

ROBERT HAMILL INQUIRY

Day 63: Tuesday 15th September 2009

The first witness on day 63 was John Munn, a serving police officer with the PSNI, who took over the day-to-day running of the Witness Protection Unit of the PSNI in October 2002. Mr Munn gave evidence about the witness protection programme. In particular his evidence related to Andrea McKee's situation in late 2003/early 2004 after she received a threatening letter which was alleged to have come from the paramilitary group the Loyalist Volunteer Force (LVF).

Mr Munn's witness statement conveyed that Andrea McKee was not willing to relocate outside the area where she lived at the time she received the threatening letter, due to commitments such as friends, family, university etc. In his statement Mr Munn also said that as Mrs McKee did not want to relocate that she would not have qualified for the witness protection programme and as such she would not receive any assistance from the witness protection team. Alternatively, if Mrs McKee did not relocate the PSNI investigation team would liaise with the local police from the area where she lived. Mr Munn agreed with Mr Underwood QC, Inquiry Counsel, that as far as he was concerned Andrea McKee did qualify for the programme but that the choice was hers [whether or not she entered the programme].

The second witness on day 63 was Robert Cooke, a Detective Superintendent in RUC Crime Branch in 1997, who worked in a department which dealt with prosecution policy. His other responsibilities included the review of evidence on prosecution files submitted to the office of the Director of Public Prosecutions (DPP) primarily for the Belfast Region. However he stepped in to cover work for the Urban Region (which included Portadown) when his colleague DS Harvey was off work for a period in mid-October 1997. DS Cooke attended prosecution consultations with witnesses for the prosecution in the Robert Hamill murder prosecution, namely Jonathan Wright and Tracey Clarke.

In his witness statement, DS Cooke recalled that during the consultation with Tracey Clarke, she was fearful of paramilitary reprisals and he believed she was telling the truth but that if she was compelled to give evidence in court that she would not. During the hearing, DS Cooke clarified for Mr Underwood that whilst Ms Clarke referred to other reasons for not wanting to give evidence, such as her boyfriend [Allister Harvey who was a suspect in Robert Hamill's murder], his impression was that she was fearful of what might happen [i.e. paramilitary retribution] if she gave evidence and that this was reinforced by her parents who were at the consultation.

DS Cooke also confirmed that there was an appetite within the RUC for the prosecution to proceed but that the DPP had what was believed to be a realistic view that it could not.

The third witness on day 63 was Raymond Kitson, the former Assistant

Director of the office of the DPP for the Belfast court circuit and Eastern circuit (which included Portadown). Mr Underwood QC asked questions about a handwritten note which Mr Kitson made of a meeting between the DPP and RUC on 13th May 1997. Mr Kitson clarified that he believed this meeting involved discussions about bail applications in relation to the Robert Hamill murder investigation and were not about the strategic direction for the investigation. Mr Kitson indicated that whilst Robert Hamill's cause of death may have been an issue discussed, it was because it appeared that Professor Crane felt that Robert Hamill may not have died from his [visible] injuries and that this would have been relevant in consideration of bail applications.

Mr Kitson could not confirm whether DCS McBurney of the RUC told him of the tip-off allegations against RC Robert Atkinson, or whether he had learned of the allegation from looking at Tracey Clarke's statement. He indicated that there was a discussion about RC Atkinson because he has written RC Atkinson's name down in his notes, but he cannot recall the details of this discussion.

Mr McGrory QC, representing the Hamill family, asked general questions about the procedure and benefit of bringing a joint indictment in a prosecution case as opposed to bringing a separate indictment when evidence and allegations may be related or intertwined. Mr Kitson accepted that there may indeed be benefits but appeared reluctant to comment on, from a prosecutorial view, whether the allegations against RC Atkinson could have been dealt with in the same crime file [and subsequently on the same indictment]. Mr Kitson felt that to do so would be speculating and he noted that the RUC did investigate both the allegations against RC Atkinson and Allister Hanvey in separate files.

Mr McGrory put it to Mr Kitson that his office should have queried the progress of the investigation against RC Atkinson. Mr Kitson said that as far as he was concerned, the DPP had to make an urgent decision when Tracey Clarke indicated in October 1997 that she would not give evidence for the prosecution in the murder trial and that a number of men were still being held in custody at that point.

In response to subsequent questions, Mr Kitson said that the DPP received the file containing the allegations against RC Atkinson in February 1998. Mr McGrory highlighted that at that stage the prosecution against another suspect, Marc Hobson, was still continuing and that RC Atkinson was being treated as a prosecution witness in the prosecution of Mr Hobson despite the fact there had been allegation against him [RC Atkinson]. Mr McGrory pressed this point and asked Mr Kitson if anyone in the DPP considered if RC Atkinson should be used in the Hobson prosecution. Mr Kitson said that Rodger Davison had already submitted committal papers which Mr Davison had not consulted him on and that the Inquiry would have to ask Mr Davison this question.

Day 64: Tuesday 16th September 2009

At the commencement of proceedings Mr Underwood QC, Inquiry Counsel, outlined that the first two witnesses during the hearing were recalled to deal with discrete issues surrounding Tracey Clarke.

The first witness to give evidence was Rodger Davison, formerly of the office of the DPP, who initially gave evidence to the Inquiry on day 13 of public hearings. Mr Underwood asked a number of questions about the procedure for the RUC passing the crime file to the DPP in relation to Robert Hamill's murder and also for the crime file dealing with the neglect complaint and allegations against RC Atkinson.

Mr Underwood also sought to clarify a legislative provision referred to as Article 3 the 1988 Order [The Criminal Justice (Evidence, Etc) (Northern Ireland) Order 1988] which enabled a witness's evidence to be read-out in court when the witness would not appear to give evidence because they were fearful of doing so. In response, Mr Davison outlined that usually a statement would be taken by police officers in which the witness would say they are not going to give evidence as a result of their fears and the officers would also record their impression of the witness's demeanour etc when they made the statement. Mr Underwood noted that records of the consultation with Tracey Clarke on 17th October 1997 do not appear to have discussed Article 3.

Questions about Tracey Clarke's consultation with the DPP on 17th October 1997 and Mr Davison's statement showed that Mr Davison was of the opinion that Ms Clarke would not give evidence because: 1) of her love for her boyfriend and suspect, Allister Hanvey; 2) because she also knew the other suspects; and 3) a perceived threat from loyalist paramilitaries which was expressed in the discussions. Mr Underwood highlighted that in his notes Gordon Kerr QC, who was also present during the consultations, attributed the fear as being expressed by Ms Clarke's parents. However, Mr Davison believed, but he could not be sure, that the fear of paramilitary attack was expressed in discussion with Ms Clarke's father and Ms Clarke. Mr Davison was of the opinion that Tracey Clarke's primary reason for not wanting to give evidence was not fear and he did not believe that Ms Clarke would make a statement to the effect that she was not giving evidence because of a perceived threat. Mr Davison then agreed with Mr Underwood's suggestion that in the absence of a statement outlining a perceived fear, prosecutors would have to rely on the evidence of police officers if they were to make an application under Article 3.

Mr Underwood also asked a series of questions about the decision to use RC Atkinson as a prosecution witness in the criminal trial against Marc Hobson for Robert Hamill's murder [these charges were later changed to the lesser charge of affray], despite the allegation that RC Atkinson had tipped-off a suspect about the murder investigation. Ultimately, Mr Davison could not recall making the decision but he explained that had he re-examined and changed the list of witnesses in the Hobson case after seeing the file relating to the neglect complaint he would have recorded such a decision [he appears to have reviewed the neglect complaint in 1998 for the purposes of disclosure in the Hobson case because the neglect complaint was being dealt with by

another person]. He further explained that if he had reviewed the witness list at that stage and not made changes then he would not have recorded it. When Mr Underwood asked Mr Davison what he would say about the decision to carry on using RC Atkinson as a prosecution witness knowing what he now knows about the neglect file and allegations against RC Atkinson, Mr Davison was of the opinion that to continue using RC Atkinson was 'in the range of decisions that a reasonable prosecutor could take'.

Mr McGrory QC representing the Hamill family asked Mr Davison if 'alarm bells' did not ring when the DPP proposed to use RC Atkinson as a witness in the murder case against Marc Hobson, when RC Atkinson had previously been a suspect in the same case for conspiracy to pervert the course of justice. Mr Davison said that at the time of deciding to put RC Atkinson forward as a witness in that case he was unaware of the telephone records indicating that contact between RC Atkinson and the suspect Allister Hanvey. He was only aware of the allegations made by Tracey Clarke, which were hearsay.

In addition, Mr McGrory highlighted that there were disclosure issues in the case against Marc Hobson as Mr Hobson's solicitor, Richard Monteith, was not aware of the allegations against RC Atkinson and had requested, but was not given, the statement of Tracey Clarke.

The second witness on day 64 was Gordon Kerr QC who was instructed by the DPP to work on the prosecutions relating to the death of Robert Hamill. Several specific queries in relation to the case were put to Mr Kerr, who previously gave evidence on day 13 of the Inquiry, some of which have been summarised below.

Mr Underwood asked questions about disclosure with specific reference to disclosure to the defence in the trial of Marc Hobson for his involvement in the attack on Robert Hamill. In particular, Mr Underwood asked about the disclosure of the allegations against RC Atkinson and the telephone records showing contact between RC Atkinson's home and the home of a suspect. In response, Mr Kerr said that disclosure in the Hobson case depended upon and was relevant to the extent that it affected or assisted the Hobson case and indicated that in the beginning you cannot be sure whether or not a phone call which had been made would become relevant.

In response to questions from Mr McGrory QC Mr Kerr told counsel that the allegations against Atkinson should have been and were disclosed to the defence in the case against Hobson. Mr McGrory acknowledged that they were disclosed but highlighted that the statement of Tracey Clarke was heavily redacted to the point that the defence would not know that the individuals involved in the alleged telephone conversations were RC Atkinson and Allister Hanvey. Mr Kerr was reluctant to comment further on the issue without seeing the full disclosure pack to see what it contained.

Mr McGrory also put it to the witness that redaction of RC Atkinson's name in Tracey Clarke's statement when it was disclosed to the defence in the

Hobson prosecution raised the question of whether the prosecution did not want the defence to know that the prosecution witness was alleged to be involved in tipping off a suspect. The witness said that he did not accept this as the only answer or suggestion and said that a conclusion could not be reached without knowing the full extent of the disclosure that was made.

The third witness on day 64 was Stephen Burnside who was involved in disclosure on behalf of the DPP in the trial of Marc Hobson. Mr Burnside told the Inquiry that he would not necessarily have disclosed the allegations against Atkinson to the defence in the Hobson case when he was going to be used as a prosecution witness. This was because disclosure was a long process and he would not necessarily have disclosed so much so early in the case and the allegation was unsubstantiated at that point [and therefore still viewed as hearsay allegations put forward by Tracey Clarke].

The chairman outlined that under the Keane principle relating to disclosure, you should not just look at what the defence ask for, but also other matters which the defence are not aware of which might be relevant. However Mr Burnside indicated that it did not appear to him that the defence [in the Hobson case] were ignorant to the line of enquiry involving RC Atkinson and the allegations against him [Atkinson].

Mr McGrory QC asked further questions about disclosure and the redactions made in Tracey Clarke's statement. Mr Burnside said that the usual process would have been for him to have made the redactions and he would have consulted prosecution counsel about 'the concept of disclosure, the reason for disclosure, and the form of disclosure' [it appears that form would have encompassed redactions]. Mr Burnside later reiterated that it appeared to him that the defence in the Hobson prosecution were aware of which officer the tip-off allegation was against and he formed this view based on previous correspondence [with the defence solicitor].

The fourth witness on day 64 was Michael Matthews who was also of the office of the DPP, but whose involvement in the Robert Hamill murder case was peripheral as he was involved in the case against Andrea and Michael McKee for conspiracy to pervert the course of justice. Mr Underwood QC asked the witness if when looking at the potential prosecution of the McKees, the Atkinsons and the Hanveys for offences connected with perverting the course of justice, if he considered establishing the content of the 'tip-off' telephone call. The witness said no and that the existence of the telephone call and the cover story which was invented around it had diverted the police from their enquiries and he indicated that this was sufficient to prove the conspiracy to pervert the course of justice.

Day 65: Wednesday 17th September 2009

The first witness to give evidence was William Junkin who was Deputy Director of the office of the Director of Public Prosecutions (DPP) from 1998, a role in which he continued when the DPP became the Public Prosecution Service (PPS) until his retirement in 2008. In 1997, Mr Junkin was Senior

Assistant Director in the DPP and as such would have acted as a line manager for the Assistant Directors.

Mr Underwood QC, representing the Hamill family, put a series of examples to Mr Junkin in an effort to establish in what situations the DPP may seek for further enquiries to be conducted after they had received the crime file from the police for their consideration. In his responses, Mr Junkin said that, for example, if an individual was being put forward as a witness but had not given a statement, then the DPP would ask investigators about getting a statement from that individual. Mr Underwood suggested that this meant that the DPP would only seek further enquiries if on the face of the crime file something had not been done. Mr Underwood put to Mr Junkin the situation in the Hamill case whereby RC Atkinson was accused of tipping off a suspect but he provided an alibi for telephone conversations and he asked Mr Junkin if the DPP would have asked for more enquiries to be conducted into the alibi. Mr Junkin said that they would only do so if the enquiries were necessary and obvious.

The second witness to give evidence on day 65 was [Robert] Ivor Morrison who worked for the office of the DPP. His first involvement in the Robert Hamill case was in 2002 when he took over the prosecution file in the case against RC Atkinson, his wife Eleanor Atkinson, Andrea and Michael McKee and Kenneth Hanvey for conspiracy to pervert the course of justice [relating to a false alibi for telephone conversations between the Hanvey and Atkinson homes].

In summary, during questions from Mr Underwood QC, notes of a consultation which Mr Morrison had with Andrea McKee and Mr Morrison's statement conveyed that he did not feel Andrea McKee could be advanced as a witness of truth against the other conspirators in the prosecution for perverting the course of justice. Mr Underwood highlighted that there was a contradiction in some of Mr Morrison's notes regarding the case R v Atkinson, Atkinson and Hanvey:

- In a memorandum on 16th March 2004 Mr Morrison outlined that he did not believe that Mrs McKee was a credible witness as he felt she had 'invented' the visit to Pendine Park with her sick son in December 2003. He indicated that Mrs McKee had the propensity to lie if she was cross-examined at trial.
- In his own notes dated 18th March 2004, Mr Morrison said that in the absence of satisfactory evidence given to Craigavon Magistrates Court on 22nd December 2003 about the nature and seriousness of Mrs McKee's son's illness it was probable that the proceedings would not go any further.

Mr Morrison said that these two documents were dealing with different parts of the possible course for the prosecutions: the first deals with what happens if the prosecution gets to trial stage; whereas the second deals with difficulties in getting defendants committed to trial stage.

Mr McGrory QC, representing the Hamill family, asked Mr Morrison if he was

a member of the freemasons or if he personally knew Kenneth Hanvey's defence solicitor in R v Atkinson, Atkinson and Hanvey, Richard Monteith. Mr Morrison told the Inquiry that he has not been a member of the freemasons and would have perhaps known Mr Monteith through court appearances in the area that Mr Monteith worked. Mr McComb, who is instructed by Richard Monteith's solicitors' office to represent a number of civilians, objected to Mr McGrory's line of questioning and said that the questions appeared to be based on the assumption that there was some improper relationship between Mr Morrison and Mr Monteith.

Mr McGrory asked a number of questions surrounding Andrea McKee's non-attendance at court on 22nd December and the subsequent adjournments arising from her non-attendance. Mr McGrory suggested that it seemed Mr Morrison had discussed Mrs McKee's non-attendance with defence solicitor Richard Monteith on 2nd January 2004 given the wording of correspondence Mr Monteith sent to the DPP in February 2004 which indicated that Mr Monteith may wish for Mr Morrison and Christine Smith to make statements about Mrs McKee's reasons for non-attendance.

The merits of investigating Mrs McKee's mentioning that she had visited Pendine Park surgery on the weekend of 19th December 2003 on 27th December 2003 when there was already evidence of ongoing issues with her son's health and a visit to her GP on 22nd December 2003 were discussed at length. Mr Morrison appeared to be of the view that it was a relevant consideration which called into question Mrs McKee's credibility and that in the interests of disclosure, the problem that no record of Mrs McKee's visit to Pendine Park with her sick son could be found had to be brought to the attention of the defence. Mr McGrory suggested that on 2nd January 2003 Mr Morrison simply had to present the statements faxed from Andrea McKee's GP and indicate that there was also a visit to Pendine that the prosecution was in the process of verifying and on that basis, leave it to the Magistrate to decide whether this was sufficient grounds for adjournment. Mr Morrison explained that his approach on 2nd January was to seek adjournment until the prosecution obtained evidence they believed they would get in support of Mrs McKee's visit to Pendine.

Mr McGrory highlighted that in a meeting which Mr Morrison had with the Director of Public Prosecutions on 26th February 2004, the Director indicated that regardless of the issues surrounding Pendine Park, Mrs McKee may still have been believed on the 'main issue' [that she lied and provided a false alibi for the Atkinson phone calls].

Mr McGrory said that there were two questions to be addressed: 1) whether or not [Mr Morrison and others] were right about Mrs McKee not telling the truth about Pendine Park; and 2) how the Pendine Park issue affected the matter of whether or not Mrs McKee is telling the truth on the main issue. Mr Morrison agreed with these questions but appeared to remain firm that the right course of action had been taken regarding Andrea McKee not continuing as a prosecution witness. Whilst he accepted that the DPP could lead Mrs McKee through evidence on the main issue when they cross-examined her at

trial, he believed that the defence were likely to cross-examine her on the Pendine Park issue.

Mr Berry QC, representing Andrea McKee, emphasised that there was other evidence which a jury could have considered in the R v Atkinson, Atkinson and Hanvey case such as the telephone records showing evidence of calls between the Atkinson and Hanvey homes as well as Mrs McKee's guilty plea for her part in the alibi conspiracy. When asked if such evidence would amount to a compelling prosecution case, Mr Morrison said that it would depend on the view that the jury took of Andrea McKee. Mr Berry said that Mr Morrison had hit the nail on the head with his response – that it depended on the view that the jury took of Andrea McKee but also of the other factors enumerated.

The fourth witness on day 65 was Ronald McCarey, a senior legal assistant in the office of the DPP between 1997 and 1999 whose role was to consider files submitted to the DPP as to whether or not to prosecute. Mr Underwood asked Mr Carey if he gave any consideration as to whether RC Atkinson could be advanced as a witness of truth in the prosecution of Marc Hobson [in light of the allegations that RC Atkinson tipped off a suspect]. Mr McCarey said that he did not give this consideration as he did not deal with the murder file [he only dealt with the neglect complaint file – which was the file that included the allegations against RC Atkinson].

Day 66: Thursday 18th September 2009

The first witness to give evidence on day 66 was Kevin McGinty, a legal advisor to the Attorney General on issues relating to Northern Ireland. Mr Underwood QC, Inquiry Counsel, asked Mr McGinty a number of questions about the information he received from the office of the Director of Public Prosecution Service (DPP) regarding Andrea McKee and her non-attendance at Craigavon Magistrates Court on 22nd December 2003. From Mr McGinty's responses, it appears he was not aware of poor record keeping by Mrs McKee's GP and that Mrs McKee's doctor had not recorded a home visit he made to her home in December. In addition, Mr McGinty indicated that he was not aware of the detail in which Andrea McKee had described a visit to Pendine Park out-of-hours doctors' surgery on 19th December 2003.

In relation to the R v Atkinson, Atkinson & Hanvey case, Mr McGinty was of the opinion that there was no reasonable prospect of prosecution due to issues with Andrea McKee's credibility being viewed as questionable after police could not verify her visit to Pendine Park (Mr McGinty learned of issues with Mrs McKee's credibility from the DPP).

During questions from Mr Emmerson QC, representing the DPP, it was indicated that Mr McGinty would have received a note of events made by Ivor Morrison in relation to Mrs McKee's non-attendance and events relating to the R v Atkinson and Others case as one of a number of pieces of information he was sent about the case. Mr Morrison's note included information about the home visit made by Mrs McKee's GP on 11th December 2003, information

about her reference to Pendine Park as well as other information. Mr McGinty explained that the question in his mind was whether or not Andrea McKee had given sufficient justification for not appearing in court as he accepted that Mrs McKee's child was sick (although he did not feel her son's sickness on 22nd December as recorded by her GP was as serious as what the Resident Magistrate was told of the child's illness on the same date). When asked, Mr Ginty confirmed that nothing he had heard during the Inquiry hearing [such as detail that Mrs McKee provided about her visit to Pendine Park in 2003] changed the advice that he would have given to the Attorney General regarding the R v Atkinson case.

In response to further questions from Mr Underwood QC, Mr McGinty confirmed that he believed the current Attorney General's view on the Robert Hamill Inquiry's terms of reference was that they should not incorporate the DPP, a view which he [Mr McGinty] shared.

The second witness on day 68 was the Director of Public Prosecutions, Sir Alasdair Fraser. Sir Alasdair confirmed that the test for prosecution would not vary if the defendant was, for instance, a police officer, or if the trial was held in a Diplock Court. He also emphasised that the test for prosecution addresses the likelihood of a conviction before an impartial tribunal of fact.

Mr Underwood highlighted that before Timothy Jameson and Tracey Clarke provided their witness statements to police in May 1997, they had responded to a standard questionnaire police constructed in relation to the incident in which Robert Hamill was attacked. Mr Underwood said that the answers which these witnesses gave in their questionnaires conflicted with what they had told police in their statements. Sir Alasdair said that he was not aware of this. However, Sir Alasdair was aware of the allegations against RC Robert Atkinson. Mr Underwood pointed out that neither Timothy Jameson nor Tracey Clarke had the inconsistencies in their evidence put to them by police officers, nor were the allegations against RC Atkinson put to him. Mr Underwood asked Sir Alasdair about the practice whereby counsel held a consultation with a witnesses and tested the witness by reference to other matters. Sir Alasdair said that counsel could examine the scope of a witness's evidence, the clarity of their recall or assess their credibility. In relation to the Robert Hamill case, Sir Alasdair said that he instructed Mr Davison to instruct Mr Kerr QC to gauge the credibility of Tracey Clarke and Timothy Jameson whereas he instructed Mr Simpson QC to look at RC Atkinson's credibility.

Mr Underwood went through the evidence existing in relation to Andrea McKee's admission that she and her husband Michael provided a false alibi for a phone call between RC Atkinson's home and the home of suspect Allister Hanvey. After taking time to highlight individual pieces of evidence, Mr Underwood asked Sir Alastair if he was faced with having to make a decision in the R V Atkinson, Atkinson and Hanvey case about advancing Mrs McKee as a prosecution witness [as the prosecution withdrew her evidence in 2004], would he make the same decision again. Sir Alastair said in all honesty, looking back he would 'say yes' and reach the same conclusions.

Mr McGrory QC, representing the Hamill family, asked questions about meetings between the investigation team and the DPP in the early stages of the murder investigation. Mr McGrory highlighted that the police knew of the phone call between the Atkinson and Hanvey homes as early as 16th May 1997. Sir Alastair was of the belief that he first became aware of the telephone records in February 1998. When asked why the DPP were meeting with the police Sir Alastair explained that the prosecution had to be satisfied that they could connect the suspects with the crime when seeking further remand of the suspects who were in custody. He also indicated that prosecution counsel could have been providing prosecutorial advice which would assist police.

Mr McGrory highlighted that Sir Alastair was of the opinion that the DPP should have been informed of Andrea McKee's role in relaying what her niece, Tracey Clarke, had told her about RC Atkinson; and that the DPP should also have been informed that Mrs McKee accompanied Ms Clarke to give her statement to police which contained allegations against RC Atkinson. Mr McGrory asked a series of questions regarding the DPP's decision to withdraw the prosecution case against RC Atkinson [for conspiracy to pervert the course of justice] on 18th March 2004. In his responses, Sir Alistair appeared to indicate that the DPP had taken Andrea McKee to have provided 'a truthful account' in relation to her allegations that she had been involved in a conspiracy to provide RC Atkinson with a false alibi, but that her credibility was doubted because of her explanation about a visit to Pendine Surgery. Mr McGrory then went on to highlight that Sir Alistair was of the opinion in 2004 that Andrea McKee may still have been believed on the main issue at trial. Sir Alistair elaborated that at this stage he was inviting counsel to talk to Mrs McKee again as he needed to be sure that every proper step to advance the case had been taken.

During questions and responses regarding Andrea McKee's credibility, Mr McGrory recited the decision of McDermott J in the case of Sayers and Others (also known as the Crockard supergrass case). Extracts from this judgement show that McDermott J concluded that a person's evidence is important as opposed to a person's character, but that a person's character should be examined 'in order to form a view as to whether or not their evidence is credible'. Sir Alastair said that in relation to Andrea McKee he was applying the test for prosecution and that part of the test for prosecution was whether or not a prosecutor can adduce credible evidence [from a prosecution witness].

Mr McGrory highlighted a document from 30th August 2002 in which Mr Simpson QC detailed evidence which supported Andrea McKee's admission that she had provided RC Atkinson with a false alibi. As a result, Mr McGrory asked why Mr Simpson's opinions were revisited on 18th March 2004; however, Sir Alasdair could not recall. Mr McGrory then said that Mr Simpson's opinions expressed in the document from 2002 were not sent to the Attorney General's office and that there was no evidence that the opinions were reconsidered. Mr McGrory said that Mr Simpson may have been of the opinion that there was no point in repeating what he had

said previously when he gave his second opinion, however Sir Alasdair could not comment on what Mr Simpson's thoughts may have been.

Mr McGrory suggested that when the Attorney General conveyed that Andrea McKee's guilty plea was significant for the prosecution case in R v Atkinson and Others, that: a) Mr Simpson should have been asked to review his opinion; and b) there should have been some discussion between Sir Alasdair and Mr Simpson about that. Sir Alasdair said that this was Mr McGrory's opinion and he did not accept it.

Mr Daly, representing Andrea McKee, suggested that there was no appetite in the office of the DPP for prosecuting RC Atkinson and his wife and Kenneth Hanvey. Sir Alasdair said that this was a question without foundation and he did not accept this statement.

During questions from Mr Emmerson QC, representing the Public Prosecution Service (PPS, formerly the DPP), Sir Alasdair agreed that the decision not to prosecute in the R v Atkinson and Others case was 'a finely balanced judgement' and one that he approached with caution. Mr Fraser also agreed that without Mrs McKee's evidence, prosecution of others for the Atkinson alibi conspiracy could not proceed regardless of the supporting evidence which was highlighted by other counsel (e.g. telephone records, taxi records etc). In addition, Sir Alasdair explained that if the committal hearings for the R v Atkinson and Others case had proceeded but the Resident Magistrate decided to terminate the committal proceedings and the DPP disagreed with it, then he [Sir Alasdair] could have asked the Attorney General to present a Bill of Indictment to the Crown Court or applied for a judge's bill [for the case to continue].

Mr Underwood QC took the opportunity to ask further questions in light of Sir Alasdair's responses to questions from other legal representatives. Mr Underwood suggested that Sir Alasdair's position could be summarised as follows:

"... if counsel had asked you what they were to tell the magistrate on 19th March [2004] about what had transpired between the police, your office and Mrs McKee about what she had said on 22nd December [2003], you would have instructed counsel to be completely candid with the court?"

Sir Alasdair's response was 'yes'. Mr Underwood asked if the court would also have been told that no step was taken to go back to Mrs McKee's GP and test an account that she had given on 9th January 2004. Sir Alasdair indicated that if this had been seen as an error which was relevant to the proceeding [failing to check that latest account with Mrs McKee's GP] then neither he nor his colleagues would be slow to accept responsibility.

After Sir Alasdair finished giving his evidence, Mr Underwood highlighted a number of new documents relating to the DPP which had been found by the PPS legal team as they were being presented as evidence for the purposes of the Inquiry.

Day 67: Monday 21st September 2009

The first witness on day 67 was Robert Langdon, a retired civil servant who was asked to write a report into the Robert Hamill case in 2000 with a view to exploring the potential for a public inquiry.

A particular focus of Mr Langdon's evidence was a memorandum he made on 24th July 2000 in which he recorded notes of a meeting with the former Chief Constable of the RUC, Sir Ronnie Flanagan, on 21st July 2000 which included the following passage:

"I asked what had precipitated the new criminal investigation [relating to the Atkinson conspiracy] the chief constable said that when the coroner had given 'the gem' to Robert Hamill's family solicitors he himself had squad 'pushed and pushed', and the re-interview of Mrs McKee followed directly from that. ('The gem' is presumably the information that statements identifying the murderers had been withdrawn)."

Mr Underwood QC, Inquiry Counsel, questioned Mr Langdon his reference in the memorandum that "the gem" that had been disclosed to the Hamill family and whether this information had resulted in the re-interview of McKee or rather whether it was the allegation against the Police officer in question which "precipitated the change in stance". Mr Langdon indicated that it was difficult to remember but he believed that the precipitating incident was the collapse of the inquest into Robert Hamill's death.

During questions from Mr McGrory QC, representing the Hamill family, Mr Langdon said that that he could recall comments made by the Chief Constable that Robert Hamill may have been starved of oxygen because of family members cradling his head. Mr McGrory indicated that in relation to the issue of the "gem", the Hamill family had been "well aware that eye-witness statements had been withdrawn" and asked the witness if he agreed that the "gem" was actually the information regarding Reserve Constable Atkinson and the "tipping off of Allister Hanvey" which was "news to the Hamill family". Mr Langdon conceded that this contention sounded "persuasive" but stated that he couldn't be sure.

In addition, Mr McGuinness, representing Sir Ronnie Flanagan, asked a number of questions about the contents of Mr Langdon's memorandum. Mr Langdon reiterated that he had a 'clear recollection' of Mr Flanagan making a comment regarding the 'cradling' of Robert Hamill's head while making a cradling gesture. Mr Langdon's note also documented that Mr McBurney had also suggested this in a separate meeting, however he could not remember Mr McBurney's statement with the same clarity as he could Mr Flanagan's. The Witness also affirmed his contention within the note that Mr Flanagan had been of the opinion that his force was being 'unfairly pilloried' and stated again that although some of his memory of the events was now unclear, he had "no reason to doubt" what he had written at that time. Mr McGuinness later said that he was 'obliged to formally suggest' that Mr

Flanagan's evidence indicated that he made no such statement regarding oxygen starvation due to the cradling of the head, however Mr Langdon remained firm that his recollection was that Sir Ronnie did and he confirmed he did not challenge Sir Ronnie on this comment as he did not see it as his job to challenge him [Sir Ronnie].

On the issue regarding the dissemination of the piece of information in Mr Langdon's notes dated 24th July 2000 referred to as the 'gem', Mr McGuinness outlined that Mr Flanagan had given evidence that 'gem' was 'not a word he would use'. Mr McGuinness then suggested that the word used was 'gen', a colloquial term for information and the Witness agreed that it was possible that he may have misheard Mr Flanagan.

The second witness on day 67 was Colin Murray, an independent policing expert engaged by the Robert Hamill Inquiry in 2005 and who has produced two reports for the Inquiry. Mr Underwood began by highlighting that Mr Murray had made a number of revisions to his reports. Such revisions included Mr Murray retracting a conclusion he had drawn that DCS McBurney had been criminally negligent and the suggestion the DI Irwin had assisted Andrea McKee in perverting the course of justice.

Mr Wolfe QC, representing the Police Service of Northern Ireland (PSNI) raised a number of questions about Mr Murray's credentials as an independent policing expert. From his questions and Mr Murray's responses, it was apparent that the role as police expert for the Inquiry is the first such instance in which Mr Murray has been given the title and he gained his policing experience by working in Kent Constabulary in England.

In addition, Mr Murray stated when questioned that he had not found any evidence of sectarianism on the part of the Police officers in this case and that if he had, he would have commented upon it.

Mr Adair QC, representing a number of individual police officers, questioned Mr Murray on the content of one of his reports where he appeared critical that RC Robert Atkinson and Allister Hanvey were not arrested following the corroboration by virtue of the telephone records of the hearsay allegation by Tracey Clarke. Mr Murray confirmed that he had been critical. Mr Adair suggested that any such arrests would have put Tracey Clarke in danger, as 'it would have been absolutely clear where the information had come from'. Mr Adair queried, even if such arrests were made and the suspects did not cooperate, where would the investigation have gone from there? Mr Murray conceded that "without admissions, [that line of enquiry] was never going to proceed".

Mr Murray went on to agree that the RUC tried to bring to account the perpetrators of the murder but stressed that there were still "lapses and failures" on the part of the Police. Mr Adair then asked Mr Murray about the consideration he had given to witness P39 and Mr Murray stated that while he did not doubt that P39 pursued the investigation in the best way she could, he had some criticisms regarding her approach, for example, the lack of

paperwork kept and the absence of instruction on her part regarding crime scene officers, forensic scientists and photographers.

Mr Adair pressed this point and outlined many aspects of the investigation, which had been carried out by P39. He described her daily briefings, the immediacy with which she attended the police station and crime scene, her involvement with crime scene officers and photographers, her briefings by Inspector McCrum and DC Keys, her instruction to the officers in question to provide detailed statements etc. After each point he asked Mr Murray if that was good police work and the Mr Murray responded positively.

In relation to the Mr Murray's critique that P39 did not keep a policy book on the case, Mr Murray described how P39 did in fact keep a journal outlining pertinent details of the case, which she later destroyed for security purposes. Mr Adair also suggested to Mr Murray that, considering there was no policy in force which requiring P39 to keep a policy book, she could not be criticised for not doing so, which Mr Murray conceded.

Mr Murray's evidence was continued on day 68.

Day 68: Tuesday 22nd September 2009

The first witness to give evidence on day 68 was Colin Murray, an independent policing expert engaged by the Robert Hamill Inquiry who was continuing his evidence from day 67.

In all, whilst Mr Murray was critical of the murder investigation and discussed the importance of gathering names and forensic evidence in the immediate aftermath of a serious incident, his report to the Inquiry concluded that whilst the murder investigation was ineffective in bringing Robert Hamill's murderers to justice, he believed that the RUC did attempt to bring those responsible for the murder to justice. Other points of note in the report's conclusions are summarised as follows:

- Inspector McCrum and P39 failed in their duty for a number of reasons outlined in the body of the report.

- The failure of DCS McBurney to properly investigate the alleged misconduct

of RC Atkinson contributed to the failure to bring anyone to justice for the murder of Robert Hamill.

- Whilst the RUC were hindered by the lack of witnesses willing to provide evidence and mistakes can be made in a murder investigation, certain acts/omissions by officers [outlined in the body the report] contributed to the failure to successfully prosecute suspects.

Mr O'Connor, representing Mr McCrum, tried to ascertain what Mr McCrum had done wrong or should have done when asking questions. In his responses, Mr Murray outlined that there was a lack of intrusive supervision of the assault scene on the part of Mr McCrum and that given the scale of this incident [within the eight month period of incidents in Portadown that Mr Murray looked at] he would have expect Mr McCrum to have talked to the

officers in the Land Rover. Mr Murray added that in the evidence he had seen that there was nothing that merited Mr McCrum leaving Portadown immediately after the incident. Mr O'Connor highlighted that Mr McCrum had sent officers to obtain the victims' clothing from Craigavon hospital but that both officers deny being told this; in response Mr Murray emphasised that if Mr McCrum had set a number of things in motion he should have ensured they were done.

Before proceeding to the next witness, Inquiry Counsel, Mr Underwood read statements of a number of individuals out who, for a variety of reasons, would not be attending to give oral evidence at the Inquiry. The statements included those of:

- Mr Annesley a driver for Call-a-Cab in Portadown on the night of the Robert Hamill murder.
- Elizabeth Irene McKee a telephone operator at Call-a-Cab at 16 West Street Portadown.
- Connor Black. He was in the area in and around the time of the Robert Hamill murder although had no memory of any of the events, but remembered talking to Kyle Magee at Call-a-Cab.
- An interview of Philip Curran. Mr Curran and Mr Gray were walking together and encountered Mr Currie on the night of the attack on Robert Hamill and were also in the area near where the attack took place.
- Statement of Michelle Jamison, who was in the vicinity of the attack on Robert Hamill.
- Beatrix Campbell, a journalist who wrote a piece in The Guardian about Mr Hamill which in general terms dealt with how she got the information for the article.
- Statement of Father Sean Dooley who was the recipient of an anonymous phone call about the attack on Robert Hamill and was one of a number of priests that helped the police with their investigations in the Catholic community [as there was a level of distrust of the police in that community].
- Statement of Maurice Hewitt, who was the conduit through which the document produced by witness P42 of what P42 alleged he saw from his home of the conflict in Portadown [in which Robert Hamill was attacked] was brought to the police.
- Statement of Mr Hughes , the wholesaler, or designer, of the silver jackets that may or may not have been sold to a shop called Paranoid in Portadown in which Tracey Clarke purchased a jacket for Allister Hanvey.
- The interview of David Gray who was in the vicinity of the attack on Robert Hamill.
- Transcript of Robert Jameson's Inquiry interview. He was asked about the circumstances, amongst other things, in which his son had come to instruct a solicitor before being interviewed by the DPP and prosecution counsel about his witness statement.

Statements of a number of police officers were also read out during the hearing. The purpose of reading these statements out was that the statements contained pieces of information which were connective between pieces of evidence and useful to highlight so that people are able to 'join the dots'.

The second witness on day 68 was Simon Rodgers who worked in the policing department of the Northern Ireland Office (NIO) in 1997 and was an advisor to the Secretary of State, Mo Mowlam, on policing issues (specifically police complaints).

Mr McGrory QC, representing the Hamill family, suggested that Dr Mowlam was misinformed by the chief constable regarding the murder investigation. Dr Mowlam wrote to the Chief Constable, Sir Ronnie Flanagan, on 28th November 1997 about the investigation into Robert Hamill's murder after she had been approached by Robert Hamill's family – the letter said:

"I should be grateful, therefore, if you would supply me with as much detail as possible on the points in the attached letter and annex so that I can reply to Diane Hamill."

It was confirmed that the Secretary of State had a statutory power [legislation not specified in transcript but assumed to be Section 8 (2) of the Police Act 1997] to have access to this information. Mr McGrory highlighted that Dr Mowlam had been informed about the 'tip off allegation' [which was the allegation that RC Atkinson had communicated with a suspect] by the Hamill family. In a response to her letter from the Chief Constable, Dr Mowlam was informed:

"This [tip-off] allegation has been included in the criminal investigation and will be considered by the Director of Public Prosecutions."

Mr McGrory highlighted the fact, that the tip-off allegation was not included in the criminal investigation and that it was dealt with under the neglect complaint in a file separate from the murder investigation file, and that the allegation was not supervised by the Independent Commission for Police Complaints (ICPC). When asked by Counsel, Mr Rodgers confirmed that he was surprised to learn the tip-off allegation was not included in the investigation. He went on to indicate that the Secretary of State would have expected the ICPC to have supervised every aspect of the investigation.

The third witness on day 68 was Paul Donnelly, former Chairman of the Independent Commission for Police Complaints (ICPC) from 1997 until it was replaced by the office of the Police Ombudsman in 2000. Mr Underwood QC asked questions to ascertain how the ICPC became involved in the investigation of the murder of Robert Hamill. Mr Donnelly's responses conveyed that the ICPC became involved in the investigation as a result of the RUC making a referral to the ICPC [however, they only supervised the investigation from the aspect of the neglect allegations against the officers in the Land Rover]. Mr Underwood summarised Mr Donnelly's views as expressed in his witness statement as being:

- 1) That the ICPC should have supervised the investigation into the allegations that RC Atkinson tipped-off a suspect.
- 2) That it did not surprise him that the ICPC did not supervise the

allegations against RC Atkinson as it would have been 'counter-cultural' for the ICPC to have been involved [indicating that they would not proactively get involved in the absence of a specific referral from the RUC or a complaint about the RC Atkinson tip-off allegation].

Mr McGrory QC highlighted that a note exists which records Greg Mullan telling Kevin Murnaghan (both of the ICPC) not to continue supervising the Atkinson allegation as it was beyond Mr Murnaghan's [and therefore the ICPC's] remit. Mr McGrory asked if Mr Donnelly would have been consulted on whether or not the allegations were within the ICPC's remit. In response, Mr Donnelly said that he would have had several conversations with Mr Mullan as he had an interest in the case and that he could seek briefings in his role as Chairman, however he could not intervene in an investigation. Mr Donnelly was also unsure if these conversations would have taken place before or after the ICPC decided that the Atkinson allegations were not in their remit.

Further questions and responses conveyed that had Mr Donnelly been aware of the Atkinson allegation and the decision that it was not within the ICPC's remit, Mr Donnelly would have approached the Chief Constable and requested that the RUC referred the matter to the ICPC for investigation. Mr Donnelly said if the Chief Constable had resisted any such request then he [Mr Donnelly] would have approached the Secretary of State. Mr Donnelly's statement and further responses indicated that he believed there would have been a degree of scope for Mr Mullan and Mr Murnaghan to have widened their investigations to encompass the Atkinson allegation. His evidence and statement also showed that he was of the opinion that the RUC may have been afraid of community tensions unravelling as the RUC investigated police officers in the Land Rover, as he believed that the officers, and 'certainly Mr Atkinson', had considerable local connections.

The final witness on day 68 was [David] Kenneth Armstrong, an independent policing expert who has prepared two reports to the Inquiry. Mr Underwood QC, Inquiry Counsel, asked Mr Armstrong about Mr Murray's criticism of the RUC. Mr Armstrong outlined that changes have taken place within the organisation policing Northern Ireland in terms of training and the dedication of resources to investigate a crime such as an attack on Robert Hamill (for example he explained dedicated facilities or an investigation team would not have been readily available, therefore officers would have to be taken away from other duties and assigned to murder investigations). Mr Armstrong also said that he believed the RUC to be professional and an efficient police service that worked without fear or favour. He provided statistics produced by the RUC to support this view.