q. We know, for example, there is a contention that
18 Allister Hanvey was wearing a silver lightweight jacket
19 with orange stripes down the sleeves. Would you have
20 regarded that as sufficiently detailed to record?

21 A. If that had been told to me, I would have recorded that,
22 yes."

As Mr Underwood observed at p100, and the Panel might agree with this, DC
McAteer have the impression of being a very precise and careful man, with 25
years experience as a detective. He further went on to say in cross examination
at p109..

"7 If I could just begin with this issue of the
8 clothing and whether or not there should or should not
9 be a more detailed note of that, what you have said is
10 that, had you been given a description voluntarily by
11 Tracey Clarke of the precise clothes that
12 Allister Hanvey was wearing, you would, of course, have
13 included that in your record for the very purposes of
14 the search team knowing what to look for?

15 A. That's correct.

16 Q. But as an experienced officer, Mr McAteer, is it not
17 correct that in a situation like this, you would be
18 conscious of forensic issues possibly arising?

19 A. That is correct.

20 Q. And that it would perhaps be prudent to ask a witness
21 such as Tracey Clarke precisely what the suspect was
22 wearing in order to go down that forensic trail?

23 A. If we can just answer to that, if Tracey Clarke -- if
24 I had asked Tracey Clarke what Allister Hanvey was
25 wearing, and she had given me a description of what he

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1 was wearing, outlining some specific garment or trousers
2 or shoes or whatever, I would have recorded that within

3 the statement.

4 Q. Yes. So can I take that as confirmation that you didn't
5 ask the question?

6 A. No, you can't. I would take it that she didn't tell me.

7 THE CHAIRMAN: There is a difference between whether she
8 volunteers or whether you ask her and she either says
9 something or doesn't say something. Can you remember,
10 did you ask her?

11 A. I can't remember whether I specifically asked her, but
12 I can assure you that I would have asked her the
13 description of what he was wearing.

14 THE CHAIRMAN: You would?

15 A. I would have. That would be a normal practice.

16 MR McGRORY: Would one expect a note to say that, "Witness
17 asked what Hanvey was wearing, but unable to tell me"?

18 A. No.

19 Q. Would that not be an important answer to note?

20 A. I can't understand why you would include that in
21 a witness statement.

22 Q. No, not necessarily in the witness statement, but in
23 terms of any notes or records of the general interview.

24 A. No, because if you wrote down everything that people
25 weren't telling you, it would be a bit stupid. You only

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1 write down what specific thing a person tells you that's
2 relevant to the investigation.

3 Q. You see, we only have your own belief in your own
4 experience and ability as a questioning officer to rely
5 on the suggestion that you must have asked her but got
6 a negative answer.

7 Do you understand me?

8 A. The only thing I could be sure of is that she did not
9 give me any description. Otherwise, I would have
10 recorded it.

11 Q. But you can't be certain that you asked her, so you
12 can't?

13 A. I would be sure that I did ask her. But she obviously
14 didn't give me an answer."

In relation to Bridgett we, (and Mr Kerr Q.C. and Mr Kitson in their evidence) have already dealt with this issue. It is arguable that to re-interview Bridgett would have weakened the case against Bridgett rather than strengthen it.

Indeed, if Bridgett had been re-interviewed about the spot of blood, and he provided an innocent explanation, we can see the criticism being posed-why did you give this man the opportunity to provide an innocent explanation for an obvious lie?

Even if there was a dilemma facing DCS McBurney, we cannot see how this could have compromised the case preparation against the murder suspects, with the exception of Hanvey.

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

Reserve Constable Atkinson does not accept that any police officer wished to protect him and that further there was no need to do so as he had committed no wrong.

Submissions by McCartan, Turkington & Breen Solicitors (Sir Ronnie Flanagan)

Sir Ronnie Flanagan's representation in this Inquiry has not been extended to nor has he been provided with all of the documentation relating to the investigation of the murder. This undoubtedly reflects the fact that he was not actively involved in the investigation or privy to the specific investigative strategy employed by and underpinning DCS McBurney acts and omissions. It is not the role of a Chief Constable to become involved in and direct the investigative strategy of an investigation. The evidence presented to this Inquiry is clearly that if Sir Ronnie Flanagan was aware that there was a potential line of investigation open then his view was that it should be pursued rigorously and without compunction.

Submissions by the Police Service of Northern Ireland

The "cleft stick" theory is not accepted by the PSNI.

There was no "dilemma" so far as the RUC or DCS McBurney was concerned about exposing Res. Con. Atkinson. The organisation and its senior investigating officer were of a single determined mind that the killers of Robert Hamill should be made to face up to their actions in a court of law. The "problem" of Atkinson was not going to deter them from that path, and did not do so.

The independent policing expert retained by the Inquiry to examine all of these matters did not seem to think so either. He was critical of certain investigative decisions and strategies, but he viewed them as being indicative of negligence and not corruption. He was satisfied that there was a "desire on the part of the RUC to bring the perpetrators to justice (page 69)."

Each of the so called "inexplicable decisions" will now be explored in turn. It is submitted that none of them support the contention that there was a desire to protect Atkinson.

Firstly, was there a failure to bolster the evidence against suspects and if so to what effect?

Despite the efforts made by police to attract witnesses to the cause of prosecuting those responsible for murdering Mr. Hamill, particularly but not

exclusively on the Catholic side, only Prunty, Clarke and Jameson came forward with evidence of the kind that could sustain a prosecution.

Efforts were made to bolster the case particularly through the use of forensic science, but there was no scientific evidence of any weight which was going to make the charges stick.

Therefore, the prospects for a successful prosecution rested entirely on Tracey Clarke and Timothy Jameson giving evidence in court because they were the only people who could put names to the faces of those who engaged in the kicking. Mr. Prunty's evidence ultimately became confused and worthless.

It is submitted that if Clarke and Jameson were not prepared to give evidence in court the prosecutions would fail regardless of any omission to bolster the evidence. If they refused to give evidence there would be nothing left to bolster. Confrontations (by whom?) would not have added any significant value to the case.

Secondly, was there reason to believe that the RUC never intended to use Timothy Jameson's evidence?

The example chosen to support this argument is that the evidence against Mr. Allen was ignored. Even if the evidence against Allen was in some sense "ignored" this does not establish that Jameson was regarded as anything other than an important part of the police case upon which prosecutions would be mounted. It is also submitted that it is inaccurate to say that the evidence against Allen was ignored. Certainly, Allen wasn't charged but Jameson's statement was used to ground his arrest and subsequent interview. Issues then arose about an identification parade which didn't arise in any other case, and this was a factor which disinclined the police to pursue a prosecution.

Thirdly, why was Clarke not asked to elaborate on what she said about the tip off?

It is unclear whether more could have been achieved by interviewing Tracey Clarke for a second time. She had provided detectives with the foundation upon which the tip off complaint could be investigated.

If DC McAteer is accurate Ms. Clarke was unable to provide more than a vague description of what Hanvey had been wearing during the interview which led to her statement (page 102). Certainly, it would have been helpful for the investigation had she been prepared to describe his clothing and inform police that this jacket had disappeared. She seemed to be telling her parents this but at no stage volunteered it to the police.

Perhaps, a further interview with Tracey Clarke might have assisted, but at this stage it is known that whatever she was prepared to say to police in the privacy of an interview room, she was not prepared to say it in court. It may be that shortly after assisting the police with the statement she was already having misgivings about assisting any further.

Fourthly, why was Bridgett not re-examined about his blood being found on Mr. Hamill's jeans?

It is submitted that the value in this exercise would have been limited and arguably it would have been counterproductive. Unless it could be presumed that Bridgett would admit to his involvement in the face of this new evidence it is submitted that there was very little point in putting this evidence to him.

Bridgett had been interviewed by the police and denied having any physical involvement with Mr. Hamill. Of course this was inconsistent with the account provided by Tracey Clarke which put him at the murder scene and attacking Mr. Hamill. By itself evidence of blood was of no particular weight, but combined with Clarke's account it provided an attractive and persuasive case against Bridgett. The finding of his blood on Mr. Hamill's trousers gave the lie to Mr. Bridgett's efforts to deny his involvement. Putting the evidence of blood to him would only afford Bridgett an opportunity to come up with an innocent explanation.

Therefore, it is submitted that by dealing with Bridgett in this way the case against him wasn't being compromised. On the contrary it is arguable that by denying him the opportunity of a further interview the RUC were acting in a manner which protected and supplemented the case against him. The ODPP were also aware of this forensic development and they, like the RUC, apparently saw no merit in re interviewing him.

15. If the Panel concludes that DCS McBurney decided to protect Res Con Atkinson the question arises, did he collude with anyone else to do so. He shared the knowledge of the tip-off allegation with the ACCs, the Deputy Chief Constable, the Chief Constable, the office of the DPP and the ICPC. It seems likely that such a wide dissemination of the information was incompatible with collusion. Otherwise, the Panel may think, most or all of those in the know about the allegation would have needed to be a party to the collusion. That had never been suggested in relation to most of those individuals and organisations.

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

Given the tight control that DCS McBurney was able to establish over the entire investigation (please see paragraph 13 above), we do not agree that wide dissemination of information was incompatible with collusion. In reality, DCS McBurney withheld information from his superiors, the ICPC, and the DPP, which is an indication of the presence of collusion, as was his decision to tip RC Atkinson off about the telephone records, which wrecked both aspects of the investigation; the murder and the complaint.

The evidence suggests that DCS McBurney took some care to keep everyone in the dark about his intention to protect RC Atkinson, but ignorance by those

who were responsible for supervising and/or scrutinising DCS McBurney's actions does not absolve them of collusion by omission.

Everyone who worked with DCS McBurney is still prepared, even after the glaringly obvious failure of the investigation into the murder of Robert Hamill, to stand up for him, and many of them were aware of RC Atkinson's alleged role, but took no responsibility for doing anything about it. DI Irwin had not one word of criticism to say against DCS McBurney, while managing to convey that he himself was only following McBurney's orders (3.11 - 3.27). ACC Raymond White did not feel any need to interest himself in Tracey Clarke's allegations against RC Atkinson, or, apparently the question of whether RC should be suspended (3.30). Nor did he see any need to brief the Secretary of State about this aspect of the case (ibid). Deputy Chief Constable Blair Wallace felt the same (3.44 - both officers were backed in this by senior civil servant John Steel, 3.188, and the Chief Constable, 3.143), and neither did he see the need to brief the Policy Authority about the allegations against Atkinson (3.43). Robert Macauley of the ICPC believed that DCS McBurney was right to inform the ICPC about the allegations (3.59) but saw no need for the ICPC to supervise that part of the investigation (3.60). Chief Constable Sir Ronnie Flanagan had no problem with DCS McBurney leading both aspects of the investigation (3.109) and said that the idea that the DCS had tipped Atkinson off in September 1997 was "ludicrous" (3.138). He absolutely denied having suggested to senior civil servant Anthony Langdon (3.200) that Robert Hamill's own family might have added to his oxygen starvation by cradling his head or that Diane Hamill had her own agenda to discredit the RUC (3.144), although we can think of no possible reason why Anthony Langdon should have lied about this, and it is not the first time that Sir Ronnie has denied having made controversial remarks (for example, he absolutely denies telling the UN Special Rapporteur on judges and lawyers, a man of the utmost integrity, that some lawyers were working on behalf of paramilitaries). Sir Ronnie regarded DCS McBurney as "hard-working, highly experienced and very honest" (3.138). DCS Colville Stewart could find nothing to suggest that DCS McBurney's pursuit of RC Atkinson was anything other than enthusiastic and believed he was determined to arrest him and viewed him with absolute distain (3.207). Assistant Chief Constable Fred Hall probably summed up the prevailing view within the RUC when he said that Robert Hamill's case was no different from any other public order incident (3.218). Even though he had no idea what DCS McBurney's strategy was, it was not his responsibility to enquire into it (3.216), especially as he (wrongly) believed it was being supervised by the ICPC (3.217). DCI K approved of DCS McBurney's strategy in dealing with Andrea McKee's false alibi (3.235) and believed that he was committed to getting Reserve Constable Atkinson (3.237). DC Edward Honeyford said that DCS McBurney "put his heart into investigations" even if he did not put everything he should have done in writing (3.239)

Nowhere is there any evidence, until PONI came on the scene, that anyone considered that DCS McBurney was wrong, or even mistaken, in his course of action. No-one held him to account, and no-one considered that accountability mechanisms such as the Police Authority, the ICPC (who agreed with them, it

appears) or the Secretary of State should be fully seized of the allegations against RC Atkinson, even at a time, or perhaps because it was such a time, of such political sensitivity.

If, as we believe, DCS McBurney was guilty of collusion, then the immediate beneficiaries of that collusion were RC Atkinson and those who killed Robert Hamill. There is no direct evidence that those beneficiaries actively colluded themselves with DCS McBurney. There is also evidence that RC Atkinson colluded with Allister Hanvey, but the ineptitude, to put it mildly, of the police investigation makes it impossible to say whether Allister Hanvey took RC Atkinson's advice, although the evidence concerning his jacket(s) may persuade the Inquiry that on the balance of probabilities, he did. There is clear evidence that RC Atkinson colluded with Michael and Andrea McKee and with Kenneth, Eleanor and Thomas Hanvey.

The evidence we have highlighted above suggests that there was general hostility within the RUC to the investigation into Robert Hamill's murder, which he was thought to have brought upon himself (although we say the evidence does not show this), and Diane Hamill, and that there was a culture of indifference and lack of accountability which permeated the RUC, the ICPC, and to some extent the Northern Ireland Office, who failed to brief the Secretary of State fully. The collusion committed by DCS McBurney and RC Atkinson benefited from this hostility and culture, which in our experience was common to many other cases at the time, as well as beforehand and afterwards. The mere fact that the Robert Hamill Inquiry is sitting at the same time as the Rosemary Nelson and Billy Wright Inquiries and at a time of ongoing concern about the lack of an inquiry into the murder of Patrick Finucane, and when the Historical Enquires Team continues to make arrests arising out of PONI's Operation Ballast, points to the fact that collusion was not an isolated phenomenon in Northern Ireland, and was certainly not limited to Robert Hamill's case. As recently as October 2009 BIRW gave evidence before a Congressional committee in Washington about collusion in Northern Ireland (a copy of which is appended).

We respectfully suggest that the Inquiry will be failing in its duty if it does not consider the issue of collusion in Robert Hamill's case in its wider context, and does not look at the behaviour of individuals in that wider context, not with a view to exculpating them, but with a view to recognising that any collusion they committed took place against a background that permitted, condoned and encouraged collusion. With that in mind, the Inquiry may wish to expand its list of potential criticisms and adverse influences.

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

The first question in this paragraph requires a determination of the issue of whether DCS McBurney decided to protect Atkinson.

We have dealt in various chapters with the actions and investigative steps and techniques taken by him.

In deciding this question, the Panel should place significant weight on what is known about the character, integrity, honesty and professionalism of DCS McBurney.

The following is the uncontroverted evidence concerning DCS McBurney's character:

Sir Ronnie Flanagan p229

"16 A. Well, I can tell you that I certainly considered
17 Mr McBurney a very experienced and very dedicated, very
18 hardworking, professional police officer and detective."

Again at p236..

"1 As I say, I had extremely experienced and
2 professional colleagues, an outstanding deputy chief
3 constable, similarly, an assistant chief constable in
4 the Complaints Department and Mr Hall himself, the
5 assistant chief constable in charge of that region and
6 Detective Chief Superintendent McBurney, all of whom
7 enjoyed my trust and confidence and for very good
8 reasons"

Further at 260,

"22 Q. I am not going to ask you, Sir Ronnie, about the
23 honesty, commitment or integrity of the late
24 Mr McBurney. I think you have made your views clear
25 about that.

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1 A. I don't mind you asking me about that. As far as I was
2 concerned, they were complete.

3 Q. What I wanted to ask you was you would have known
4 Mr McBurney over a long period of time?

5 A. I did.

6 Q. And you would have worked with him over a long period of
7 time?

8 A. That's correct. Not necessarily closely. Different
9 spheres of responsibility.

10 Q. But certainly you knew enough about him, if I may put it
11 like that, on a personal level to enable you to form
12 those conclusions about his honesty, integrity and
13 commitment?

14 A. Absolutely.

15 Q. Did you ever detect any lack of commitment in respect of
16 the late Mr McBurney in the investigation of a crime
17 simply because either the victim or the alleged

18 perpetrator was from one side of the community or the
19 other?

20 A. Quite the opposite. Quite the opposite. He would not
21 have had a trace of sectarianism in his body and he
22 would have been tenacious and hardworking to a fault, to
23 a fault, until it probably affected his health.

24 Q. Would the same have been true if he was investigating
25 the alleged commission of an offence by a police

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1 officer?

2 A. Maynard McBurney is someone, and when he came to me to
3 talk about this new opportunity, as we have described
4 it, who would have been desperately keen that if
5 a police officer had behaved in the way alleged, to do
6 all that he, Maynard McBurney, could do to see that that
7 behaviour was dealt with.

8 Q. I am now going to put a scenario that has been suggested
9 in this Inquiry, that when Mr McBurney first interviewed
10 Atkinson in September of 1997 by asking Reserve
11 Constable Atkinson about his phone and his phone
12 records, that he was in some way tipping off Reserve
13 Constable Atkinson that the police are on to him.
14 What do you say to that suggestion or scenario?

15 A. Knowing Maynard McBurney as I did know him, I would
16 absolutely refute such a scenario, such a suggestion.

17 Q. Would it be fair to describe this as ludicrous?

18 A. You would need to know Maynard McBurney as I did.
19 Knowing him as I did, I would be happy to describe the
20 scenario as ludicrous that he would deliberately tip off
21 someone who had behaved in the dreadful way that was
22 alleged. "

ACC Raymond White at p122,

"5 In your own words -- and I know we are dealing with
6 a man who is now dead, so I don't want you to be
7 influenced by that fact, because sometimes we all are
8 when we talk of people who are dead -- can you just tell
9 the Panel in your own words anything about the
10 integrity, professionalism or otherwise of Mr McBurney?

11 A. Mr McBurney I would say, Mr Chairman, was a competent,
12 professional police officer. He lived, in a sense, one
13 would say, for his work as a crime investigator. Some
14 would say that he was of the old school, that he wasn't
15 interested in what you would call promotion if it was
16 going to take him away from sort of the hands-on
17 investigative side of work. It was a case of "don't put
18 me in an office" sort of scenario.

19 He was an individual, I would say, who got good job
20 satisfaction from the successes of those that he
21 commanded, and, in that sense, he demanded a sort of,
22 I would say, high standard of integrity from those that
23 he dealt with and got it, because there are many senior
24 officers serving today who received a dressing down from
25 McBurney as regards the quality of their work and will

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1 still remember it.
2 He wasn't an individual that sought media attention,
3 and whilst he was very open and approachable as regards
4 problems that his staff would have, he had been brought
5 up in an ethos where he kept his own personal issues to
6 himself. You know, he would have been there for other
7 people, "But don't take me -- don't pry into my own life
8 too much."

Again at p125,

"2 Q. Was Mr McBurney a man for filling in books or action?

3 A. I think, like those of his genre, he came through a sort
4 of a steep learning curve like the rest of us.
5 You know, we struggle to sort of adapt to all the
6 changes that were taking place within CID. To be
7 straight about it, in the sense that he probably might
8 have been lax to some degree as regards policy
9 documentation and written records to some degree,
10 preferring more to actually do what his training almost
11 had been, involvement in the process.

12 Q. Was he ever lax in his determination to catch the bad
13 guys from whatever side of the community?

14 A. I think his investigative record speaks for itself
15 there. He has been involved in over 200-odd
16 investigations of a serious nature.

17 I think if anything could be said of
18 Maynard McBurney, it would be that, without fear or
19 favour, he did his job and did it to a very high
20 standard."

DC Honeyford at p11,

"2 Q. Now, the final thing I want to ask you about,
3 Mr Honeyford, is in relation to your knowledge of how
4 Detective Chief Superintendent McBurney operated as
5 a policeman?

6 A. Yes.

7 Q. You have already told us that -- I think you have
8 described him as being -- it was "hands-on"?

9 A. That would be the words I would use, yes.

10 Q. I am not being at all flippant when I say this, but, as
11 a member of the public, for example, one has ideas in
12 one's mind about the Inspector Morse-type policeman who
13 wants to get the bad guys but perhaps does not fill his
14 notebook in. Do you know that general conception?

15 A. Yes.

16 Q. We have the other policeman who is more concerned or
17 equally concerned about filling in his notebook, what
18 time he arrives, what time he leaves and what he does
19 and recording everything?

20 A. Yes.

21 Q. Now, in the scale of that sort of contrast, where do you
22 put Detective Chief Superintendent McBurney?

23 A. McBurney would be very much, Mr Chairman, hands-on.
24 It is very hard for me to put into the context how
25 much writing a man of that calibre would be expected to

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1 put in a notebook in a day, and I suppose there is times
2 he does not have things covered that he should have, but
3 I don't believe he would be one for excess writing.
4 He would be more for getting the job done and
5 following enquiries. Certainly a man who I honestly
6 believed, and have always believed, feels for each and
7 every injured party, and he really does put his heart
8 and soul into investigations, long, long hours and, like
9 a lot of us, had very little home time as a result of
10 it. He always dedicated his life to the investigating
11 of serious crime.

12 Q. Did he make any distinction between whether the victim
13 was a Catholic or Protestant?"

Raymond Kitson p96,

"2 Q. Now the final thing I want to ask you about is because
3 you have mentioned at one stage during the course of
4 an answer that, because you were dealing inter alia with
5 Mr McBurney as a senior investigating officer, you were
6 confident -- am I right in summarising what you are
7 saying is you were confident that everything that needed
8 to be done would be done to pursue the investigation?

9 A. Well, he was the head detective of the region. As
10 I say, I had met with and dealt with him on a number of
11 occasions. As I say, he had Mr Harvey with him, so
12 I knew that the chief constable's Crime Branch officer
13 was involved. Therefore, I had no reason to doubt that
14 anything which needed to be done would be done.

15 Q. Was that your experience of Mr McBurney's investigation
16 of crime whether it involved Catholics, Protestants or
17 whatever?

18 A. Well, I don't know if I can comment on that. All
19 I would like to comment on is just, if it's relevant, my
20 previous experience of him dealing with
21 an investigation.
22 Q. I understand and that was that he had, as I -- the
23 impression I am getting from you is that he investigated
24 any matters in which he was involved thoroughly and with
25 integrity?

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1 A. My experience was he was a dedicated and thorough
2 investigator."

The following is the evidence about DCS McBurney's determination to pursue Atkinson, from those witnesses who were either involved in the subsequent investigation or who knew the man and his methods.

ACC Raymond White p128,

"10 Q. The final thing I want to ask you about is this. It is
11 just briefly. You have told us about the meeting you
12 had with Mr McBurney concerning what he told you had
13 been his tactic in relation to Atkinson.
14 Now, can you tell us whether or not he appeared to
15 you a man who was keen to pursue Atkinson?
16 A. Very much so. I never had any doubt in my mind that his
17 ultimate desire was to bring the case to a successful
18 conclusion, you know. That certainly came across
19 whenever he spoke as regards his determination to see
20 McKee."

DSC Colville Stewart at p175,

"8 Q. Can I ask you this, just to lay the groundwork for the
9 question, first of all? You knew Mr McBurney?
10 A. I did, yes.
11 Q. Did you get on with him?
12 A. Not especially, no.
13 Q. Was he a friend?
14 A. No.
15 Q. If you asked him what day it was, what would his reply
16 be?
17 A. He would probably want to know why you wanted to know
18 what the day was."

He further stated at p177,

"14 Q. Having been involved in very considerable detail in this
15 investigation, being aware of everything Mr McBurney
16 did, did you find anything that suggested that

17 Mr McBurney was other than enthusiastic in pursuing
18 Atkinson?
19 A. No, nothing.
20 Q. You did, however, carry out steps that he hadn't. There
21 is no gainsaying that.
22 A. Yes, that's true.
23 Q. Knowing McBurney as you did, because, unfortunately, as
24 we all know, he is deceased and the Panel will not be
25 able to see him, so it is important we get some flavour

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1 about the man, what would have been his attitude towards
2 getting a bad policeman?
3 A. Oh, he would have been absolutely determined to bring
4 that person to justice, totally determined. He would
5 have viewed such a person with absolute disdain."

David Wood PONI at p5,

"22 Q. Then if we look at paragraph 13 of your statement at
23 page 81279, we have already briefly looked at this,
24 because this is the paragraph in which you, as it were,
25 incorporate Chris Mahaffey's report. You say in it in

6
1 the second sentence:
2 "That report was critical of Mr McBurney but there
3 was no misconduct outcomes available to him because
4 Mr McBurney had retired in 2001. I reviewed
5 Mr Mahaffey's report and agreed with his conclusions.
6 We didn't approach it on the basis of criminal conduct
7 by Mr McBurney and concluded that there was no evidence
8 or allegation that he had perverted the course of
9 justice; rather he wasn't doing his job very well."
10 Again, I know it is a while ago since you have had
11 to consider it in detail, but was it your impression at
12 the time this was just that, neglect, rather than
13 anything more sinister?
14 A. Yes, it was. It was, as I say, some aspects of cultural
15 difficulties, I think, with confronting what had to be
16 done and, secondly, just absolute neglect and, you know,
17 just a poor investigation. That's how I interpreted it
18 at the time, a neglect of duty, rather than anything
19 worse than that."

Sir Ronnie Flanagan p234,

"Maynard McBurney was conducting his enquiries
2 under the supervision of the late Mr Murnaghan and
3 I would have expected that that was well in hand.

4 I had no reason to doubt Maynard's ability or his
5 determination to get to the bottom of it.
6 Maynard McBurney was an individual, I can tell you, who
7 would not have tolerated such behaviour within the
8 organisation that I know he was very proud of."

Perhaps the most significant piece of evidence given as to the conduct and intentions of DCS McBurney in both the murder and tip-off investigations, was that of K, who as we know re-investigated these matters with a fine toothcomb. His evidence first dealt with the extent of the original investigation up to the date he joined it at p1..

"24 First of all, can I ask you to look at page 75234?
25 This is a two-page document that deals with some figures

1
1 for the state of the investigation as at the point where
2 you came on board, that's the murder investigation.
3 I want to see if you can help us with whether you
4 can confirm these figures.
5 If we look at paragraph 3, there is a question:
6 "The number of witness statements taken by the
7 police up to the appointment of K."
8 The answer comes back:
9 "The number of statements taken by the police was
10 404."
11 Can you confirm that or would that surprise you?
12 A. That would look to be about correct.
13 Q. "4. The number of people interviewed by police both
14 under caution and as potential witnesses up to the
15 appointment of K."
16 There is a read-off here from the HOLMES system
17 which shows:
18 "... 91 civilian witnesses have been interviewed up
19 until K took on the inquiry, 9 of which were interviewed
20 under caution. It should be noted that this figure does
21 not include 12 police officers that were at the scene,
22 and, further, there were 11 police officers interviewed
23 under caution for various matters involving complaints
24 against the police and disciplinary matters."
25 Again, can you confirm that?

2
1 A. I can.
2 Q. Then if we go down, there is another 4, unfortunately:
3 "The number of questionnaires completed."
4 We call those QPFs and QPGs:
5 "The number of questionnaires completed was 51."
6 I think actually that must refer to QPFs --
7 A. Yes, it would, yes --

8 Q. -- because QPGs --
9 A. -- I would recognise that.
10 Q. Sorry. I overspoke there:
11 "The number of people who refused to speak to
12 investigating police officers or make statements to
13 police."
14 We are given:
15 "21 persons refused to make statements, 14 of which
16 either answered questionnaires or gave accounts of their
17 movements; 4 referred to [what has been blanked out
18 there is 'xxxxxxxxxxxxx solicitors'] (no reply given);
19 2 could not be contacted; 1 totally refused to
20 cooperate."
21 Again, can you confirm those figures?
22 A. They are taken from the HOLMES system. I can confirm
23 them, yes.
24 Q. Thank you. Then if we go to 6:
25 "The total number of HOLMES actions and entries in

3
1 respect of the investigation up to the appointment
2 of K."
3 The answer comes back:
4 "452 actions were raised ..."
5 Again, how does that strike you?
6 A. That is correct.
7 Q. Finally:
8 "The total number of police officers who were
9 involved in the investigation up to the appointment
10 of K."
11 Then:
12 "The total number ... was 462."
13 Again, can you comment on that?
14 A. What does it mean, "The total number of police officers
15 involved in the Hamill investigation"?
16 Q. I am afraid we would have to ask the PSNI in more detail
17 about that.
18 A. I am not too sure what you mean by that.
19 Q. Fine. If you can't help, you can't help.
20 The impression given here then is that a lot of
21 manpower was put into it?
22 A. Absolutely. I would agree with that."

K then went on describe his views on DCS McBurney's strategy and determination to pursue Atkinson. We appreciate we have quoted this evidence in another context, but it's importance cannot be overstated, p4,

"8 Q. Can you help us about your understanding of why it took
9 until June 2000 for the McKees to be seen again when
10 they split up in 1999?

11 A. In terms of what I was briefed by Mr McBurney, and on my
12 appointment he had indicated to me that his intention
13 was always to monitor the McKees, and he briefed me that
14 they had subsequently separated and he briefed me that
15 his strategy always was that he may have been able to
16 penetrate this conspiracy by taking advantage of that
17 separation, and, consequently, when he found out that
18 they had separated and were both living apart, he took
19 the decision at that point to approach both of them.

20 Q. Obviously I am sure you are aware there is a fair amount
21 of controversy about the strategy over the McKees.

22 Sadly, of course, Mr McBurney is unable to answer for
23 himself now.

24 A. Yes.

25 Q. What I am exercised about is to try to get everybody's

5

1 impressions, as best I can, of how he acted.

2 When you were briefed about that and his, as it
3 were, long-view strategy, how did that strike you at the
4 time?

5 A. I had no difficulties with that.

6 Q. So not so exceptionally mad as to be impossible?

7 A. No. He had to penetrate a conspiracy, which is very,
8 very difficult to do in terms of criminal investigation,
9 and, I mean, I think that his strategy, which was
10 discussed with me, which was that, really, to break
11 a conspiracy, you have to penetrate it and get one of
12 the conspirators to come out and tell the truth about
13 it, I think that, certainly in my view, was a useful
14 strategy.

15 Q. Okay. Had you worked with him before?

16 A. Yes.

17 Q. We have had the advantage of seeing Colville Stewart
18 give evidence, and, if I may say so, the impression
19 being given is that Mr McBurney is very old school.
20 Colville Stewart, new broom, very aware of new policing
21 techniques and investigative techniques and so on and
22 making thorough records of everything.

23 Would that be a fair impression of the distinction
24 between these two?

25 A. Yes, I think that is fair. Mr McBurney was a very

6

1 hardworking detective. He was a detective's detective.

2 You know, he headed up a region through many years which
3 encountered many, many murders and he headed up a lot of
4 very serious criminal investigations and he brought
5 a lot of people to book.

6 So in terms of his commitment to his work, I would

7 have had no doubt about that.

8 Q. Or his effectiveness?

9 A. Absolutely. At times maybe he took too much on and he
10 would have liked to have done things himself."

He further stated at p124,

"15 Q. Now, Mr Underwood has already said to you that it is
16 important that the Panel get an impression from people
17 as to what they think about some of the issues that this
18 Panel has to decide.

19 What was your impression between June 2000 and
20 December 2000 as to whether Mr McBurney was determined
21 to nail Mr Atkinson? What was your impression about
22 that?

23 A. I was under no doubt at all that Mr McBurney was
24 absolutely committed to getting Atkinson. I have no
25 doubt at all that's what he wanted to do from the

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1 beginning, and, when I was brought into the inquiry into
2 2000, he still had that same level of commitment.

3 Q. Now, you also told us that when you joined the inquiry
4 in June 2000, that Mr McBurney explained to you what his
5 strategy had been from the start. I am not going to go
6 through it, but, essentially, it was waiting in the long
7 grass for one of the conspirators to break. Is that
8 paraphrasing what you were saying?

9 A. Yes.

10 Q. You have also told us that you had no problem with his
11 thoughts on that and strategy.

12 A. No.

13 Q. We know that you carried out a number of enquiries which
14 I think Mr McGrory has dealt with that Mr McBurney did
15 not. Isn't that right?

16 A. That is correct.

17 Q. Taking that into account, and taking everything you know
18 about this entire inquiry into account, can you tell the
19 Inquiry what your impression is as to whether
20 Mr McBurney was determined from the very start before
21 June 2000 to nail Robert Atkinson?

22 A. I think he was always determined to nail
23 Robert Atkinson.

24 Q. What do you say -- I mean, the Panel have to deal with
25 the fact that you did a number of matters which weren't

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1 done by Mr McBurney. Have you any comment about that
2 or ...?

3 A. It's difficult to put yourself in any person's

4 circumstances, because I cannot understand the issues
5 that Mr McBurney would have been dealing with at that
6 time, but as regards the beginning of the investigation,
7 this was a difficult one, because he simply had a bit of
8 hearsay in relation to this tip-off.
9 At that point in time, the McKee issue had not come
10 into it. He had very complex issues to deal with around
11 the murder, but he looked at the billing. The search
12 would have been very important in terms of seeing
13 whether there was evidence that could have corroborated
14 that in terms of the destruction of forensic evidence,
15 and the issues then kick in, how does he progress this?
16 Now, it is difficult at that point. He wasn't to
17 know, of course, that the McKees were then at some stage
18 later in the year to come forward and be offered as
19 an alibi. At the moment that we reached that point
20 I have to say that if I was in those circumstances, that
21 would have intrigued me as to why this alibi was being
22 offered by this individual. You --
23 Q. Just to stop you there, would you have done something
24 more proactive at that stage? What do you say?
25 A. The point is, I think, at that minute, because that

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1 appears to be -- it would have appeared to me to be very
2 intriguing, you are immediately starting to strategise
3 around that interview.
4 THE CHAIRMAN: This is the alibi interview?
5 A. The alibi interview, Mr Chairman.
6 You would have had to send an officer to do it. You
7 would have given that officer directions in relation to
8 how to proceed with that. If it had been me, I would
9 have had to say to the officer, "Put the person on
10 notice of the declaration", and bring attention to this.
11 MR ADAIR: This is Andrea McKee?
12 A. Yes, absolutely.
13 Q. If, at that point, they don't want to make a statement,
14 to then withdraw at that moment. If Andrea McKee wanted
15 to make a statement, to take the statement, because the
16 other factor that we have to think about is that
17 Andrea McKee also was instrumental in bringing important
18 information into the hands of the police. So I would
19 have been considering Article 2 issues. The officer who
20 would have done that, I would have expected to do what
21 had been directed.
22 The issue then is, whenever that statement gets
23 back, what happens from that moment? That's where I can
24 no longer comment"

One might agree or disagree with the strategy and say things should or should not have been done in 1997 and after, but having regard to the above evidence and to the fact that the strategy would have succeeded, had it not been for the decision of the DPP, it is difficult to attribute any protective or sinister motives to the actions of DCS McBurney.

Like any case which is looked at with microscopic hindsight, one will always find that there are some areas that may be subject to criticism. Whether or not this amounts to negligence is a fine line between human frailty and lack of care. Our submission is that the entirety of the officers, for whom we appear, acted in good faith.

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

Reserve Constable Atkinson did not need, nor received any protection from any officers.

The below potential criticisms or possible adverse inferences are dealt with in Section 8

Submissions by McCartan, Turkington & Breen Solicitors (Sir Ronnie Flanagan)

There is no evidence that Sir Ronnie Flanagan in any way obstructed the investigation into the death of Robert Hamill. He was not actively involved in the investigation or privy to the specific investigative strategy employed by and underpinning DCS McBurney acts. On the occasions concerns were raised he acted immediately and decisively to ensure that the investigation could progress, was transparent and would enjoy public confidence. This is evidenced by his contacting the DPP and ICPC in June 2000, his appointment of Colville Stewart as a result of reservations expressed on behalf of the Police Ombudsman's office and his intervention to ensure that the appropriate surveillance equipment was purchased for the investigation (14633). Mr David Wood comments that Sir Ronnie Flanagan took the PONI complaints seriously, was proactively cooperative and could not have done any more (p. 150).

It should be clear from the evidence to the Inquiry that Sir Ronnie Flanagan whilst he would be properly defensive of the RUC was a conscientious and professional chief Constable taking all necessary and appropriate steps required of him in the exercise of his duty. At all times when it was necessary for him to become directly involved he responded in a manner designed to enable a transparent, rigorous and comprehensive investigation. The evidence confirms that Sir Ronnie Flanagan was a man who was open to and innovative in recommending and embracing change at all levels within and to the RUC. Whilst he was proud of the organisation that he led the evidence nonetheless suggests that he would act without hesitation and be unswerving in the investigation and prosecution of an alleged offender within the ranks of the RUC.

Submissions by P J McGroory Solicitors (Family of Robert Hamill)

THE SENIOR OFFICERS

The Chief Constable, Sir Ronnie Flanagan

1. The Royal Ulster Constabulary was, by any definition, a major organisation, the effective performance of which required the efforts and dedication of many thousands of individuals. Many such organisations have one individual who may be regarded as the most senior person on whose shoulders the responsibility for the running of the organisation ultimately rests. We do of course accept that, in practical terms, the responsibility for the overseeing and management of such a large body cannot be expected to rest entirely with one man. As the Chairman pointed out to another witness, in the context of a different organisation, that responsibility is often exercised vicariously through others. That indeed may be so but when a situation arises where there are multiple failures to such an extent that the organisation has singularly failed to perform in an area central to its very purpose then questions must be asked about the conduct of those whose responsibility it is to direct the organisation.

2. In the case of Robert Hamill, a man was attacked and beaten with such severity that he sustained Axonal brain injury. There is an abundance of evidence that the attack was sustained and severe (1) and was accompanied by sectarian abuse so venomous that in one case a policeman was moved to remark "He was in that crowd that was shouting "I hope they die!"He was just part of that crowd that were pretty aggressive. I remember looking at him and seeing blood coming from his nose. He was rather excitable. His eye were - I've never seen such a.....look of excitement in his face". (2) Sadly, that in itself was and is not a unique occurrence in this jurisdiction. What made this incident remarkable however is the fact that it occurred within yards of a police vehicle manned by officers posted to the centre of Portadown for the very purpose of preventing an outbreak of disorder. It occurred in circumstances where a warning was issued to those police by one of the patrons of St Patrick's Hall that others were on their way. Two of those alleged to have been involved; Bridgett and Forbes, in the murder were in casual conversation with the police only a moment or two before they became involved. Another, Lunt, was initially arrested only to be let go again and vital evidential opportunities were lost as result. Another, Hanvey, was a friend of one of the Land Rover crew who assisted him escape detection for the murder he committed at least by giving him advice and very probably by failing to reveal what he saw him do. There are criticisms of the failure of duty officers to ascertain the severity of the situation and take immediate steps to have those involved arrested at the optimum time for evidence gathering. There are criticisms of the thoroughness of the searches and of general investigative strategy.

3. The family of Robert Hamill however does not seek to lay the blame for every mistake and every omission by police officers on the shoulders of Sir Ronnie Flanagan. What this family deserved however and did not get from the

Chief Constable of the RUC was the moral leadership necessary to confront and address the manifestation of naked sectarian bigotry within his own force in the conduct and form of Reserve Constable Robbie Atkinson.

4. The Inquiry has issued a list of witnesses to this Inquiry in respect of whom some criticism may be made. Of Sir Ronnie Flanagan it says only that he might stand to be criticised for failing to ensure ICPC supervision of the complaint into the tipping off allegation against Reserve Constable Atkinson. That is indeed a criticism we seek to make of him and if it is to be made it must be on the basis that he was charged with knowledge of the allegation at a time when it fell to him to take steps to ensure supervision. If the Panel finds that he had that knowledge then, we respectfully submit he had an even greater moral and personal responsibility as Chief Constable to ensure that the investigation into Reserve Constable Atkinson was conducted to the highest of standards. This he failed to do.

5. It is important to bear in mind that the conduct alleged of Reserve Constable Atkinson is that of a most serious criminal offence. Criminal conduct of police officers is of course covered by the disciplinary code for the very purpose of assessing whether or not the nature of that conduct is such that the officer in question should be allowed to continue to serve the community as a member of the police force. The investigation of that conduct as a crime however is a different matter. No policeman suspected of the commission of a crime should be treated any differently than any other citizen in terms of the investigation of that offence. While it is accepted that there may be some overlap in the conduct of the two investigations, the investigative priority must be centred on the crime. (3) Disciplinary proceedings will follow whether there is a conviction or not. The primary purpose of the ICPC was to ensure that there was proper investigation of police officers for wrongdoing whether the conduct was criminal or disciplinary or both. We will return to the role of the ICPC later in these submissions but its presence cannot replace or relieve those in charge of the RUC of their investigative obligations when it comes to allegations of criminal conduct on the part of police officers.

6. The nature of the criminal conduct alleged of Reserve Constable Atkinson is crucial in assessing the degree to which there was an obligation on the Chief Constable, his ACC of Crime, Mr White, and regional commander at ACC level, Mr Hall to involve themselves in the detail of the investigation. We are not talking about the criminal conduct of a police officer in his personal time that might either impact on his ability to perform as a police officer or bring the force into disrepute. We are talking about the criminal conduct of a police officer in the conduct of his duty that concerns him joining as an accessory, albeit after the fact, in the very crime he should have been seeking to prevent; and that crime was one of murder. Short of committing murder itself, one cannot imagine a more serious allegation against a police officer. It goes to the very essence of policing.

7. Both the former Chief Constable and ACC White have made the case that, as far as they were concerned, all the proper investigative procedures were in place to deal with the allegation against Reserve Constable Atkinson.

A senior and experienced Detective Chief Superintendent was in charge and the ICPC was, as far as they knew, supervising every aspect of the investigation. The Chief Constable points to the fact that he made an independent referral to the ICPC even before a formal complaint was made. When he was asked by the Secretary of State in December 1997 for a progress report he took steps to ensure a comprehensive reply that included confirmation that the issue of police contacts with the alleged perpetrators was actively under investigation. Beyond that, he clearly believes, no more should have been expected of him. (4)

8. The family of the murder victim in this case, Robert Hamill expected and deserved a great deal more from the Chief Constable in these circumstances. One of the reasons advanced by the former Chief Constable for not involving himself too closely with the detail of this investigation is the fact that the Chief Constable is the ultimate court of appeal in disciplinary proceedings and should, accordingly, leave himself free from intimate knowledge of disciplinary investigations. This was the answer he gave Mr Underwood QC when asked why he did not personally consider suspending Reserve Constable Atkinson when the allegation was made. (5) The Guidance to the Chief Constable on Police Complaints and Discipline Procedures, which has a statutory basis, provides, at paragraph 11.7 for the transfer of this role to another Chief Constable when necessary. The preceding paragraph 11.6 in fact envisages that there are circumstances where the Chief Constable, “will of necessity have some knowledge of a case while it is still under consideration”. One example given is where the matters raised are “..prima facie serious and would amount to a substantial criticism of the force..”

9. We submit therefore that this Chief Constable was duty bound to ensure that he was kept informed and have a direct knowledge of the conduct of the investigation into the allegation from the moment it came to his attention, so serious were the consequences of it for the reputation of the police force he led. Indeed Sir Ronnie professed to the Panel to have been particularly concerned about the damage caused to the image of his police force within the minority community following the reversal of the decision to stop the Drumcree march in 1996. This was something he claimed to have made a priority to reverse when he became Chief Constable later that year. (7)

10. This provision came as no surprise to Sir Ronnie when it was brought to his attention during his evidence when questioned about the issue of suspension of Reserve Constable Atkinson by Mr McGrory QC. (8) Interestingly, he said then that he did acquire a degree of knowledge about the case that would have required him to bring in another Chief Constable to exercise those disciplinary functions but no such proceedings ever occurred as the officer took off sick after his October 1997 interview and never returned. It is perhaps with regret that he wasn't pressed on the precise time at which he reached this degree of knowledge but it is probable that he meant later in 2000, once he had been fully briefed by DCS Mc Burney. It is his evidence of course that, up until then, he knew little of the detail of this allegation.

11. The matter of suspension of Reserve Constable Atkinson is something we say should have been considered at least after the telephone billing records confirmed that there was telephone contact between his home and the Hanvey home on the very day of the attack on Robert Hamill. Whether it was the responsibility of the Chief Constable or a designated deputy is neither here nor there. It is true that the departure from active duty of Reserve Constable Atkinson who went off on the sick immediately after the October 1997 interview reduced any immediate threat of interference in the investigation or of any repetition of criminal conduct while on duty. That does not mean to say he could not have been suspended even at that stage, lest he should seek to return. Moreover, as far as the general public and colleagues were concerned he remained a serving police officer. We submit that at least part of the purpose of suspending an officer from duty once serious allegation is made is to make it known to the public and other members of the force that any suggestion of such conduct will be dealt with most severely.

12. The question still remains why he was not considered for suspension between May and October. When questioned about this by Mr McGrory QC, the former Chief Constable speculated that it may have had something to do with the investigative strategy but as he was not involved with that strategy he could not comment. We submit that this is not an acceptable response.

13. Sir Ronnie Flanagan cited the “appellate court” defence referred to above on the issue of suspension with the Permanent Under Secretary, xxxxxxxx when they met to discuss this case on 9th June 2000. Paragraphs 8 and 9 of that document reveal an understandable unease on the part of the Permanent Under Secretary that Portadown may have been policed by somebody who may have conspired to pervert the course of justice in a murder case. (9) The fact that a police officer who was suspected of the offence of assisting offenders was not immediately considered for suspension is astonishing and raises serious questions about the appetite within the upper ranks of the RUC for addressing something that should have been an investigative and a policing priority. Indeed that is a concern shared by the family of Robert Hamill and was given eloquent expression by xxxxxxxxxxxx in the following sentence of his memorandum, “I feel (but did not say) that the failure to suspend may be indicative of a failure to strike the right balance between fairness to the officer and taking seriously a very serious allegation.”

14. We have asked the question elsewhere why DCS Mc Burney may have considered it the right thing to do to effectively cover up the conduct of the reservist. This question is particularly poignant when he clearly informed all those whom he ought to have informed of the seriousness and nature of the allegation. We submit that the answer lies in the attitude and approach to this allegation displayed by the former Chief Constable and his colleagues at Deputy and Assistant Chief Constable level. All of them were informed of the allegation on the morning of Monday 12th May 1997. While investigative responsibility was given over to Detective Chief Superintendent Mc Burney, some degree of supervision of the investigation of this most serious matter must attach to the Chief Constable, his ACC of crime, ACC White or the regional commander ACC Hall. We have prepared a separate short submission

addressing the responsibilities of the Assistant Chief Constables. That they should all claim to have little or no knowledge of the progress of the enquiry into Reserve Constable Atkinson is nothing short of a disgrace.

15. As we have discussed above, the administrative role of appellate authority was not, by Sir Ronnie's own admission, a bar to his personal supervision of the investigation into the allegation that one of his officers had been tipping off a suspect in the sectarian murder of a Catholic. His failure to at least inform himself of the progress of this investigation does not sit well with his self professed concern for the good reputation of the force within the minority community. This failure, we submit, had serious consequences for it provided the opportunity for DCS Mc Burney, now free from supervision from either the ICPC or his superiors to skilfully orchestrate a "cover up", of the criminal conduct of Reserve Constable Atkinson.

16. This is a submission we have made elsewhere and we do not resile from it. It is not necessary however that the Panel should agree with us, for our argument that the failures of the Chief Constable contributed to the escape of Reserve Constable Atkinson to succeed. This is a submission that can stand on the basis of lack of direction and supervision even if the Panel finds that DCS Mc Burney's failures, if indeed such findings are made, were due to neglect rather than the result of a deliberate plan to protect Atkinson.

17. If the Panel is persuaded that DCS McBurney was guilty of the deliberate protection of Reserve Constable Atkinson then it must consider three possibilities that directly concern the Chief Constable; either he (i) acted alone in defiance of his superiors; (ii) felt encouraged by their apparent disinterest to behave in the way he did or (iii) was acting on direct instructions.

18. We submit that the very credibility of Sir Ronnie Flanagan as a witness is now in issue following the disclosure of two important documents from the Northern Ireland Office and his reaction when confronted with them in evidence.

19. Mr Underwood QC drew Sir Ronnie's attention to several parts of the document attributed to xxxxxxxxxxxx and in particular, paragraph's 8 and 9 referred to above. When asked about the remark attributed to him by xxxxxxxxxxxx he would sack Reserve Constable Atkinson, regardless of the cost, if asked by xxxx to do so, he denied that he would take such action on the request of a Permanent Secretary and replied that this was "an inaccurate reflection of any conversation we would have had.." (10) The Panel has not heard from xxxxxxxx on this but it will have to consider the unlikelihood of a Permanent Secretary taking an inaccurate note of a conversation he clearly considered to be of some importance. It must therefore consider whether Sir Ronnie has given a truthful answer here. In considering this it must also take into account the answer given by sir Ronnie in relation to the next document put to him.

20. That document is a note made by Anthony Langdon of separate meetings he held with the former Chief Constable and members of the ICPC on 21st July 2000. Mr Langdon was then a recently retired Home Office civil servant, commissioned at the suggestion of xxxxxxxxxx to write a report to assist the Government in its response to the increasing public clamour for a public inquiry into the death of Robert Hamill. The document notes at paragraph 3 that Mr Langdon found the Chief Constable in a pretty defensive and critical mood. (11)According to Mr Langdon the then Chief Constable, “ .. commented that Robert Hamill’s death could well have been caused by his own family cradling his head in a way that led to oxygen starvation.....he thought that it was noteworthy that it was Hamill’s sister rather than his partner who was making the running, and that his sister had her own agenda to discredit the RUC..”

21. The response of the Chief Constable to this document is to be found a pages 256 line 11 of his evidence through to the beginning of page 258 and is perhaps worth repeating in full:-

Q. Would you go on and look at that paragraph:
“He commented that Hamill’s death could well have been caused by his own family cradling his head in a way that led to oxygen starvation.”

Where do you get that?

A. I think that’s a quite disgraceful record of the conversation that we had. What was suggested to me -- I remember being absolutely shocked when Robert Hamill died, because my belief was that he was progressing well and that he was not at risk of dying. In asking people -- and I think it may well have been in a conversation with Maynard McBurney -- there would have been a general discussion that sometimes people, not specifically the family, but even police at the scene who would cradle a person, but to suggest that Robert Hamill’s death was due to anything other than the beating he received at the hand of his assailants is absolutely disgraceful.

Q. So do you dispute the manner in which this has been recorded?

A. Absolutely.

Q. As for the next bit:
“He thought it was noteworthy that it was Hamill’s sister rather than his partner who was making the running and that the sister (Diane) had her own agenda to discredit the RUC.

Did you make that remark?

A. Certainly I did not make that remark. I would not ascribe that to Robert Hamill’s sister.

Q. Had you made the remark, do you agree that it would be a reprehensible attitude to be displaying?

A. It would be an improper attitude.

Q. Do you accept now that Diane Hamill has done nothing since the death of her brother but to properly campaign to get to the bottom of the murder?

A. I accept that absolutely completely. Indeed when you and I had a meeting where I passed through you information to the family, but asked them to respect it by not making it public, they respected that absolutely and completely.

Q. Do you accept that she has never had an agenda to discredit the RUC?

A. I do. I think she has an agenda to find out exactly what happened to her brother.

Q. Do you say that no-one in the RUC, either in the upper ranks or the lower ranks, had a view that the Hamills were just about discrediting the RUC?

A. I can't speak for everyone in the organisation, Chairman, but certainly it would not be a view that would be properly ascribed to the organisation. I can't speak for every individual in that organisation.

22. Sir Ronnie has categorically denied that he made this remark and has gone on to say that it would have been a disgraceful thing to have said. This must be contrasted with the evidence of Mr Langdon who came to the Inquiry and stated in the clearest possible terms that the Chief Constable did indeed make such a remark and that he remembered him doing so because as he said it he made a cradling motion with his arms to illustrate how it might have happened. (12) One of these men is lying about this and we submit that it is Sir Ronnie Flanagan. The Panel has observed both witnesses give their evidence and will be in a position to make a judgement on this. Mr Langdon was very clear however that his note was made very quickly after the meeting and has a firm recollection of Sir Ronnie making the remark about the cradling of the head. It would follow then that the rest of the note is likely to be accurate. We further submit that Mr Langdon had absolutely no reason to falsely attribute the comments or indeed the sentiments to the former Chief Constable. Sir Ronnie on the other hand has every reason to deny that he said such things.

23. If the Panel does find that Sir Ronnie did make these comments then this has serious implications for his credit worthiness as a witness and all of his evidence should be viewed with great caution. His credibility aside however these remarks reveal a great deal, we submit, about this Chief Constable and his true attitude about this case that might assist the Panel in considering some of the submissions we have made above. Firstly, this is a man so defensive about any possible criticism of his force that he will say

whatever it takes to defend it. The suggestion that Robert might have died of oxygen starvation is quite plainly ludicrous but clearly designed to make Mr Langdon think this attack was not as serious as people were making out. The comments about Diane Hamill's motives however are particularly insidious. Their purpose was to blacken the good name of this family and to seek to taint them as anti police propagandists. This of course was not just directed to Mr Langdon but to those to whom he would eventually report. The Panel must therefore evaluate everything this witness has said with great caution.

24. We have already raised the possibility that DCS McBurney behaved the way he did on express instructions or that he took his cue from the apparent disinterest of the Chief Constable in the investigation of the allegations made about Reserve Constable Atkinson. This witness first told the Inquiry that he knew nothing of these allegations until DCS Mc Burney came to him about his "new opportunity" in respect of the McKee's separation. (13) In his second Inquiry statement of 28th April 2009, he accepts that he spoke to DCS Mc Burney twice on May 10th following the making of the Tracy Clarke interview, although he still claims to have no recollection if he was informed of the Atkinson allegation. (14) There is no doubt that he informed Mr Raymond Kitson of the office of the DPP about it when he spoke to him on 13th May 1997 (15) and the ICPC. (16) We submit that it is inconceivable that Detective Superintendent McBurney did not inform his Chief Constable of this aspect of the statement of Tracy Clarke when they spoke on twice on the phone on May 10th 1997. The Panel must consider the likelihood that Sir Ronnie Flanagan is lying about this. He also now accepts the irrefutable evidence of ACC Hall that he was told of the allegations at the regular Monday morning meeting on 13th May but he says he simply doesn't recollect that.(17) The Panel is entitled to consider that he is not telling the truth about that either.

25. The Inquiry has commissioned a report from Professor Kieran McEvoy of the School of Law at Queen's University Belfast. He made the following observation about Sir Ronnie Flanagan at paragraph 5.12 of his report; "In tracing the evolution of the former chief constable's attitude towards change over that period, one sees a highly skilled police leader in action. Sir Ronnie demonstrated finely judged antennae to the changing political climate and appeared to make carefully calibrated political judgements and public pronouncements accordingly as the process developed. He also demonstrated a high degree of sensitivity to the prevailing mood of his officers at different junctures in the process and certainly took great pains not to outstrip his constituency in leading the organisation towards inevitable change. He was knighted in 1999 and in 2002 became the first person in Northern Ireland to receive a Knight Grand Cross of the Order of the British Empire (GBE) in recognition of his skills in managing the changeover from the RUC to PSNI. (18)

26. We submit that it is inconceivable that his highly skilled and highly political of Chief Constables failed to pick up on the potential consequences for the RUC of the inevitable disclosure of the allegation against Reserve Constable Atkinson if he were to be arrested along with the perpetrators of the

murder of Robert Hamill as one guilty of the offence of assisting offenders. This is the man who independently referred the case to the ICPC before there was even a complaint received from the office of Rosemary Nelson, so sharply tuned were his antennae in terms of criticism of his force, particularly in the area of collusion between police and Loyalists. We further submit that it is inconceivable that the Chief constable of the RUC did not keep himself well informed of the progress of an investigation into allegations of serious criminal conduct of one of a member of his full time Reserve.

27. There are further passages of the report of Professor McEvoy to which we might refer in oral submissions, particularly in relation to the precarious situation in terms of the very future of this police force at precisely the time of these events. It is abundantly clear however that the last thing this Chief Constable needed in May 1997 was the revelation that a Portadown Reservist colluded with the killers of Robert Hamill. We respectfully submit that, whatever the benefits of being seen to pursue such a policeman in terms of gaining some credibility within the Catholic community, there will have been some within the RUC, this Chief Constable perhaps included, who took the view that the cost of impartiality in terms of damage to police morale and his own reputation within his own force, might have been too high a price to pay.

28. The Panel will recall that Mr McGrory QC raised with quite a number of witnesses some correspondence between the Chief Constable and the then Secretary of State, Dr Mo Mowlam. When it was first raised, with ACC White we believe, the Chairman made the observation that, in today's society the police could not be expected to give an account of the detail of an investigation to a government figure. This was a valid observation from the Chair that modern society expects the police to have absolute investigative independence. With this we absolutely agree but we would ask the Panel to bear with us while we revisit this correspondence for we believe that the totality of the evidence on this point will show that Dr Mowlam could and should have been given more information that she was.

29. We would ask the Panel to examine the following documents in sequence; (i) A letter from Dr Mowlam to Sir Ronnie Flanagan dated November 28th 1997(19) following a meeting she had with the family of Robert Hamill on November 24th 1997; (ii) A memorandum from Detective Inspector Irwin to ACC White through Superintendent Hooke addressing the issues raised in Dr Mowlam's letter; (20) (iii) Mr White's recommendations on an appropriate response to the Secretary of State dated 18th December 1997 (21); and (iv) the reply from Sir Ronnie to the Secretary of State dated December 23rd 1997 (22)

30. The letter from Dr Mowlam attached an earlier letter she had received from Diane Hamill raising a number of issues of concern to the family including the fact at point 5 that there were press reports of " links between some officers and some of the defendants". In the final paragraph of the second page of her letter, Dr Mowlam asked the Chief Constable to supply her with "as much detail as possible" on the points in the attached letter". (23)

31. Document (ii) is a report by DI Irwin dated 15th December to Superintendent Hook of the Crime unit in Knocknagoney and stated at POINT 5 “ A DPP file is being submitted which relates to an allegation of a link between one of the accused and one police officer” (Emphasis ours)

32. Document (iii) is from ACC White to the Chief Constable and seems to have two purposes. It firstly imparts to the Chief Constable all of the background information relevant to the questions raised by the Secretary of State and it secondly advises the Chief Constable on the level of detail he in turn should impart to the Secretary of State. In 5.3 he informs the Chief Constable that the investigation DCS Mc Burney is conducting into the Land Rover crew is almost concluded and is likely to report that they did their best in very difficult circumstances. He advises the Chief Constable not to impart this information to the Secretary of State lest it should pre-empt any decision of the DPP.

33. At 7.1 under the heading “Relationship between Accused and Police Officer” ACC White tells the Chief Constable that this matter is the subject of a criminal investigation and that a file will be forwarded to the DPP in due course. He advises the chief Constable that it would “not be prudent to make any comment about this at this stage nor to pre-empt the decision of the DPP”

34. Document (iv) is the reply from Sir Ronnie to the Secretary of State. Under the heading “relationship between some officers and some of the defendants” he tells the Secretary of State the following, “This allegation has been included in the criminal investigation and will be considered by the Director of Public Prosecutions”

35. Mr Simon Rogers made a statement dated September 21st (24) and gave evidence the same day. At the time of these events he worked in the Police Division of the Northern Ireland Office, which dealt with the issue of police complaints. He recounts how the Secretary of State received a letter from the family in advance of a meeting that took place on November 24th and in that letter the family had raised the issue of press reports of links between some officers and some of the defendants. (25) He has said in his evidence that the Secretary of State had sympathy with the family and wanted to do as much for them as she could. At paragraph 15 of his statement he sets out the steps that he took to obtain information from the Chief Constable. He anticipated, correctly as it turned out, that the Chief Constable would want very little information released. It is clear that Mr Rogers means released publicly as that indeed is what the Chief Constable asked of the Secretary of State in the penultimate paragraph of his letter in reply.(26) Mr Rogers however was very clear that the Secretary of State was quite entitled to seek a “report” from the chief Constable “ on any matter she wished to receive a report on” in accordance with section 15(2) of the Police Northern Ireland Act 1970. He did not feel it necessary to cite the legislation as the Chief Constable would have been well aware of his obligations in this regard.

36. The letter from the Secretary of State of course asked the Chief Constable “ for as much detail as possible” on the points raised in Diane

Hamill's letter , which she attached.(27) It is our respectful submission that the reply on the question of "links between some officers and some defendants" was brief to the extreme and arguably misleading. If it satisfies the Chief Constable's statutory obligation at all it does so barely. We submit that to have suggested that it had been included in the criminal investigation leads the reader to believe that the writer is talking about the murder inquiry when it clearly was not. It is of course true that the neglect file, which did address the "tipping off" allegation, was a criminal file and did go to the DPP. Had that been made clear to the Secretary of State however, she may well have raised some questions, which she was clearly entitled to do under the statute. It is accepted by the family however that Mr Rogers did make it clear that he was unaware of the detail of the various investigations and the important point for him was that the DPP would be made aware of the allegation, which they were by way of the neglect file. We have submitted elsewhere that the separation of the Atkinson "tipping off" allegation from the murder file significantly compromised the investigation, not least because it was submitted at a different time and to a different officer. That may not have been something Mr Rogers or the Secretary of State would have been alert to, but the Chief Constable didn't necessarily know that.

37. The evidence of Mr Rodgers is that he would have expected the Chief Constable to have brought the information about the specific allegation against the Reserve Constable Atkinson to the Secretary of State, had he known about it. At first, he appeared to agree with the statement of his former colleague, Mr Steele, that the Chief Constable's answer was appropriate when asked to comment on it by Mr Underwood QC (28) at the outset of his evidence. However, he later gave a very different answer to Mr McGrory QC as follows(29)

Question: "Yes. Insofar as the details of the allegation are concerned, what we now know, Mr Rogers is that there was a specific allegation against a specific officer that had been made by a witness, Tracey Clarke, that there had been telephone calls made and advice given to destroy clothing to one of the murderers by a policeman. We also know that telephone records obtained very quickly after that allegation had been made at least supported the allegation to the extent that there was telephone contact between the policeman's household. Now, I want to suggest to you that this is information which could have been given to the Secretary of State without it necessarily in any way interfering with the operational independence of the chief constable. She could have been told that as a point of information?"

Answer: "I do try to address that in my statement in paragraph 27, where you say that if the chief constable, for

Example, in advising the Secretary of State was
Aware of this allegation at this particular time, then
I would have expected him perhaps to have informed
the Secretary of State.”

38. In the interests of clarity, Paragraph 27 of his statement reads “If the Chief Constable was aware of the allegation about the Reserve Constable at this time then I think one could have reasonably expected him to inform the SoS, regardless of the correspondence”.

39. We of course know that the Chief Constable did know about it, at least from the meeting on May 13th. ACC White, as we have seen above, referred to “a criminal investigation” and “a file” going to the DPP under the heading “Relationship between Accused and Police Officer”. We suggest ACC White assumed his Chief Constable knew exactly who and what he was talking about. In fact the Chief Constable had to go to some lengths to change the wording of the information he received to avoid letting the Secretary of State know that there was in fact a specific allegation, which would have given some substance to the press reports Diane Hamill had raised with the Secretary of State.

40. The Chairman has questioned whether or not it would have been appropriate for the Secretary of State to be getting involved in making decisions as to what information the family should have been given. The family accepts that there would be a range of reasons why that would not normally be in the public interest. There could be risks to independence, operational reasons and the obvious consideration that the Secretary of State has many other responsibilities. However, there had to be exceptions to this. Why else would the Secretary of State have been given the statutory power to seek reports from the Chief Constable? We respectfully ask that he Panel consider the following submission:

41. The Secretary of State, as part of the Executive had a constitutional responsibility for the policing of Northern Ireland. While the police force of course should be free to exercise its policing functions free from political interference it was nevertheless very much in the public interest that it should be accountable in some way to the Executive. That is why section 15 (2) the Police NI Act obliged the Chief Constable to report to the Secretary of State on “any matter she wished to receive a report on” (30) . The Secretary of State also had a direct responsibility for the supervision of police complaints, which was entirely consistent with her constitutional responsibility for policing. It was purely a matter for the Secretary of State what she chose to do with information. A responsible Secretary of State would of course be expected to be mindful of the independence of the police force but there is no evidence that Dr Mowlam was anything but responsible. In fact, Blair Wallace who was Deputy Chief Constable at that time and who steadfastly defended the Chief Constable’s reply accepted that he had worked with almost every Secretary of State in Northern Ireland and never had a problem over confidentiality with a Secretary of State on a one to one basis.(31) This Secretary of State clearly felt she had an obligation to the family of Robert Hamill to find out as much as

she could about this case and in particular if there was any truth in the allegation that the police colluded with those responsible for this sectarian murder. In such circumstances, we submit, the Secretary of State should have been at least informed of the existence of a specific allegation of collusion against a specific policeman in order that she could determine, in consultation with the police, how she could best fulfil her obligations to the Hamill family and to the public interest.

42. We wish to stress that we are not submitting that the Secretary of State should be receiving representations from unhappy victims and seeking explanations from the police in any way as an everyday part of her function. This was not a normal case however and the fact is she decided she did require information and it was the statutory duty of the chief Constable to give it to her.

43. Mr Rogers was perfectly comfortable with the suggestion that the Secretary of State could have been given more information without the independence of the police being in any way compromised.(32) He also said in evidence that, had he known the investigation of the “tipping off” allegation was not being supervised he would have brought it to the attention of the Secretary of State who had the power to refer it to the ICPC herself. (33) If it was considered to be inappropriate for operational reasons to give the family this information, there is no reason why the Secretary of State could not have been told that. These are not inconsistent propositions. Informing the family was only one of a number of options open to her. She could have exercised her statutory powers to ensure supervision and indeed to make her own enquiries as to the status of the investigation without telling the family any of the detail. As was evident from the note of xxxxxxxxx, the Executive was entitled to feel uncomfortable that someone against whom an allegation like this was made should be policing the streets of Portadown.(34)

44. Even if there were operational reasons for not informing the family of the deceased in the early stages of this investigation, we can think of no reason why they were not informed at some later stage. By the time the Secretary of State was making her enquiries of the Chief Constable both Tracy Clarke and Timothy Jameson had indicated their unwillingness to give evidence and charges against all but one of the original accused had been withdrawn. If there was a view that there was a risk of interference while the DPP was deliberating, then why could the family not have been told after the decision had been taken? One has to wonder that if the Coroner had not informed the family of this allegation in 2000 might they ever have found out. Had they never found out they would not have been able to bring such pressure to bear on the Executive as they did and this Inquiry would not be taking place. It is interesting to note from the statement of Mr Rogers that, even then, the Secretary of State was keeping under review the possibility of a Public Inquiry in this case.(35)

45. Whether the wording of the Chief Constable’s reply to the Secretary of State on this point was a deliberate subterfuge or not may be a difficult question for the Panel to determine. He may have met, just, his statutory

obligation but he was certainly not giving the Secretary of State “as much detail as possible”. We submit however that the question of whether he ought to have given her more information must be considered in light of our earlier submission as to the credit worthiness of Sir Ronnie Flanagan as a witness.

46. It should further be considered that in the course of preparing his reply to the Secretary of State he clearly had to make a conscious decision not to tell her of the existence of a specific allegation. This does not sit well with his evidence that he had no knowledge of this aspect of the inquiry. Neither he nor ACC White, we submit, could possibly have been telling the truth to this Inquiry when they made their 2006 statements that they had never heard of this allegation until 2000. This was a highly charged and highly political case. The circumstances of the allegation against the policeman had to be very unusual. We submit that when the news of the abandoned inquest came in June 2000 they knew exactly what was involved in terms of the extent of the alleged collusion of Reserve Constable Atkinson.

The Chief Constable (References)

- 1 Statement of Reserve Constable Atkinson, page 10972 “Whilst I was struggling with this person I could see out of the corner of my eye that 3 youths were jumping on the head of the male who was lying on the ground outside Eastwood.”; Statement of PC Neill, page 10945 “During this a male, late 20s, round face.....was near me and I saw him kick at the injured man I now know as Robert Hamill”
- 2 Page 30 of the Inquiry Interview transcript of Dean Silcock,
- 3 Mr Murray’s supplementary report of November 2008 deals comprehensively with these procedures, in particular at section 6. It is clear that one interview may cover both criminal and disciplinary issues but that the criminal aspect will have priority. (74534)
- 4 Statements of Sir Ronnie Flanagan dated 31st July 2006 and 28th April 2009 can be found on the system at pages xxxxx and 81831 respectively.
- 5 September 10th page 195
- 6 Page 73378
- 7 Ibid pages 202 and 203
- 8 Ibid pages 240 to 241
- 9 39625-39626
- 10 September 10th page 194 line 12
- 11 Page 39692
- 12 September 21st page line 20ff and later page 21 lines 1 to 7
- 13 Statement of 31st July 2006 paragraph 10 pagexxxxx
- 14 Statement of 28th April 2009 paragraph 10 page 81833
- 15 Note for file by Mr Kitson dated 13th May 1997 - pages 31603 – 31612
- 16 File note - Greg Mullan to Kevin Murnaghan re meeting on 12.5.97 - pages 14822 – 14823
- 17 September 10th pages 189 to 190
- 18 See BBC Profile available <http://news.bbc.co.uk/1/hi/uk/6990858.stm>
- 19 60487
- 20 16500 to 16502

- 21 15385 to 1389
- 2 1 5375 to 15377
- 23 60487/8
- 24 82068 to 82077
- 25 Point 5 of the family letter page 60819
- 26 15377
- 27 Secretary of State Letter 60488, Diane Hamill letter 60818
- 28 Page 108
- 29 Page 126 line 5 - page 127 line 2

- 30 Simon Rogers paragraph 15 page 82073
- 31 May 21st page 68
- 32 Page 116 line 20
- 33 Page 125 line 4
- 34 39625
- 35 Paragraph 24 82076

THE ASSISTANT CHIEF CONSTABLES

ACC Raymond White

1. Mr Raymond white was Assistant Chief Constable of Crime in 1997. He made a statement to the Inquiry on 25th (1) July 2006 and a supplementary statement dated 24th January 2009. (2) He gave evidence on May 20th.
2. At the bottom of page 4 of his first statement Mr White said that he was not aware that allegations had been made against Reserve Constable Atkinson from the outset or that they were supported by telephone billing.
3. In his subsequent statement at paragraph 17 he states that it would have been impossible for him to have had a supervisory role in a major investigation and that this would have been the function of the SIO. He explained that there were maybe 5 or 6 murder enquiries ongoing at any one time and it would have been impossible for the senior officer to be popping in and out all the time. He says later in paragraph 24 that he did not recall having regular briefings about the Hamill investigation but that this was not unusual as he did not have briefings on the many murders that had taken place. He does recall however in paragraph 26 that DCS McBurney consulted him before going to Wrexham, partly to obtain approval to make enquiries outside the jurisdiction and partly to satisfy himself that his line of investigation was sound.
4. In his evidence, when questioned by Mr Underwood QC, Mr White explained the supervisory functions of the ACC of Crime. He explained that there were 5 or 6 officers of Chief Superintendent of Superintendent rank who read files before they went to the DPP. These were not cursory glances at the file; they were thoroughly read and may have involved telephone calls to the investigating officer to discuss pros and cons of matters relating to the

investigation.(3) Mr Underwood subsequently put to Mr White some of the glaring omissions and weaknesses in the crime file, not least the reliance by Mr McBurney on the Mc Kee alibi for the phone call. These questions were understandably put on the basis that the supervising reader of the file simply would not have been able to spot some of these issues. Mr White could only really confirm that view and appears to accept that the supervisory system at the time had its limitations. We submit that this is something the Panel my wish to consider further.(4)

5. We wish to make some further observations however about the evidence of this witness in the context of the submission above concerning the apparent lack of interest at this level in the conduct of the investigation against Reserve Constable Atkinson. It has turned out that this witness, like his Chief Constable, had a good deal more knowledge of the allegation against Reserve Constable Atkinson than he at first admitted. He too was at the meeting on the morning of Monday 13th May when the matter was raised by ACC Hall. Not only that but he authorised the request to obtain the telephone billing records and accepted to Mr Underwood QC that he would have been given some detail about the allegation in a synopsis in the course of that process.(5) His evidence is that he now has had the benefit of reading these documents but had no recollection of this when making his statement.

6. Later in his evidence Mr McGrory QC questioned Mr White about the contents of his briefing note to the Chief Constable prior to the latter's reply to the Secretary of State's request for information following her meeting with the Hamill family on 24th November 1997. The note is dated 18th December and is signed by this witness.(6) The note, under the heading "Relationship between Accused and Police Officer"(7) refers to the fact that there was a criminal investigation and that a file would be submitted to the DPP. This is a document that will be all too familiar to the Panel as Mr McGrory QC raised this and other correspondence with quite a number of witnesses and it forms part of a more lengthy submission elsewhere.

7. Although the former Assistant Chief Constable denied this implied he had any knowledge of the file or its contents(8) we submit that it is further evidence that he had at least some reason to be reminded that there was an ongoing investigation into an allegation of serious corrupt behaviour by a policeman.

8. We are not in a position to make a firmly grounded submission that this witness was lying to the Inquiry about his state of knowledge of this investigation when he made his first statement. The Panel may think it odd however that both the Chief Constable and the Assistant Chief Constable of Crime initially told the Inquiry that they had no knowledge of the Atkinson allegation until 2000 only to have to accept that they were indeed seized of such information when confronted with documentary evidence. Neither man appeared to have any difficulty remembering discussions with DCS Mc Burney about the allegation when he came to them in 2000.

9. As in the case of the Chief Constable the remarkable feature of this witness's evidence is that the investigation of an allegation of the commission of a most serious crime by a police officer in the course of his duty appears to have gone virtually unnoticed and unsupervised by the senior command of the RUC. It is open to the Panel to consider, we submit, that the Assistant Chief Constable of Crime must have had a good idea what was going on in the investigation of Reserve Constable Atkinson's conduct and could and should have had some responsibility for the strategic direction of the investigation. In the alternative, he was informed of the existence of the allegation and then promptly forgot all about it. That is still a most serious indictment of the leadership of this police force, if it was in fact the case.

ACC Frederick Hall

10. This witness gave evidence on September 2nd. He was Assistant Chief Constable for South region, which meant that he was in effect the regional commander of those charged with the conduct of the investigation into the murder of Robert Hamill and indeed of the criminal investigation into the conduct of Reserve Constable Atkinson.

11. His evidence is that he was very aware of the Hamill murder and was responsible for the press strategy around the time of the murder. Indeed he gave television interviews sympathising with the family and appealing for witnesses and so forth. He arranged to meet Detective Chief Superintendent Mc Burney and P39 on Sunday 11th May so that he would be well briefed on the case for the Monday morning meeting with the Chief Constable, Deputy Chief Constable and other ACC's. It was at this Sunday briefing that he learned of the evidence from Tracy Clarke about Reserve Constable Atkinson.(9) He brought this information directly to the meeting the next morning and made it clear that anything touching on the integrity of a police officer was a very serious matter in his eyes.(10)

12. This witness has said that had personally spoken to the Chief Constable about the case two or three times around the time of the death and that those at the meeting were well aware of the case when he raised the matter of Reserve Constable Atkinson with them. He recounted how he himself phoned Mr Murnaghan to make sure he was aware of this aspect of the case. He was very clear in his evidence that the purpose of that call was to ensure ICPC supervision of the extra dimension in respect of Reserve Constable Atkinson that had now come to light through Tracy Clarke. He informed the Inquiry that he was extremely surprised therefore to learn in 2007 that this aspect was not actually supervised.(12)

13. Mr Underwood QC, on behalf of the Inquiry, raised the issue of consideration of suspension of Reserve Constable Atkinson at this or any other stage.(13) This witness could only say that as far as his role was concerned, suspension was a not a matter for him. It was really a matter for G Department that governed Complaints and Discipline. He simply could not assist with the question of consideration of this issue at any time. The witness pointed out

that there might be all sorts of reasons why immediate suspension might not have taken place and that by the time Atkinson was confronted with the phone calls he took off on the sick.

14. It is our submission however that it is not just the failure of the RUC to suspend Atkinson that should be criticised but the failure to even consider it. Not a single senior policeman in this force can point us to any evidence that it was even considered. Insofar as this witness is personally concerned we accept his complete honesty in his recollections and dealings with this Tribunal. However, we must raise our concern that no one at this level appears to have known the first thing about the investigation of Reserve Constable Atkinson after it was discussed at their meeting on Monday 12th May 1997; not the Chief Constable, not the ACC of Crime and not the ACC of South region. This, we submit, is a shameful indication of the lack of interest of senior police in relation to this most serious matter and if nothing else they must be held collectively accountable for any failings in the conduct of the investigation.

The Assistant Chief Constables (references)

- (1) 81253
- (2) 81659
- (3) May 20th Page 57 line 6ff
- (4) Ibid page 62
- (5) Ibid pages 58 - 59
- (6) 15385 to 15389
- (7) 15388 at 7.1
- (8) May 20th page 96 line 8
- (9) September 2nd page 31
- (10) Ibid page 32 line 15
- (11) Ibid page 52 line 10
- (12) Ibid page 36 line 23
- (13) Ibid pages 40-42

Submissions by the Police Service of Northern Ireland

It is submitted that for all of the reasons stated above there is no sensible or persuasive basis for deciding that McBurney decided to protect Res. Con. Atkinson.

This is underpinned by the point made in this comment: having informed a diverse audience about the allegation made against Res. Con. Atkinson it would have been rather incongruous and dangerous for DCS McBurney to engage in a course of conduct designed to cover-up Atkinson's activities and to protect him.

By telling this group about the allegations DCS McBurney would have reasonably anticipated a high degree of interest and scrutiny of his

investigation. If the matter was to be covered up and Atkinson protected, McBurney would have at least required the acquiescence of many if not all of these players.

As has been mentioned above, the absence of a policy book is harmful to DCS McBurney's cause. However, there is one final point on the allegation of collusion which is worthy of consideration and might be regarded as something of a litmus test.

On the 19 October 1999 DI Irwin wrote a message noting that Michael and Andrea McKee had separated (2395). This is emphatic evidence that this was not an investigation which DCS McBurney had given up on or buried. Why would Irwin have any interest in documenting the marital arrangements of the McKees if it was not with a view to informing the investigation? It is submitted that the record signals the fact that the investigation had become reinvigorated, and that it was going to be able to rely on this helpful development.

It is submitted that if this was a corrupt and collusive investigation it would have shown no interest in the opportunity afforded by the McKee separation. Indeed rather than advertising the fact of the separation by creating a document, a collusive team would have studiously ignored the development.

Potential Criticisms or Adverse Inferences

Robert Atkinson

- Entered into a conspiracy with his wife and the McKees to cover the telephone call of 27 April 1997.
- Warned Allister Hanvey to destroy the clothing that he wore on 27 April 1997.

Sir Ronnie Flanagan

- Failed to ensure that the ICPC was supervising the investigation into the tip-off.

Allister Hanvey

- Participated in the attack on Robert Hamill.
- Destroyed the clothing that he was wearing at the time of the attack.

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.
- Took a witness statement from Andrea McKee, which he knew to be untrue, and allowed it to be advanced as true.

Timothy Jameson

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

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.

Blair Wallace

- Failed to ensure that consideration was given to suspending Res Con Atkinson or serving a Form 17(3) on him in relation to the tip-off allegation.