

*Return to an Address of the Honourable the House of Commons
dated 1st April 2004
for the*

**Cory
Collusion Inquiry
Report**

Robert Hamill

Ordered by the House of Commons to be printed 1st April 2004

© Parliamentary Copyright 2004

The text in this document (excluding the Royal Arms and departmental logos) may be reproduced free of charge in any format or medium providing that it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Parliamentary copyright and the title of the document specified.

Any enquiries relating to the copyright in this document should be addressed to The Licensing Division, HMSO, St Clements House, 2-16 Colegate, Norwich, NR3 1BQ.
Fax: 01603 723000 or e-mail: licensing@cabinet-office.x.gsi.gov.uk

Foreword

I was asked by the Government of the United Kingdom to investigate allegations of collusion by members of the security forces in the context of the deaths of Patrick Finucane, Robert Hamill, Rosemary Nelson and Billy Wright and to report with recommendations for any further action. These four reports are the product of my investigation.

It is important that I should make clear what I have taken my task to involve. My task was not to make final determinations of fact or attributions of responsibility. I had the preliminary role of assessing whether there is a case to be answered as to possible collusion, in a wide sense, by members of the security forces in these deaths such as to warrant further and more detailed inquiry. It necessarily follows from this role that my findings are provisional only, and cannot be taken to be final determinations of any matter. It is right that this point should be emphasised at the outset, in fairness to the individuals referred to in the reports.

The nature of the task which I undertook was reflected in the nature of my investigation in each case. My investigations took the straightforward form of scrutiny of the documentary evidence which exists in relation to each of these cases. Given the preliminary and provisional nature of the task assigned to me, and the desirability of arriving at recommendations expeditiously, it was not necessary or appropriate for me to hear any oral evidence from the individuals referred to in my reports. Obviously, before any final findings of fact or determinations of responsibility could be made, it would be necessary for individuals to have an opportunity of answering any potential criticisms which might be made of them.

For the reasons which I have given in my reports, I have found that in each of the four cases the documentary evidence indicates that there are matters of concern which would warrant further and more detailed inquiry.

Robert Hamill

Preface	2.1
The flash point: the intersection of Thomas Street and Market Street	2.8
Robert Hamill the victim	2.10
The explosion at the flash point	
A. Introduction	2.11
B. Testimony at the Mr P trial	
i. Testimony of civilians	2.19
ii. Testimony of police officers	2.30
iii. Radio police logs	2.72
iv. The injuries suffered by Robert Hamill	2.75
v. The judgment of Lord Justice [name redacted]	2.79
C. Statements	
i. Statements of civilians	2.86
ii. Statements of police officers	2.111
D. Inconsistencies	2.122
The subsequent police investigation	
A. Investigation into the assault/murder of Robert Hamill	2.126
B. Press Releases	2.129
C. Internal disciplinary proceedings	2.136
Conspiracy to pervert the course of public justice: the conduct of Reserve Constable B	2.174
Other disquieting aspects of the conduct of Reserve Constable B	2.219
Collusion	
A. The definition of collusion	2.222
B. Importance of the police force to the community	2.228
C. What actions of the police could constitute collusion?	
i. The conduct of Reserve Constable B	2.231
D. Other aspects of police conduct a Public Inquiry might wish to explore	2.237
i. The warning of Mr V and the movement of the Land Rover	2.238
ii. What could be heard inside the Land Rover?	2.240
iii. Why were the officers in the Land Rover unaware of the identity of the members of the Protestant participants in the riot?	2.242
iv. Failure to seal off the scene and take blood and liquid samples when the police were advised that the injuries to Hamill were life threatening	2.243

v.	The release of Mr J	2.244
vi.	Mrs X and her presence during the time that Witness “A” gave her statement to the police	2.245
vii.	The failure to proceed with and follow up on tests of blood and liquid found at the scene	2.247

Appendix A Map of Portadown Town Centre

Appendix B Map of the junction between Thomas Street and Market Street

Preface

- 2.1 The terms of reference pertaining to this inquiry are precise and clear. I have no power to subpoena witnesses or compel the production of documents. It follows that I cannot make findings of fact based on the examination and cross-examination of witnesses.
- 2.2 My task is to review all the relevant papers pertaining to each case including the records of earlier investigations. In addition I may interview anyone I think can assist in the examination of the relevant documents. The aim of the process is to determine whether there is sufficient evidence of collusion between state security forces and those responsible for the murder of Robert Hamill to warrant a public inquiry.
- 2.3 At the end of December James O'Reilly was appointed to the Federal Court of Canada. He was a dedicated and able counsel who worked conscientiously and well on this Commission.
- 2.4 He will be an outstanding member of the Federal Court and contribute tremendously to their work. Yet I will sorely miss his cheerful presence and his indefatigable diligence.
- 2.5 Fortunately his co counsel Renee Pomerance has agreed to do all the work required of counsel. Like James O'Reilly she is a very able and dedicated counsel. She has already made a tremendous contribution and her work on the Hamill case provides yet another example of her constant diligence and cheerfulness despite the heavy burden of her work and tight time lines. I am deeply indebted to her.
- 2.6 As well I must express my gratitude to the team of independent police officers that was assembled to assist me in gathering documents relevant to the murder cases under review. The seven officers are Detective Inspector [name redacted], Detective Sergeant [name redacted], Detective Sergeant [name redacted], Detectives [name

redacted], [name redacted], [name redacted] and [name redacted]. They too have worked cheerfully, diligently and with great efficiency to ensure that I had or was able to read every document that was relevant to this inquiry.

- 2.7 The Police Ombudsman's office has been extremely helpful and the Police Service of Northern Ireland (PSNI) has cooperated fully. I would like to particularly thank Acting Detective Superintendent [name redacted] for his exemplary cooperation.

The flash point : the intersection of Thomas Street and Market Street

- 2.8 It seems archaic and unfortunate to refer to the groups involved in this Saturday night brawl by their religion. Yet it is the designation often employed in Northern Ireland. I have, with regret and misgivings, used it to designate the two groups involved in this fatal affair.
- 2.9 Location is of prime importance for real estate of any kind whether industrial, commercial, residential or sectarian flash point. The intersection of Thomas and Market Streets in Portadown was, in Northern Ireland, destined to be so described. On Thomas Street, a little over 900ft from Market Street, was St Patrick's Hall. On a Saturday, young Catholics would gather there for an evening of dancing and drinking. Similarly young Protestants would meet for the same pleasurable purposes at the Portadown Rugby Club or at the Coach Inn, Banbridge. From there a bus would pick them up and drop them off at Bridge Street. The Protestants would then walk along High Street and into Market Street, and pass Thomas Street on the way to their homes. The Catholics would have to cross Market Street at Thomas Street to get to Woodhouse Street in order to reach their homes. Thus these groups would in all likelihood meet each other at the intersection of Thomas and Market Street.

Robert Hamill the victim

2.10 On 27 April 1997, when he suffered his fatal injuries, Robert Hamill was a twenty five year old construction worker. He had lived with his fiancée for several years. They had two handsome boys, Shane who was six years old and Ryan who was four, and they were expecting a third child. On the evening of 26 April, he had gone to St Patrick's Hall with his cousins Siobhan Girvan and Gregory Girvan and Gregory's wife Joanne Girvan. There he would have had a few drinks, listened to the music and perhaps danced. The music stopped at about 1.20am. Shortly after, Robert Hamill together with Siobhan, Joanne and Gregory Girvan left the Hall. They started down Thomas Street towards Market Street. They intended to cross Market Street and then to continue along Woodhouse Street to their homes. Joanne thought there were a couple of people on the other side of Thomas Street who were also walking towards Market Street. Ordinarily reaching Market Street would simply signify the completion of a segment of the journey home. On this occasion it signalled the eruption of violence and ensuing tragedy.

The explosion at the flash point

A. Introduction

- 2.11 As in all explosive situations, events unfolded with such rapidity that they were difficult to describe. They were extremely confusing for both witnesses and participants in the events. It is not surprising that the statements and testimony of the witnesses are conflicting. Saturday 26 April 1997 was described by members of the RUC on duty as a quiet night in Portadown. Some time around 1.00am on 27 April the situation changed radically. An ugly and violent fight erupted in the centre of Portadown at the intersection of Thomas Street and Market Street. The fighting involved two different factions of a mob of some 50 people. The police estimated that the unruly group was composed of some 10 or 12 Catholics (Nationalists) and about 40 Protestants (Loyalists). The vicious drunken brawl could be properly described as a riot. As in any riotous situation the affair was difficult to control, incidents were impossible to describe with accuracy and the consequences were severe and tragic.
- 2.12 The police statements indicate that Saturday night sectarian brawling was common in Northern Ireland. There was such an air of certainty to this event in Portadown that police patrols were briefed and positioned with a view to prohibit or at least inhibit the extent of the violence. It was for this purpose that an RUC Land Rover containing a team of four officers was briefed to take up a position at the intersection of Thomas and Market Streets on the night of 26/27 April 1997. This was known as a site of frequent if not regular Saturday night sectarian violence and thus was known to the police as a flash point for violence in Portadown.
- 2.13 A summary follows of the testimony and statements of witnesses to the brawl.
- 2.14 This summary is based on two evidentiary sources. First, a number of people testified at the 1999 trial of Mr P, who was acquitted of murdering Robert Hamill but convicted of the offence of causing an affray. Mr P had been arrested for the murder on 10 May 1997 along with various other individuals, including Mr Q, Mr J, Mr O,

Mr R and Mr G. However, because two crucial witnesses were unwilling to testify, (Witness “A” and Witness “B”) there was insufficient evidence on which to proceed against the other suspects.

- 2.15 Secondly, several individuals who were not called to testify at the Mr P trial gave statements to the police, often on more than one occasion. These statements are also extremely helpful in trying to piece together the material events leading to Robert Hamill’s death.
- 2.16 Finally, two maps are attached. The smaller scale map shows the general location of the intersection of Market Street with Thomas and Woodhouse Streets. The other larger map shows the intersection in greater detail.
- 2.17 First I will review the evidence given at the Mr P trial and then the out-of-court statements.
- 2.18 The review of the evidence of the incident may appear tedious. Yet it is important because this is the incident which led to the death of Robert Hamill and gave rise to not only the trial of Mr P but this Inquiry.

B. Testimony at the Mr P trial

i. Testimony of civilians

Gregory Girvan

- 2.19 In his testimony, Gregory Girvan described the evening of 26 April 1997 at St Patrick’s Hall on Thomas Street with his wife Joanne, his sister Siobhan, and their cousin Robert Hamill. When the music stopped, they all left the hall and headed straight down Thomas Street towards Woodhouse Street on the way to their homes. He stated that he noticed a few people at the junction of Thomas and Market Street. However he also noticed a Land Rover at the top of Woodhouse Street in the lay-by. He did not believe that the vehicle was in the position shown by the police in their statements. However it will become apparent that the Land Rover was moved three times by the police officers during the course of the evening. All the locations were

close together on what I will refer to as the northerly side of Market Street on either side of Woodhouse Street.

- 2.20 In any event the next thing Girvan recalled was waking up in Craigavon Hospital at approximately 2.00am. He had a cut on his head and a couple of marks on his face and lower body.

Joanne Girvan

- 2.21 She testified that she left the Hall with her husband Gregory, his sister Siobhan and Robert Hamill about 1.20am. Together they went down Thomas Street towards Market Street. She saw a couple of people across Thomas Street walking in the same direction towards Woodhouse Street. She saw a police Land Rover at the intersection. It was facing towards the bottom of the town (looking down Market Street towards High Street and Castle Street). She said that it was not blocking Woodhouse Street and was quite close to the Halifax Building Society which is located on the right side of the junction. This would place the Land Rover across Market Street and on the right hand side of Woodhouse Street looking north from the intersection.
- 2.22 She stated that out of 'nowhere' a crowd of 20-30 people gathered around her. She remembered that Gregory was lying unconscious directly outside the Eastwood Clothing Store which is on the left hand side of Thomas Street at the intersection of Market Street. She saw that Robert was unconscious and lying across the road towards the No. 7 Home Bakery on Thomas Street. She explained that she lay on top of Gregory, kept her head down and screamed for an ambulance or for someone to help. She had no recollection of whether the crowd that gathered around her and her husband came from the right or the left. Eventually an ambulance arrived on the scene. At this time a police officer told her to place her husband in the recovery position on his side. She saw that Robert Hamill was still lying unconscious across the road. The crowd had not yet dispersed. She did not see any of the police leave the Land Rover nor did she see any confrontations between the police and others near the Land Rover. It was her perception that none of the officers left the vehicle until the attack was over and the ambulance had arrived.

Siobhan Girvan

- 2.23 Siobhan confirmed that the group left St Patrick's Hall at about 1.20am. They walked along Thomas Street towards Market Street and as they did so she observed two people at the bottom of Thomas Street and also saw what she described as a "police jeep", clearly a reference to the Land Rover.
- 2.24 The people she saw were standing near the bakery (No. 7 Home Bakery) on the right hand side of Thomas Street approaching Market Street. She said the police vehicle was just across the road and could be seen from Thomas Street. She said it was just beyond the mouth of Woodhouse Street and was towards the Halifax Building Society on the right hand side of the intersection of Market or High Street and Thomas Street. Actually the Halifax Building Society is located on the corner of Woodhouse Street and Market Street.
- 2.25 She said a crowd appeared from nowhere and started attacking them. She could not remember whether they came from the right or left side. She saw Robert lying on the ground and 20 or 30 people were kicking at him in the head and shouting "die you bastard." She took her coat off and put it under his head. She looked across and saw Joanne lying on top of her husband Gregory. She said that Robert was lying close to the centre of the street whereas Gregory was closer to the footpath or sidewalk of the Eastwood store. She ran to the police jeep and banged on the side of the vehicle asking them to get out and help. She said that she got no response and then ran back to Robert. At some point an ambulance eventually arrived. Like Joanne Girvan, Siobhan did not see any officers get out of the Land Rover, nor did she see any officers trying to break up the fights or the groups.

Mr H

- 2.26 Mr H testified that he was at the St Patrick's Hall with his girlfriend. When he walked home along Thomas Street he saw Robert Hamill, Gregory Girvan, Joanne and Siobhan moving in the same direction. Robert was walking in front of him while the others were behind him.

- 2.27 He saw a police Land Rover parked just outside the Halifax Building Society. He said that the back was facing towards the Eastwood Clothing shop because the Land Rover was parked on an angle. He did not see the Land Rover move from that position. At some point “a whole squad” appeared out of nowhere and jumped Robert saying “get him get him”. At that time Robert was close to the junction of Thomas and Market Street on the side where the bakery is located. He altered that slightly on his cross examination and said that Robert was “just a wee bit down from Eastwood Clothing at the time of the attack”. He added that neither man was attacked outside the bakery. He said that Robert was knocked to the ground and was being kicked while the crowd shouted “kill the Fenian bastard”.
- 2.28 Girvan ran down to try and help but he too was knocked to the ground just outside of the Eastwood Clothing store. Mr H did not see anyone lying on the ground outside the bakery. He said that both Hamill and Girvan were on the side of the street where the Evans business and Eastwood Clothing is located. Mr H thought that the crowd came from his left hand side but he added that it all happened very quickly. He said the attack seemed to last about 10 minutes. He tried to help and ran into the middle of the crowd. He said that there were no police around until after Robert had been beaten up. The police did not arrive during the 10 minutes that the assault took place. When two officers did come to the scene they tried to break the crowd up. The crowd was still kicking at Robert when the police arrived. He said that the police took one fellow and brought him down towards the Land Rover. This person was wearing a Rangers scarf and had been one of the people kicking Robert. Within a short time he saw this man get out of the Land Rover and go back out onto the street. Mr H complained about this to a policewoman and asked her whether the man’s name was known to the police and said to the officer “I hope you got his name”. Mr H did not know any of the people that were involved in the attack. In his earlier statement to the police, Mr H said that he also told the female officer that the man released from the Land Rover was one of the persons who had been kicking Robert. He did not give this precise evidence at trial, perhaps because he was not asked to elaborate on what he had said to the police woman.

Ambulance Driver A

2.29 The ambulance attendant Ambulance Driver A testified that at about 1.52am he received a call to attend at the town centre and at 1.58am he arrived at the scene. He observed two rival factions who were throwing missiles and kicking at the ambulance. He noticed the presence of the police Land Rover and that there were police officers about. He noticed a male lying on the right hand side of the road near Eastwoods and this person he later identified as Robert Hamill. He noticed a bottle lying beside him. At the same time he observed another man lying on the road just to the left of the white line. This must have been Gregory Girvan. Both men were on the church side of Thomas Street and reasonably close to each other. He quite frankly agreed that he could not be precise about the location of the two men as his prime concern was taking care of their injuries. As they placed the two injured men in the ambulance the general fracas continued.

ii. Testimony of the police officers

2.30 There were four officers briefed for duty in the Land Rover which was stationed at the intersection of Market and Thomas Street. The senior officer and thus the officer in charge of the contingent was Constable A. The other officers were Reserve Constable B, Reserve Constable C and Reserve Constable D. Constable A occupied the driver's seat of the vehicle and Reserve Constable C was seated next to him in the front passenger seat. Reserve Constables B and D were seated in the back of the Land Rover. Of these four officers, only Constables A and B were called to testify at the Mr P trial. An officer from one of the back-up units, Constable E, was called to give evidence as well.

Constable A

2.31 Constable A testified that he was on public order duties in the early morning hours of 27 April. At that time it was anticipated that there would be Loyalists coming home from the Rugby Club and The Coach Inn at Banbridge and that there might be a confrontation with Nationalists coming up from St Patrick's Hall.

- 2.32 At 1.30am he parked the Land Rover in the lay-by on Market Street close to the Alliance and Leicester Building Society on the left hand side of the intersection of Woodhouse and Market Street. He said they were parked there for about five to 10 minutes. The town had been very quiet that night, however, within a few minutes people began coming up from High Street on the right hand side of Market Street in groups of twos or threes. He described them as walking up in “dribs and drabs”. He said that the Land Rover was then on Market Street, facing towards the Halifax building. He moved it so that he could have a better view of those coming up from Market Street because from the Land Rover he could see a group of people outside “Boss Hoggs” which was on the opposite side of High Street .
- 2.33 Officer A stated that as he began to move the vehicle a man (now believed to be Mr V) walked out across the road in front of the officers and appeared to mouth something to them. Officer A did not know what he said. However Officer C opened her door and asked the man to repeat himself. The man said that there were some people coming down from St Patrick’s Hall to Thomas Street. Quite apart from this warning I would have thought that the arrival of people from St Patrick’s Hall should have been anticipated at this hour of the morning. In any event, Officer A moved the Land Rover and looked down Thomas Street but he did not see anyone coming.
- 2.34 According to Officer A he was about to move from this position, drive down to the bottom of the town and turn back up to Thomas Street. He explained that there were a number of people coming up from the bottom of town and the officers wanted to check that area. However, it was then that two males approached from the direction of the Halifax building moving towards the mouth of the Woodhouse Street junction. They approached the man who had just walked in front of the Land Rover. According to Officer A it was at this moment that he moved the vehicle to its third and final position. Officer C opened her door of the Land Rover and told the two men to move on and they left moving in the direction of the Alliance and Leicester building. The man whom they had confronted proceeded on down Woodhouse Street. Officer A said at this time the Land Rover was slightly angled from the junction. From this vantage point, the occupants of the Land Rover would have had great difficulty seeing what was going on in Thomas Street. Constable A confirmed that the only two who could have kept an eye out for trouble on Thomas Street were the officers in the back

and even they would have had to strain their necks around to see out of the small window.

- 2.35 Constable A went on to say that the two males who had been told to move on approached the Land Rover. They came to the front passenger door and started having a sociable conversation with the officers telling them where they had been that evening. One of these men he identified as Mr R, who was holding a bottle of Old English Cider in his hand as they chatted.
- 2.36 Suddenly the door on the driver's side was opened and a man he had not seen before started pulling Officer A out of the vehicle. He was shouting "you sat there and did nothing, you sat there, watched that happening and you did nothing". There was a female somewhere behind him shouting the same sort of thing. Officer A maintained that he did not know what they were talking about. When he left the Land Rover he was facing the No. 7 Home Bakery. He saw a crowd of about 40 people at the junction of Thomas Street. These people were spread right across the road. They were standing in separate groups and there was a lot of "cat calling" going on between the two groups. The Protestant was the larger group and the Nationalists the smaller group of eight to 10 people. He said the Protestants were shouting "Fenian bastards" and the Nationalists were responding in kind. However, he said that he did not observe any physical contact between the groups when he left the Land Rover. Officer B and D both got out of the vehicle and Officer B came around towards Officer A. Officer A testified that as they were standing there four or five separate fights broke out across the street. One was outside Eastwood Clothing and one was close to the No. 7 Home Bakery.
- 2.37 Officer A said that he made his way to the fight that was going on near Eastwood's which involved three or four people against one. He said the lighting in the area was fine and he had no difficulty seeing the persons involved. He tried to break up the fight by removing one man, the victim, who was Catholic. He escorted this person over to Woodhouse Street and told him to get out of the area. He said the individual he escorted was in his 20's and had a cream or white leisure top on with a short zipper on the front below the neck. Later Officer A went on to say that this person just kept

coming back and had to be escorted back to Woodhouse Street at least three or four times.

- 2.38 Officer A said that as he was speaking to this person another man came up from behind and punched him in the face. Officer A said the man who struck him was a male in his late teens or early 20's and was someone that he had not seen before. He grabbed the man and kept asking his name but all the man would say was "I'm sorry". He was very intoxicated and according to Officer A "that was all that he could get out of him, he couldn't actually give me his name".
- 2.39 Officer A took him back to the side of the Land Rover but did not arrest him. Officer A later testified that he felt that he was not in a position to arrest anyone for assault at that stage. By this time bottles were being thrown and one smashed on top of the Land Rover. Officer C was standing at the vehicle and was on the radio.
- 2.40 Officer A said that fights were still going on and backup had not yet arrived. He looked for Officers B and D as he was concerned for their safety. He saw Officer B was involved in one of the fights in the area of the pelican crossing and he went to assist him. Officer A later said that while he had physically detained a youth whom he had seen commit an assault, he did not arrest that person because he was more concerned about the safety of the other two uniformed officers out in the street.
- 2.41 At some time, Officer A became aware that there was a body lying in the road outside of Eastwood's. He said that he had not seen the body earlier when he had gone to break up the fight. Still later he became aware of another body. In later testimony, Officer A insisted that "it was not possible" that Hamill was lying unconscious on the ground when he left the Land Rover. He testified that he was certain about that.
- 2.42 Officer A stated that, at one point, he was concentrating on getting Officer B out of a fight. He said there were five people involved. Officer B appeared to be trying to pull someone out of the fight and the crowd was trying to pull Officer B into it. After assisting Officer B, Officer A went over to the man lying outside Eastwood's whom he now knows to be Robert Hamill. He said Robert Hamill was lying on his back and there was liquid around his head which he subsequently came to believe was alcohol.

Robert Hamill's breathing was laboured and he was making a rasping sound. He said that Robert Hamill was alone at this stage and there was no one in his immediate vicinity.

- 2.43 Officer A remembered seeing a person standing near Robert Hamill's head and shoulders. This person appeared to be shouting. He swung his foot towards Robert Hamill in the direction of his head and shoulders. Officer A saw this very clearly. He described the person as being in his 20's with short hair, a "goatee beard", 5'8" or 5'10", wearing a waistcoat or sort of leather fronted coat with cloth arms on it. He repeated that the lighting was still very good. While in an earlier statement, Officer A stated that the man had "kicked" Robert Hamill, in his testimony, he was unable to say whether the person's foot actually hit Robert Hamill or not. Officer A said that he did not do anything about this person because he was involved in trying to split up yet another fight. Backup had not yet arrived.
- 2.44 Eventually Officer A saw Girvan lying outside No. 7 Home Bakery. He said one or two women were down beside him and were shouting for an ambulance. He said that Officer B told them that an ambulance was coming. He said fighting was continuing throughout this period. He saw the person who had swung his foot at Robert Hamill in another fight later that evening. Officer A went over to assist Officer B and realised that the person Officer B was fighting was the same man who had stood over Robert Hamill. Officer A struck him with his baton. He said that it took about one and a half hours for things to finally calm down.
- 2.45 When the ambulance arrived the Officers A, B and D were able to push the Loyalist crowd back and away from Robert Hamill. The crowd had started shouting and trying to get past the officers.
- 2.46 On 10 May 1997, Mr P was in an interview room and Officer A was asked whether Mr P was the same person he had seen on 27 April, standing over Robert Hamill and swinging his foot at him. Officer A agreed that this was the same person and he testified that he had no doubt on this aspect.

- 2.47 In his testimony, Officer A agreed that he had difficulty placing events in chronological order. He described one incident in which he saw two people approach each other on Thomas Street. One was armed with a piece of glass or had a bottle in his hand. At first Officer A suggested that the other man might have been Robert Hamill. However, he later retracted this suggestion, acknowledging that he was not close enough to identify either of the parties, who were 20 or 30 yards away from him. Ultimately, Officer A testified that he could not describe their age, height, clothing, or facial features, nor could he say when the encounter took place. All he could recall was that one person was holding a bottle or piece of glass in his hand.
- 2.48 Constable A did remember seeing Mr O at the scene, but did not see him take part in any assault. He knew Mr O because of a motor vehicle accident he had investigated. He did not see Mr O anywhere near the injured men or see him kick, punch or in any way attack anyone. Nor did he see Mr O talking to Reserve Constable B. He did remember that Mr O was wearing a tracksuit top that night.

Reserve Constable B

- 2.49 Reserve Constable B was a member of the team stationed in the Land Rover at the intersection of Thomas Street and Market Street in the early morning hours of 27 April 1997. He confirmed that this intersection was known as a flash point and it was quite normal to put a patrol out on Saturday nights. He stated that, at 1.30am, the Land Rover was at the point just in front of the Alliance and Leicester building facing down towards the town. He said they originally parked in the lay-by but then moved out in front of the Alliance and Leicester facing down towards the bottom of the town. He could not remember if the vehicle was facing straight down the road or at a slight angle. It was subsequently moved to a third position onto the give way line at the mouth of Woodhouse Street. He said that they were facing at a slight angle down the street.
- 2.50 He testified that when the Land Rover was moved to this third position there was a little more activity at the bottom end of town as more people were beginning to make their way home. He said that from the third position they could see the bottom of the town much better than they could at the lay-by. From the Land Rover the officers had

a clear view of the [pub – name redacted], which was of concern to them. However the officers could only see Thomas Street through the back doors or the side slots and thus it was difficult to see or observe any activity in Thomas Street.

- 2.51 He stated that there were people coming home in “dribs and drabs” from what the officers took to be two locations: the Portadown Rugby Club and the bus stop where people are dropped off who have been at the Coach Inn at Banbridge. He explained that people coming from the Rugby Club would be coming up from the bottom end of the town. Similarly the bus from the Coach Inn at Banbridge would stop at the bottom of the town outside the security barriers at Castle Street a little further down High Street. It was only on the rare occasions when the barriers were open that the bus would bring people right up into the centre of the town. He related that the group coming up was happy and that there was nothing untoward. It seemed to be a normal crowd going home from bars and clubs.
- 2.52 He stated that he did not remember looking out the small side windows to see what was happening on Thomas Street or if there were signs of trouble there, although he did remember looking in the opposite direction down Woodhouse Street.
- 2.53 He said that at one point a man in his mid 30’s appeared from the right hand side of the vehicle and crossed to the left in front of the Land Rover. However, he did not remember the man saying anything or telling the officers that there would be a group of people coming from St Patrick’s Hall. He said that, if someone had said that, the officers would have been keeping a look out in that direction in light of the potential for trouble associated with the crossing of the two rival factions. He said that as the male passed the Land Rover two other men came up the left hand footpath towards him and they had a slight exchange. However Constable C opened the door of the Land Rover and told them to carry on and they did so. It was his recollection that the Land Rover was in the third position when the male crossed in front and that it did not move from that position.
- 2.54 The next thing that Officer B remembered was Officer A’s door on the driver’s side was opened and Officer A was being pulled out of the vehicle. Officer B got out of the rear door of the Land Rover and ran to help him. According to Officer B the same

male that had crossed in front of the vehicle earlier was having an altercation with Officer A. Officer B said that he could not make out what the man was saying to Officer A but that he was certainly quite agitated.

- 2.55 He then noticed that there were groups of young men gathered at various parts of the upper town. They were “cat-calling” each other and Officer B said it was obvious that there were two opposing factions: one Catholic Nationalist, and the other Protestant Loyalist. They were yelling “Protestant bastards” and “Fenian bastards” at each other. He estimated that there were approximately 50 Protestants and 12 Nationalists and they were spread out across the street. He said that at this point he and Officer A were the only officers outside the Land Rover. However in cross-examination he stated that Officer D might have followed him out of the Land Rover when he went to assist Officer A. He said that it was clear that the crowd was only shouting at this point and that there had been no bodily contact.
- 2.56 The next thing he saw was a group of three or four from the Protestant crowd grabbing one of the Catholics. Officer B and Officer A ran to the aid of the Nationalist. They pulled him away and took him to the top of Woodhouse Street to relative safety. He said that this man was dressed in a light coloured casual top.
- 2.57 Just 10-15 seconds later he turned and saw two people lying on the road, one in front of the Bakery and the other in front of the Eastwood shop. He said they were alone, and that he was quite certain that if they had been on the ground earlier he would have seen them. He called to Officer C to call an ambulance and she told him that she had already called one. (It is thus clear that she must have been advised, probably by another officer, of the need for an ambulance before Officer B spoke to her.)
- 2.58 Officer B said that the groups were still fighting and bottles were being thrown. He ran over to the two men lying on the ground and kept the Loyalist crowd from getting at them again. He said the crowd kept trying to get past the officers. It was necessary for him to strike one person, Mr G, with his baton. He said that the officers were trying to contain the crowd in the upper part of the street. One person in particular kept coming forward. Officer A took that person and removed him from the scene to the rear of the Land Rover. Officer B accompanied them and when they got to the

vehicle, the person he thought first crossed in front of the Land Rover grabbed Officer B by the jacket and tried to remove his baton.

- 2.59 At that moment over his right shoulder Officer B could see three youths jumping on one of the persons who had been lying on the ground. They were jumping on his head and shoulders. Officer B then broke away from the man he was struggling with and ran over to the man lying on the ground. This caused the assailants of the man on the ground to run off into the crowd at the upper side of town some 25-30 yards away.
- 2.60 He said that the Protestant crowd kept surging forward and then moving back and that they were all around the officers. They were shouting and screaming “kill the Fenian bastards” and shoving at the officers trying to get back to where the bodies were lying in the road. He estimated there were close to 50 persons present. At one point he noticed that the ground was wet around one of the men lying on the ground. He thought at first it was blood but then saw a bottle and assumed it was alcohol.
- 2.61 Officer B stated that at this stage there were three officers in the crowd and one officer in the Land Rover. He said several minutes later the backup officers arrived.
- 2.62 One of the backup officers, Constable E, was having difficulty with a person known to Officer B as Mr J. Officer B helped her place Mr J in the back of the Land Rover. He noticed that Mr J was wearing a red white and blue scarf. With Mr J in the Land Rover he went back across the street. He said some 40 minutes later he saw Mr J back on the street.
- 2.63 The ambulance arrived and was on the scene for approximately 15-20 minutes. He estimated that it took about 7-8 minutes for the backup officers to arrive and start providing assistance.
- 2.64 He saw two women present, one nursing one of the injured males. He did not see either of the women approach the Land Rover.
- 2.65 He said there was talk among the Catholic Nationalists to the effect that the police had done nothing to stop the assault. However he believed that he had done everything he

could. As soon as he was aware of the trouble he went over and saved one person and did his best to keep the two groups apart.

- 2.66 Officer B knew Mr O as a member of the local Tae Kwon Do club who was ranked second in the world in that martial art. Yet Officer B never identified Mr O by name in his early statements, even though he clearly saw him in the crowd that evening. This will become significant when examining the events giving rise to an alleged conspiracy to pervert the course of justice.

Constable E

- 2.67 Constable E testified that she overheard a radio transmission from Reserve Constable C at approximately 1.47am requesting immediate assistance in the Portadown centre. She immediately set out for the town centre and her vehicle arrived in the area at approximately 1.55am. A young man caught her attention as her vehicle passed Thornton's confectionery shop which was on the left side of Market Street prior to its junction with Woodhouse Street. He was wearing white jeans, white trainers, white sweat top with dark grey stripes on his sleeves and a white cap. He had a red, white and blue scarf around his face. In his right hand he was holding a large green bottle upside down. Constable E believed that he intended to throw it. They pulled the car over and Officer E got out. The male then pulled the scarf over his face and ran in the direction of the church. She now knows that this man was Mr J.

- 2.68 She then returned to the place where the rest of the officers were located in the town centre. She saw a crowd of 40-50 persons and two men lying motionless on the road. The crowd was very close to the men. Officer E, Constable F and the crew from the Land Rover were trying to push them back. She noted that Constable G had also arrived and he was helping one of the men in the road. She testified that there was no ambulance on the scene at this time.

- 2.69 As she turned to push back the crowd Constable E once again saw Mr J. However as soon as he saw the officer he ran off. She grabbed him by the arm and he began kicking at her legs. She brought him to the Land Rover, ascertained his name and address and then radioed Portadown Communications to verify the information. She said that Constable A helped her to bring Mr J to the vehicle. She thought that Mr J was placed in the Land Rover at about 1.57am although it might have been earlier. He apparently left the Land Rover at about 2.05am. When she was asked why she released Mr J, Officer E testified that “it wasn’t practical at that time to deal with him in any other way”. When Mr J was released two males approached Constable E. They were very upset and one man asked why she was letting Mr J out when he was “one of the one’s that did it”. Constable E did not record this in her note book nor did she take the names of these two men.
- 2.70 Similarly, she did not mention this encounter in her initial statement to investigators, though she spoke of it in a later statement given on 27 June 1997. In that statement she said that Mr J left the Land Rover at about 1.57am. She was then approached by a male person approximately 5’9” in height wearing light coloured trousers, blue shirt and tie with short ginger fair hair. This person shouted at her “What the fuck did you let him go for, he was one of the ones that did it”. She took this to be a reference to the two male persons who were lying motionless in the road. She tried to explain to this person her reasons for releasing Mr J but he was very aggressive and constantly shouting at her.
- 2.71 Officer E said that from the time she arrived she did not see any fighting, assaults or kicks. She did say that she saw Mr R, who was known to her, at the scene. She observed that he was bleeding from the nose.

iii. Police radio logs

- 2.72 The radio log indicates that Reserve Constable C’s requests for urgently needed backup in the centre of town was made at 1.45am and 1.46am, and that the request for ambulances was made at 1.48am. At 1.54am the message was sent from Portadown Communications Centre that the Land Rover crew would have the assistance of officers from two other vehicles in a very short time.

2.73 The radio request for the address of Mr J was made at 1.55am. At that time the officers were told that Mr J was not listed at [address redacted].

2.74 At 1.58am the ambulance arrived at the scene. Shortly after, at 2.00am, a request was made to Headquarters to make sure that St Patrick's Hall had emptied and that all the patrons had left. Eventually when it was possible to get through to St Patrick's Hall the police were advised that there were still patrons there and that they had all been advised to take taxis home. At 2.07am it was confirmed that all patrons had left the Hall.

iv. The injuries suffered by Robert Hamill

2.75 Ambulance Driver A, the ambulance attendant who tended to Robert Hamill at the scene, did not remember noting that Robert Hamill had trouble breathing. His records did indicate that Robert Hamill had a strong pulse and appeared to be breathing normally although he was unconscious. He noticed an abrasion on the side of the head but apart from that there were no other signs of injury. He said they left the scene at 2.02am and arrived at the hospital at 2.09am.

2.76 [Name redacted] was the casualty officer on duty at the emergency department of the Craigavon Hospital in the early morning of 27 April 1997. He described Hamill as being unconscious and having difficulty breathing. He was concerned about Robert Hamill's condition but he noted that there were no obvious physical injuries and there was nothing about his facial features to indicate that he had been the victim of a savage assault. It was later discovered that Hamill had, in fact, suffered serious head injuries that might be life-threatening. At approximately 5.30am, he was transferred to the Neurological Department of the Royal Victoria Hospital, where he died 11 days later, on 8 May 1997.

2.77 The following extracts from the autopsy report of [name redacted] are relevant to this inquiry.

“Cause of Death

Diffuse Brain Injury associated with Fracture of Skull due to Blows to the Head.

Commentary

This young man died in hospital eleven days after he had been assaulted.

Death was as a result of the head injuries which he had sustained. Externally his injuries appeared trivial; there was a small area of abrasion on the left side of the forehead, a bruise on the upper eyelid of the left eye and a small spot of abrasion close to the left nostril. Even internally the injuries did not seem particularly severe with only two areas of bruising on each side of the under surface of the scalp and a small almost hairline fracture in the front part of the skull running into the roof of the left eye socket. Detailed examination of the brain however and in particular its microscopic examination revealed widespread damage within its substance of a type known as diffuse axonal injury. This condition, most frequently encountered in acceleration/ deceleration injury as a result of road traffic accidents is also well recognised as occurring as the result of repeated blows to the head such as by punching or kicking and this would seem the most likely mechanism of injury in this case. It was ultimately the effects of the brain injury which were eventually responsible for his death in hospital.

He had also sustained some other injuries although none of these were serious enough to have played any part in his death. There was a fading bruise on the front of the abdomen and some further bruising in the muscles of the abdominal wall which could have been due to blows during the assault. There were numerous bruises to the left upper limb, particularly on the forearm and hand which could have been sustained if the arm was struck whilst raised in a defensive gesture. A few further bruises were located on the right upper limb but some of these were probably related to injections given whilst in hospital. A fairly large area of bruising overlying the right side of the pelvis was due to blunt force and might have been caused by a kick.

The autopsy also revealed some changes in the lungs caused in part probably by a period of assisted ventilation and also by the terminal aspiration of stomach contents but these findings are unlikely to have contributed to or accelerated death.

In view of the lapse of time between the assault and his death, an analysis for the presence of alcohol was not carried out following the autopsy. However on his initial admission to hospital an analysis revealed an alcohol concentration of 221 mg. per 100 ml. Such a level would leave no doubt that he was moderately intoxicated at the time of the incident. Also it is well recognised that alcohol intoxication exacerbates the effects of head injuries and may well have played a part in the fatal outcome in this case.”

2.78 The autopsy appears to have been carefully conducted and the autopsy report is thorough. However there are two aspects which raise questions for which I could not find answers. First, the forensic scientist that worked on the case noted that the back and collar of Robert Hamill’s jacket was “extensively blood-stained”. Yet I could not find a report indicating that the blood on that area of the jacket was ever tested. Secondly blood in this location might indicate an injury to the back of his head. Yet there is no photograph of the back of his head taken at autopsy or any other time. Nor is there any reference to the back of Robert Hamill’s body in the autopsy report. This is unfortunate and makes it impossible to determine whether the blood on the jacket belonged to Robert Hamill, and if so, whether it came from an open wound to the back of the head. There may well be a clear answer to these questions but it is not yet apparent to me.

v. The judgment of Lord Justice [name redacted]

2.79 At the conclusion of his trial, Mr P was acquitted of murder but convicted of causing an affray and sentenced to four years imprisonment. The conviction and sentence were upheld in the Court of Appeal.

- 2.80 It may be helpful to set out the findings and comments of Lord Justice [name redacted] in this matter. He found that he was not convinced beyond a reasonable doubt that Mr P had been identified as the one who caused the fatal injuries to Robert Hamill. In his opinion the fatal injuries had probably been inflicted before Constable A saw Robert Hamill on the ground. Officer A testified that at that time no one was attacking Robert Hamill.
- 2.81 The trial judge noted that the witnesses, particularly Mrs Joanne Girvan and Miss Siobhan Girvan, referred to the speed with which the attack was mounted and carried out. He was unable to resolve the question of whether the police officers remained in the Land Rover during the attack. He noted that those who attended St Patrick's Hall gave evidence that the officers did not come out of the Land Rover until after the attack had occurred. He said that that could well be accepted in light of the fact that the officers probably did not see the attack on Robert Hamill or see him on the ground as a result of the position of the Land Rover. He found that when the officers did intervene they acted "resolutely" and kept the Loyalist crowd away from the two men on the ground. He commented that the Nationalists were heavily outnumbered by the Loyalist crowd and it was only the presence and intervention of the police that prevented further attacks upon them.
- 2.82 He found that the injuries sustained by Mr Hamill and by Mr Girvan did not establish that a prolonged beating took place. He noted that the fatal injury to Mr Hamill could have been caused by one blow or a blow combined with a heavy fall. He found that the officers did come across the road shortly after the attack and that the contrary evidence could be explained by the confusion and distress of those coming from St Patrick's Hall. He noted that both Joanne and Siobhan were bent over Gregory Girvan and Robert Hamill and that these witnesses "were distraught during the attack and in no position to make accurate observations".
- 2.83 Significantly, he recognised that there was reasonable doubt as to whether Constable A was being truthful when he described the scene as he looked across the street when he got out of the Land Rover. He went on to say that "if that evidence is untruthful the purpose of it is obviously to protect his own and his fellow officers' position in the face of criticism that had been publicly made against them". In his opinion no such

consideration applied to his evidence implicating Mr P which he accepted as truthful and accurate.

2.84 He went on to note that he had three criticisms pertaining to the actions of the police. The first was the failure to pay sufficient attention to the warning provided earlier in the evening by the man who came up to the Land Rover and advised that patrons from St Patrick's Hall would be coming up the street. Second the unfortunate movement of the Land Rover meant that the officers within it would have difficulty seeing what was happening at the intersection of Thomas Street and Market Street. Thirdly the release of Mr J seemed "very strange", since, on the basis of Mr H's remarks, Mr J was, at the very least, a potential witness.

2.85 It can be seen that the evidence presented to Lord Justice [name redacted] was both conflicting and worrisome. His reasons demonstrate that he carefully considered the evidence in reaching his conclusions. Nor can it be forgotten that a trial judge has the tremendous advantage of seeing and hearing the witnesses which is of invaluable assistance in assessing their credibility. However in this case there is a further complicating factor. Some witnesses, such as the other officers at the scene, whose testimony might have been relevant and important to the conclusions reached were not called. Yet they did make statements that I will now review.

C. Statements

i. Statements of civilians

2.86 It seems relatively clear that Mr V is the man who was seen to pass in front of the Land Rover just prior to the incident. In his statement to police, he said that he was coming from St Patrick's Hall on the evening in question. He walked down Thomas Street across Market Street towards Woodhouse Street. At this point he saw groups of young people coming up the main street (Market Street). He was concerned with this because he knew others would be coming from the Hall and the groups would meet at the intersection. He went over to the Land Rover and spoke to a constable in the vehicle. He told her that others were coming out of St Patrick's Hall and he warned the officers of possible trouble in light of the other youths coming up Market Street.

He then continued to walk down Woodhouse Street toward his home. He was not present when the fights broke out and the assaults took place.

- 2.87 Mr I lived in the flat overlooking the junction of Market and Thomas Street. On April 27 at about 2.00am he heard loud voices. He said that he saw two males, one of whom was Robert Hamill, running down Thomas Street and striking Mr D, the brother of his girlfriend Ms C. He said that Mr D may well have been standing with another man in the middle of the road. He and Ms C went downstairs and asked Mr D, who appeared to be drunk, to come into their apartment. By the time they got upstairs and looked out the window he saw two individuals lying on the road at the intersection of Thomas and Market Street.
- 2.88 Although she did not see the punch that did the damage, Ms C noticed that her brother had been hit in the face when they went downstairs to bring him into the flat. When she got back upstairs with her brother, she saw two men on the road, both on the Thomas Street side of what she described as the central reservation of the intersection. She saw a woman who was with Robert Hamill scream at a police officer as he approached Robert Hamill who was on the ground. The woman shouted “get away you black bastard this is all your fault”. She saw the officer then walk away.
- 2.89 Certain civilians gave statements suggesting that the police remained in the Land Rover and did nothing to stop the melee. This was the position of Mr F and Mr N, both of whom stated that the police ignored requests for help. This witness was first identified as [name redacted – similar sounding to Mr N]. However in the statement he signed at the office of his solicitors he gave his name as Mr N. I will now refer to him by that name.
- 2.90 Mr N said that the people on the ground were being punched and kicked and he himself was attacked and knocked to the ground. He went over to see how Robert Hamill was and stayed with him for about 10 minutes as the crowd was close.
- 2.91 He said that the police did not leave the vehicle at any time during the attack. At one point a girl banged on the back of the Land Rover pleading for help but that the RUC ignored her.

- 2.92 Similarly Mr F stated that he heard screaming and proceeded to the top of Woodhouse Street. There he saw a police Land Rover and two men lying on the ground. A girl was at the Land Rover screaming for help. However there were no police in the area except for those that were inside the vehicle. While he waited for an ambulance the police made no effort to help the injured man.
- 2.93 It should be noted that these statements were not taken by the police but rather by Rosemary Nelson, solicitor for the Hamill family.
- 2.94 The police wrote to Rosemary Nelson and called her asking for copies of the statements of witnesses to the incident which she had taken. There were no replies to the letters or calls. It was not until October 1998 that copies of the statements in her possession were sent to the Police Ombudsman.
- 2.95 By way of contrast, other civilians reported that the police were present within the crowd and intervening to prevent and break up fights. For example, Mr W, in his statement, said that people were pushing at the police as they were trying to break up fights. Mr A saw two people standing at the Land Rover speaking to the police and later saw the police trying to push the crowd back. Mr K reported that he saw four or five people kicking at a male on the ground, and that the police were trying to help the prone man. A police presence was also confirmed by Mr E, who saw two police officers within the crowd, trying to keep the two groups apart.
- 2.96 Certain civilian witnesses were also able to identify persons involved in the affray. Mr W saw Mr P start fighting in the middle of the road, and Mr R trading punches with someone else. He also saw Mr O at the scene, wearing blue jeans and a dark tracksuit top that was grey and had orange strips on both arms.
- 2.97 The most significant statements in this regard were from persons who came to be designated as Witnesses "A" and "B".
- 2.98 Witness "A" was at the town centre at the time of the riot. The witness observed a number of individuals kicking a man who had been lying in the centre of the road. She said they were kicking this man around the head and body and jumping on him.

- 2.99 The witness identified Mr Q, Mr O, Mr R, Mr G and Mr P as the attackers.
- 2.100 The same witness also observed the attack on Girvan but was unable to identify the persons involved in that attack. This witness talked to Officer B, an officer she knew. She asked him if the two men were okay whereupon Officer B shook his head.
- 2.101 Witness "A" went on to describe a conversation with Mr O that took place on the following Tuesday. Mr O wanted to know what this witness had told the police. Reserve Constable B's name came up and Mr O told Witness "A" that Officer B had been very good to him. The morning after the incident Officer B had called him about 8.00 in the morning and told him to get rid of the clothes that he was wearing the previous night.
- 2.102 Witness "A" was in touch with Mr O subsequently because he kept asking what the witness had told the police. Mr O told this witness that Officer B had been ringing him every day to keep him up to date on the police investigation.
- 2.103 It should be noted that Witness "A" has refused to testify although she has never denied the truth of the contents of the statement. Following a consultation with the DPP, it was determined that Witness "A" would not testify, due to concerns for her safety. The coroner was also concerned that she might be in grave danger if she was identified.
- 2.104 There seems to be no doubt that Witness "A" was genuinely concerned that her life would be in danger if she was required to give evidence either before the coroner or in court. The coroner determined that he would neither call Witness "A" nor have the statement of that witness read in court. Some time later Witness "A" was publicly identified and as a result is referred to by name later in this report.
- 2.105 Witness "B" stated that he saw Mr O kick and punch the person lying on the ground. He said he was kicking him in the chest area. It can be inferred from the location of the victim described by this witness that the man on the ground was Robert Hamill. Witness "B" also said that he saw Mr S kick Robert Hamill in the face. He said that during these assaults the injured man did not move. Witness "B" also said that he saw

a man named [name redacted], whose description matched Mr P, fighting with a person in an Umbro sweater (who would seem to be Mr N).

- 2.106 This witness also saw Mr P fighting with a person in a blue shirt and tie who might well have been Mr H. Witness “B” saw Mr Q punch the person wearing the Umbro sweater in the face. He saw Mr G involved in various fights and observed that Mr R had a “bust nose”.
- 2.107 Witness “B” retracted his statement on 21 October 1997 at a meeting attended by Counsel [name redacted], and several police officers. At this time he said that he could not remember what he saw. He could not distinguish in his mind between what he had actually seen and what people had told him about the incident. He also said that he was drunk at the time and that in his statement he simply agreed with what the police said to him. Although he said that he was not afraid to give evidence he admitted that he did not want to do so. It was concluded that “this witness will not give any evidence of any value whatsoever”.
- 2.108 Sometime later in January 2000, the coroner received a telephone call from Witness “B”. Unlike Witness “A”, Witness “B” was very reluctant to give his reasons for not wanting to give evidence. Rather he stated that not all of his statement was correct. He said that words had been put into his mouth by the police. When pressed by the coroner, he ultimately stated that he had fears for his safety. In the result the coroner determined that neither “A” nor “B” would be called and without their evidence an inquest would serve no useful purpose. Similarly, the refusal of Witnesses “A” and “B” to testify had earlier resulted in the withdrawal of criminal charges against all of the arrested suspects, save and except for Mr P.
- 2.109 Various suspects gave exculpatory statements to the police both following the incident and following their arrests. Mr O admitted being at the scene while the fighting was underway but denied that he had participated in an assault. He stated that he never came closer than 10 yards to the two men on the ground. He did not see anyone kick, punch or hit either man. He said that he was approached by an officer to help move the crowd back and he did so. He did not name the officer but his description of him closely matched that of Reserve Constable B. Mr O said that he knew the officer from

seeing him around the town though Officer B denied this encounter. Lastly, in contrast to descriptions provided by others, Mr O stated that he was wearing a black “CAT” zipped up jacket, dark blue Levi jeans and a pair of white and black Asics trainers on the night of the incident. He confirmed he had a second degree black belt in the martial sport Tae Kwon Do.

2.110 [Mr O’s father], Mr O’s father, stated that he and his wife received an anonymous threatening letter referring to him and his family as murdering Orange bastards. The letter came from the Catholic Reaction Force which stated that they knew where they lived, that they were going to kill a member of their family and that they ought to make funeral arrangements.

ii. Statements of police officers

2.111 Officer D, one of the four members of the Land Rover crew, was not called at the Mr P trial, although he appeared to be an important witness.

2.112 In his statement, Officer D confirmed that a male (undoubtedly Mr V) had warned the officers that his friends were coming from St Patrick’s Hall towards the town centre. Officer D stated that he got out of the Land Rover and saw 50 young men and several fights.

2.113 He stated that someone in a navy shirt approached him and shouted “What the fuck are you going to do?” Officer D tried to get this man to Woodhouse Street for his own safety. He then saw two males lying on the road and he helped his police colleagues move the crowd back. I should observe that in connection with a police disciplinary inquiry, a Mr Y, from the Independent Commission for Police Complaints (ICPC), made a note to the effect that Officer D may have made a point of staying on the periphery of the fighting. When asked if it would have been possible for three to four officers to control the situation, his response was “Well at the end of the day if we got, if we, had my wife could have been walking behind my coffin as well so she could have if I had been in the middle of that.” This was taken to be a “condemning” statement that was inconsistent with his statement that “he at no time saw any fighting”.

- 2.114 It is also significant that, in Officer D's notes of the incident, he wrote that, while they were in the Land Rover speaking to Mr R and Mr Q, he heard shouting from Thomas Street but he could not make out what was being said. This would suggest that it was possible to hear shouting from within the Land Rover. He further noted that once he was out of the Land Rover he saw several fights and heard females screaming.
- 2.115 Reserve Constable C was the fourth officer stationed in the Land Rover. She too was in a position to offer helpful evidence had she been called to testify at the Mr P trial. Among other things, Officer C provided a statement in which she indicated that she could hear Mr R and Mr Q shouting at Mr V from inside the Land Rover, notwithstanding that the door was shut and the engine was running. Curiously, in contrast to Constable D, Officer C did not hear any shouting while the door was open and the officers were chatting with Mr Q and Mr R. She could not explain this, save for the possibility that she may have been too engrossed in conversation to hear any shouting and yelling going on at that time.
- 2.116 A number of statements were also given by back-up officers who attended the scene, but it is only necessary to refer to some of these.
- 2.117 Officer G stated that when he arrived on the scene he saw Robert Hamill on the ground and noted that Robert Hamill was having difficulty breathing. He moved glass away from his head and radioed for an ambulance. He pushed youths away from the injured man. He stated that a woman wearing a white top pointed to a youth and alleged that he had jumped on the head of one of the injured men. This youth was wearing a charcoal grey top and had blood coming from his nose. A number of people in the crowd called him [name redacted – Mr R]. He also observed that Mr G was abusive towards the police. Officer G stated that he told the woman who was with Robert Hamill to place him in the recovery position and helped her to turn Robert Hamill over.
- 2.118 When Officer H arrived at the scene, he saw the two men lying in the roadway being attended to by members of the police. He took up a position on Woodhouse Street but left the area for a short time to return to the police station.

- 2.119 Constable I assisted Constable E in placing Mr J in the Land Rover. At one point, he was told by Constable F to return to the police station to obtain a riot gun.
- 2.120 While at the scene, he saw Mr O and remembered him wearing jeans and a dark colour baseball type jacket with greyish coloured sleeves. He did not observe any conversation between Mr O and Officer B.
- 2.121 In a later statement in September 2001 he said that he knew Mr O from his normal policing duties around Portadown. When he first saw him at the scene, he could not remember his name. He asked another police officer and was told that it was Mr O. He was not sure but believed the officer who told him this was Officer B. Constable I knew that Mr O was in the Tae Kwon Do club and recalled that his picture was in the local paper. He related that he occasionally did “protection” with Officer B for Mr Z at the [building name redacted] where the Tae Kwon Do club was located.
- 2.122 When he gave his third statement on 28 December 2000 Sergeant J was asked whether he had any contact with Officer B at the scene of the assault. He remembered Officer B referring to one individual who was particularly hostile, and saying “do you know who he is, watch him that fellow is an expert or a black belt in martial arts”. He said that Officer B mentioned that person’s name as Mr O but Officer J did not know him.
- 2.123 Finally, Constable K was on duty at the scene as part of a mobile support unit. He observed broken glass lying around both where the injured persons were lying and where the police Land Rover was parked. He did not take any steps to preserve the evidence. However he did recognise Mr R at the scene and noticed that his nose was bleeding. He also recognised Mr G, Mr T, Mr L and Mr M in the crowd. However he did not see any of these individuals committing an offence. It is significant that this officer quickly recognised and named several members of the Protestant group who were at the scene. This is in marked contrast to many of the other officers who appeared unable to describe or name the individuals who were caught up in the riot.

D. Inconsistencies

2.124 It is not unusual for people to differ in their testimony or statements as to events they have witnessed. There may be many reasons for this. It may be something as simple as poor eyesight, poor health or excessive consumption of alcohol that accounts for differences in individual perceptions. So too a pronounced bias, fear, extreme fatigue or sudden distractions may also lead to differences in recollection. For those who are involved in or who are close to a riot, it is a highly emotional, extremely stressful and often dangerous experience. Thus it should not be surprising that the descriptions of witnesses as to what transpired during a riot may differ widely.

2.125 For any or all of these reasons, the accounts of witnesses, including police constables, vary widely in this case. It may be helpful to review and set out in summary form some of the differences in this evidence.

- a) At the Mr P trial, Reserve Constable B testified that a man, (believed to be Mr V), walked in front of the Land Rover. However, Officer B did not recall the man saying anything at all. Constable A confirmed that a man walked in front of the Land Rover, but testified that the man told the officers that more people were coming down Thomas Street from St Patrick's Hall. According to Officer A, Reserve Constable C had to open the door of the Land Rover and ask the man to repeat his statement, so that they could hear what he had to say. Mr V, in his statement, confirmed that he specifically warned the officers that others would be departing from St. Patrick's Hall and proceeding down Thomas Street.
- b) Reserve Constable B claimed that the Land Rover had already been positioned in its third location before the man walked in front of the vehicle. In contrast, Constable A claimed that the man walked in front of the vehicle while it was parked in its second position and that the police did not move the vehicle to the third and final position until after a confrontation between Mr V and two other persons at the scene (Mr R and Mr Q). According to Officer A, he was just about to drive down to the bottom of town and round back up to Thomas Street when Mr R and Mr Q accosted Mr V. They pulled into the third position and

Officer C opened the door, telling the two men to move on. The Land Rover then stayed in this position.

- c) Constable A testified that, after the police broke up the confrontation that was brewing, Mr R and Mr Q came back to the passenger door and engaged in social, “jovial” conversation with the officers, discussing where they had been that evening. This encounter was never mentioned by Reserve Constable B in his testimony, even though it was potentially the key factor that distracted the police and prevented them from noticing the momentum of the violence that was building around them.
- d) It was common ground that, at some point, Constable A was pulled from the driver’s seat of the Land Rover by a man who was shouting: “You sat there and did nothing”. Reserve Constable B testified that this was the same man who had initially passed in front of the vehicle, but Constable A testified that he was pulled from the vehicle by a different man. Mr V, in his statement, reported going home after passing by the Land Rover, thus supporting Officer A’s impression that someone other than Mr V pulled him out of the vehicle.
- e) Officer A denied that anyone ever banged on the side or doors of the Land Rover. Yet, Siobhan Girvan testified that after Robert and Gregory had been struck to the ground, (very shortly after they arrived at the junction), she ran to the police jeep and banged on the side of the vehicle, asking them to get help. She claimed that she got no response. Some years later, an examination of Constable D’s notes indicates that he recorded that he thought that he heard shouting while they were in the Land Rover, though this was consistently denied by Constable A.
- f) Officers A and B both testified that there was no fighting or physical aggression at the time they left the Land Rover, and that Robert Hamill and Gregory Girvan were not yet lying on the ground. Officer A testified that he was facing the No.7 Home Bakery when he left the vehicle and that it was “not possible” that Robert Hamill was already on the ground at that time. According to Officer A and Officer B, there was only shouting and name calling. They said that there

had not yet been any bodily contact when they left the Land Rover although it began soon after. By way of contrast, Joanne and Siobhan Girvan testified that the police did not leave the Land Rover until some time after the attack, specifically when the ambulance arrived. Mr H, another civilian witness, testified that there were no police around “until after Robert had been beaten up”. The statement of the person who pulled Officer A from the Land Rover - “You sat there and did nothing” - could also support the inference that some form of violence had already taken place.

- g) On the other hand, whether it was before or after the attack on Robert Hamill and Gregory Girvan, a number of statements support the inference that police did leave the vehicle before the ambulance arrived, and did their best to exercise crowd control and prevent further acts of violence. The officers themselves, including those in back-up units, described various confrontations between themselves and unruly civilians as well as their efforts to protect the two men on the ground. A number of civilian eye-witnesses confirm that there was a distinct police presence prior to the arrival of the ambulance. This is set out in the statements of Ms C, Mr E, Mr O, Mr W and Mr A. This observation is contradicted by two statements provided to the Police Ombudsman in 1998 by the solicitor for the Hamill family. (In this regard see the statements of Mr N and Mr F). It is also arguably inconsistent with the testimony of Joanne and Siobhan Girvan at the Mr P trial, in which they claimed not to have seen any police in the area during the course of the affray. However, these witnesses acknowledged that they were keeping their heads down as they lay over the injured men. One might also infer that, at the relevant time, these witnesses would have been both fearful and distressed.
- h) Officer A testified that he witnessed an incident in which two men were running toward each other, one holding a piece of glass or a bottle in his hand. He suggested that the other person might have been Robert Hamill, but he could not be certain of the parties’ identities, or precisely when this took place. This particular incident was not apparently reported by any other eye-witnesses at the scene.

- i) At one point, Officer B observed three youths jumping on the head and shoulders of one of the men on the ground. Officer A did not, at any point, see anyone jumping on the head of either man. He did observe Mr P swing his foot in the direction of Robert Hamill's head and shoulders, although he could not say whether or not there was contact.

- j) There was considerable confusion over the precise location of the bodies of Robert Hamill and Gregory Girvan. Constable A maintained that Gregory Girvan was lying outside of the No. 7 bakery, while Robert Hamill was in the middle of the road outside of Eastwood Clothing. Joanne Girvan testified that Gregory Girvan was lying outside Eastwood Clothing and that Robert Hamill was lying across the road. Similarly, Siobhan Girvan testified that Robert Hamill was lying close to the central reservation in the middle of the street and that Girvan was closer to the footpath and the Eastwoods store. Mr H testified that no one was lying outside of the bakery; rather, both Robert Hamill and Gregory Girvan were lying on the other side of the street, near Eastwood clothing. Ambulance Driver A, the ambulance driver testified that Robert Hamill was lying on the right hand side of the road near the central reservation facing Eastwoods, while Girvan was just to the left of the white line. According to Ambulance Driver A, both men were on the "church side" of Thomas Street and were lying relatively close together.

Subsequent police investigation

A. The investigation into the assault and killing of Robert Hamill

2.126 The following is a brief chronology of events relating to the police investigation into the murder of Robert Hamill, beginning with events after peace had been restored at the junction of Market and Thomas Street on 27 April 1997.

2.127 27 April 1997

- a) At 2.30am Inspector L left Portadown.

- b) At 2.45am Constables F and E were tasked to carry out other duties at the scene of a road traffic accident.
- c) At 3.45am the four officers from the Land Rover crew (Officer A, Officer C, Officer D and Officer B) were stood down. All terminated duty at 3.45am except Officer B who finished at 4.15am.
- d) At approximately 4.30am Inspector L learned from the hospital that Robert Hamill had sustained serious head injuries that might be life threatening and that he was being transferred to the Neurological Department of Royal Victoria Hospital.
- e) As a result, Detective Constable M was telephoned at home by Inspector L and given a briefing.
- f) Two civilian witnesses, Mr DD and Mr CC, reported that, at 4.20am their Craigavon Borough Council mechanical road sweeper was diverted by police. They were asked to leave the area around Thomas Street, High Street, Market Street and Woodhouse Street unswept because there had been an incident in the area.
- g) Detective Constable M came on duty at 5.00am. He arrived at the police station at 5.30am and went to the scene. When he arrived Officer M saw police officers in the area – however, the scene was not sealed off and none of the officers could identify where the assaults had taken place. As a result, Officer M gave orders not to let anyone through the town centre.
- h) Detective Constable M then returned to the Portadown Police station and asked Inspector L to recall to duty the four members of the Land Rover crew. He also asked Detective Chief Inspector N to attend. Officer M also arranged for the attendance of officers from scenes of crime and photography units.

- i) At 7.15am Officer M and Officer N obtained details that enabled them to seal and secure the scene with tape. Constable E was appointed to begin a scene log.
- j) At 7.30am Officer M and Officer N attended at the homes of Robert Hamill and Gregory Girvan in an unsuccessful attempt to obtain the clothing they were wearing at the time they were attacked.
- k) At 10.00am Constable O was directed by Detective Constable M to collect forensic samples from the scene. He collected various items including a number of light pieces of broken wood, samples of broken glass on each side of the street, a beer tin lying next to the junction, a half full wine bottle and an empty wine bottle. In addition, Officer O collected four samples of blood from the junctions. These were marked and identified as follows:
 - MAA1: blood sample Market Street on Thomas Street side
 - MAA2: blood sample Market Street on Thomas Street side
 - MAA3: blood sample footpath Woodhouse Street side
 - MAA4: blood sample footpath Woodhouse Street side.
- l) The items were submitted to the laboratory. Analysis of the wood and glass did not disclose the presence of any blood. The four blood stains collected from the roadway were received by the laboratory but were not apparently subjected to any forensic testing.
- m) At 10am Detective Constable M also directed [name redacted], the RUC photographer, to take a number of photographs at the scene.

2.128 Events following 27 April 1997

- a) 29 April 1997: Robert Hamill's clothing was obtained by the police from [name redacted], a solicitor.
- b) 29 April 1997: the police took an initial statement from Mr G.

- c) 6 May 1997: Mr T was arrested but was subsequently eliminated as a suspect. (It appears that one of the officers had referred to Mr T when he meant to say Mr P.)
- d) 6 May 1997: Detective Sergeant P directed officers to search for clothing from Mr R and Mr T. The searches were carried out.
- e) Various officers seized clothing from the home of Mr Q.
- f) Mr Q and Mr R were initially arrested in connection with the assault on Robert Hamill. The charge at that time was Causing Grievous Bodily Harm with Intent. (On 10 May 1997 this charge was amended to one of murder). These individuals gave statements denying any involvement in the assaults.
- g) 7 May 1997: Mr O was initially interviewed as a witness.
- h) 8 May 1997: Robert Hamill died while in the hospital.
- i) 9 May 1997: A witness statement was taken from Mr P by Detective Constable Q – no clothing was requested from Mr P at that time.
- j) [name redacted], a civilian mapping officer attached to the RUC mapping section, visited the scene where he took notes and made observations.
- k) 10 May 1997: 6 persons were arrested under the supervision of Chief Superintendent R and Detective Inspector S and charged with the murder of Robert Hamill. They were:

Mr Q

Mr J

Mr O

Mr P

Mr R

Mr G

- l) Those of the accused who made statements denied any personal involvement in the assault on Robert Hamill.
- m) Constable A positively identified Mr P as the person he had seen swinging his foot at Robert Hamill's head.
- n) Search warrants were issued and clothing was seized from the homes of Mr P, Mr J and Mr G.
- o) An unsuccessful search for clothing was also carried out at Mr O's home.
- p) On 11 May 1997 the police searched [Mr O's uncle]'s home under warrant, looking without success for clothing belonging to Mr O, his nephew.
- q) On 13 May 1997 the police conducted yet another search of Mr O's home but nothing of relevance was found.
- r) On 15 May 1997 the police arrested two additional persons:
 - Mr S
 - Mr D
- s) Both were subsequently released unconditionally.
- t) 10 June 1997: The four officers from the Land Rover crew were taken back to the scene, placed under caution and asked to reconstruct the events of the evening of 27 April 1997.
- u) Detective Sergeant T and [name redacted] attended at [address redacted], the home of Ms C, and took photographs of the inside of the flat and the view from the front window. On the same date, they took photographs from [address redacted].
- v) On 16/17 June 1997, the police Land Rover was tested for sound levels.

- w) In October 1997, Witness “B” retracted his testimony. In addition, Witness “A” refused to testify, because of her concerns for her safety. After a consultation with the Director of Public Prosecutions, it was determined that neither Witness “A” nor “B” could testify at trial. It was also determined that there were concerns regarding the credibility of Mr H’s statements, in particular, his ability to consistently identify those at the scene. As a result, charges were withdrawn against all offenders with the exception of Mr P, who had been clearly identified by Constable A as being involved in the attack.

- x) On 25 March 1999; Mr P was acquitted of murder but convicted of the offence of affray. He was sentenced to a term of four years. The conviction and sentence were later upheld on appeal.

- y) On 15 May 2000; the coroner made a final decision not to hold an inquest. He had assured Witnesses “A” and “B” that he would neither call them as witnesses nor use their statements. The coroner concluded that, without this evidence, an inquest would serve no useful purpose.

B. The Press Releases

- 2.129 Following the attack on Robert Hamill, various press releases were issued by the RUC. The first, issued at 6 a.m. on the morning of the incident, referred to “a clash between rival factions” and indicated that the “police themselves came under attack by a section of the crowd”. It also stated that two youths had been detained in hospital with head injuries.
- 2.130 Later that day, at 9.00 p.m., another press released was issued, indicating that one of the injured youths was still in hospital, and that the police were anxious to speak to anyone who was in the area of the affray at the relevant time.
- 2.131 A number of press releases concerning the incident were issued in the days that followed. One, issued on 30 April 1997, stated that, due to the large number of people involved in the disturbance, the police were unable to contain the situation and

became the subject of attack themselves. A further appeal for witnesses was made at this time.

2.132 Subsequently, on 7 May 1997, a press release was issued to clarify the nature of the conflict, namely that “four people, two couples, who had left a social event in St. Patrick’s Hall, were set upon by a large crowd.” Again, a plea was made for any persons with relevant information to come forward. On 8 May 1997, the police issued a release disclosing that Robert Hamill had died in hospital and that a murder enquiry had commenced. Additional releases were issued as arrests were made and other events unfolded.

2.133 The RUC has been criticised for the manner in which it issued press releases after the incident. One of the primary complaints was that the early releases were misleading, in that they spoke of a clash between “two rival factions”, rather than four people being set upon by a large crowd. It is, to say the least, unfortunate that this mistake was not corrected until 7 May 1997. Certainly the initial releases would have created an erroneous impression of the incident and aroused the suspicions of the members of the Catholic community. Obviously, it would have been preferable if the early releases had been accurate and if the excellent clarification had been issued earlier.

2.134 Yet there does not appear to be anything sinister about the handling of the press releases. The first documents had to be prepared and issued quickly, within hours of the incident. The police had to rely on whatever information was available. If the initial information was inadequate or confused, the better course would have been to issue a release stating that two persons had been injured in an unfortunate incident that was being investigated and that a further news release would be made when the situation was clarified. In an ideal world, an immediate correction would have been issued as soon as the facts had been ascertained.

2.135 However, in subsequent releases, such as the one issued on 30 April 1997, the police were responding to a specific allegation that they had not intervened in the assault. Moreover, throughout this time, the police were focussed on persuading potential witnesses to come forward. This was necessary to secure material evidence. Further and most importantly, the true nature of the dispute was very fairly put forward on 7

May 1997. There does not appear to have been any deliberate dishonesty or collusive conduct arising out of the press releases issued by the RUC following the assault on Robert Hamill.

C. Internal disciplinary proceedings

- 2.136 There was a great deal of public criticism of the actions or rather the inaction of the police during the incident. It is clear that there is a marked divergence of opinion among the witnesses as to the actions of the officers. The Catholic Nationalist group alleges that the officers must have seen what was happening and took no action to prevent it. The Protestant Loyalist side takes the position that as soon as they were aware of the situation the officers intervened and did their best to protect the Nationalists.
- 2.137 About 2.45am on 27 April, peace was restored in Portadown Town Centre. About 3.45am on this long, stressful, chaotic and tragic night the four officers from the Land Rover returned to their station and shortly after went off duty.
- 2.138 At 4.35am the hospital phoned the police station to advise that Robert Hamill had suffered life threatening injuries and had been removed to intensive care. The four officers were called to return to the station at 6.00am for a further debriefing. The time they left this debriefing is an important factor. Officer B left some time around 8.00am or shortly thereafter. His home is some fifteen minutes from the police station.
- 2.139 At a later debriefing, I would have thought that the following issues needed to be addressed.
- 2.140 Why was so little attention given to the warning which Mr V gave to the officers that people from the St Patrick's Hall would be arriving on the scene shortly?

- 2.141 If the warning was given prior to moving the Land Rover to its third location why was it placed in a position that made it very difficult for the officers to see what was happening on Thomas Street?
- 2.142 Why was there so little reference to the names of those that the police officers saw at the incident?
- 2.143 For example, it will become apparent that Officer B had known Mr O for a number of years through the Tae Kwon Do club.
- 2.144 He also told a Sergeant at the scene that Mr O was a martial arts expert with a black belt in Tae Kwon Do. In those circumstances, why did he fail to mention Mr O's name in his initial debriefing statements?
- 2.145 Why did Mr O, who put himself at the scene, although not as a participant in any of the assaults, not mention until much later Officer B's name as being one of the officers at the scene?
- 2.146 Why was there not a concerted effort made to track down those who witnessed the scene and might have identified participants? It is true that this might not have been feasible at 2.00am but after the 6.00am debriefing it could have been undertaken.
- 2.147 Why was Mr J released or, at least, why was he not taken back into custody later in view of the statements made to the police that he was one of those that actively participated in the assault on Robert Hamill?
- 2.148 Lastly in light of the statement of Witness "A" why was more not done to explore the relationship between Officer B and Mr O?
- 2.149 Not unexpectedly, the Robert Hamill murder led the community to question the conduct of the police. As a result, a number of disciplinary investigations were carried out. Those investigations explored some of the issues I have set out above. The first investigation was undertaken by Detective Chief Superintendent R supervised by Mr [name redacted] a solicitor from ICPC. The investigation was instituted as a result of a

complaint received from Rosemary Nelson, the solicitor acting for Robert Hamill's sister, Diane Hamill. It was carried out by the RUC under the supervision of the Independent Commission for Police Complaints (which subsequently became the Police Ombudsman's office) and was concerned with the alleged misconduct of officers present at the scene of the murder. The question was whether the four officers in the Land Rover were guilty of neglect of duty or criminal neglect. Chief Superintendent R may have been an unfortunate choice for this task. He participated in the Hamill murder investigation himself and as a result was, of necessity, working closely with the officers involved.

2.150 The conclusions of Chief Superintendent R may be summarised in this way. He found that:

“there are witnesses who indicate that the police did their best under prevailing circumstances to preserve the peace ... that they believed they were doing their best to prevent sectarian disorder. There is no doubt that this was a highly volatile situation in which individual accounts vary creating contradictory versions of events. The problem is exacerbated not only by excess alcohol but by the reticence of some to become involved either because of group allegiance, manipulations of events or in the furtherance of unknown agendas. ...”

He concluded:

“I am satisfied that collectively and as individuals the four police officers concerned did not wilfully neglect to perform their duties on the date in question and therefore I recommend no further action criminally or disciplinary in this instance...”

2.151 With regard to Officer B's alleged warnings to Mr O referred to by Witness “A” he concluded “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 by Witness “A”. I therefore recommend no prosecution”.

2.152 The DPP similarly concluded that there should be no prosecution.

2.153 Officer R's report was forwarded to the Independent Commission for Police Complaints. There appears to have been some initial disagreement with Officer R's findings.

2.154 An opinion drafted on 2 August 1999 by Mr Y concluded:

- “1. That it is regrettable that neither Officer C or Officer D were called to testify at the Mr P trial.

2. That both officers could and should have become more involved in keeping rival factions apart prior to the arrival of police reinforcements; of the Land Rover crew only Constable A and Reserve Constable B were called to give evidence. It is regrettable for our purposes that neither Reserve Constable C nor Reserve Constable D were summoned as witnesses as I would have been interested to hear their evidence under cross-examination. I am convinced both officers could and should have become more involved in keeping rival factions apart prior to the arrival of police reinforcements.

3. I am also of the view that Constable A as the most senior crew member and the driver of the Land Rover was negligent in failing to take immediate action to address the concern expressed by a member of the public about patrons from St Patrick's Hall coming down Thomas Street.”

2.155 An opinion drafted on 20 April 2000 by [name redacted] came to the following conclusions:

- “1. With regard to press releases. While there is no evidence of disciplinary matters, greater care should have been taken in the drafting of each;

2. The actions of the police in the Land Rover must be viewed against the backdrop of a history of problems at the junction of Thomas and Market Streets,

and the fact that in Portadown Town Centre public order duty has for a long time meant trying to keep rival factions apart;

3. Virtually none of the police officer witnesses who could have offered or expanded on vital evidence came forward. This was despite extensive attempts to secure cooperation with the complaints investigation.”

2.156 The author disagreed with Officer R’s assertion that the police acted “under the prevailing circumstances to preserve the peace”, writing:

“When the police were initially informed by Mr V that people were coming from St Patrick’s Hall, they ignored this vital information. They did not anticipate any attack, they did not call for reinforcements even though police knew on a Saturday night the Banbridge Bus Group would be rowdy.

From the evidence the police remained in the Land Rover even after the fighting commenced. Reserve Constable D stated during his interview that he told Officer A that he heard shouting while the police were still in the vehicle. This was denied by Officer A. Officer C’s notebook entry records that when they got out of the Land Rover there were several fights in progress and a lot of shouting ...

Although there is some suggestion that the police had an H&K riot gun, no warning shots were fired to ward off the Loyalist attackers.

The police did not administer first aid to Robert Hamill”.

2.157 The author of this document concluded that there was evidence that the police were in neglect of duty. This finding was based upon the failure to anticipate an attack, and also the failure to dismount from the Land Rover and to administer first aid.

2.158 A letter dated 5 May 2000 was sent by the ICPC to the Assistant Chief Constable of the RUC. The letter included the following paragraphs:

“Given the situation pertaining at the time and bearing in mind that the function of the RUC patrol was to perform public order duties, the Commission takes the view that there is clear prima facie evidence that the police failed to take appropriate action aimed at preventing public disorder.

Constable A was not only the driver of the Land Rover but also the senior officer at the scene. Consequently it is held by the Commission that he is responsible for the failure of police to react with sufficient urgency to a potentially dangerous situation.”

2.159 The same letter recommended that Officer A be charged with the disciplinary offence of neglect of duty and that he be suspended pending the outcome of a hearing.

2.160 Lastly the letter stated :

“Although recommending no disciplinary action, the Commission wishes to put on record its view that greater efforts could have been made by the police to administer first aid to injured parties at the scene.”

2.161 It was signed by the Chief Executive of ICPC [name redacted].

2.162 The recommendation that Officer A be disciplined was later retracted in a letter dated 22 April 2002 from Detective Chief Inspector Z, on behalf of the Police Ombudsman for Northern Ireland, to Detective Chief Superintendent U of the Police Service of Northern Ireland (PSNI), formerly the RUC. This letter confirmed that:-

“the Police Ombudsman has reviewed the original decision of the ICPC to direct disciplinary hearing in respect of Constable A. In light of all the material now available it has been decided that a disciplinary hearing is not appropriate.”

2.163 This apparent reversal was based upon a report prepared for the Police Ombudsman by [name redacted] on 24 February 2002, which offered the following observations:

“It seems likely that Constable A was made aware of what was happening in Market Street when two persons came to the drivers’ door of the Land Rover. Yet if Messrs N and F are to be believed, Constable A and the other officers did absolutely nothing prior to the ambulance arriving. Such conclusions seem untenable given the extent of the evidence to the contrary... the position of the vehicle and the distraction of two persons talking to Constable C is, according to the officers the reason why they did not see sooner what was happening at the junction of Market and Thomas Street... The position of the Land Rover meant that Constable A would have to look over his right shoulder behind him to see what was happening in the street. It seems to be unlikely that it could be established beyond reasonable doubt that he was aware of what was happening before the two persons came to the drivers’ door and he neglected or that he omitted to do anything about it.....

The balance of the evidence in my view tends to show that the police, once aware of what was happening, did act promptly and intended to break up the sectarian fight. To put it another way I do not consider that a prosecution of this officer for neglect of duty has any prospect of success for the reasons stated above.”

2.164 A second investigation into alleged police misconduct took place in 2001. This inquiry, which was led by Superintendent V and Chief Inspector W, was much broader in scope. It scrutinised the way in which the police had carried out their investigation into the murder of Robert Hamill and focussed upon seven areas of concern:

1. Scene preservation.
2. The existence or otherwise of an immediate arrest strategy.
3. The absence of a general arrest strategy of those identified at the time as being concerned with the disturbance.
4. No consideration was given to the seizure of suspects’ clothing for purposes of forensic examination.

5. No attempt was made to gather debris at the scene.
6. There was no adequate debriefing of officers who had attended the disturbance.
7. Valuable forensic identification evidence was lost as a result.

2.165 Superintendent V concluded that there were four main areas open to criticism:

1. Lack of supervision;
2. Failure to properly and constructively debrief police personnel on duty;
3. Failure to maintain recorded policy on decisions made which determined the course of the investigation; and
4. Failure to complete proper records, such as notebooks and statements.

2.166 Regarding the preservation of the scene, Superintendent V, like Lord Justice [name redacted], noted that “at the time when Robert Hamill was assaulted a riot was in progress with people and police running about the scene – these officers at this stage were concerned with preserving life and preventing further injury to the victims and possibly injuries to themselves – hindsight is extremely relevant in this particular case.”

2.167 She noted that no one knew how serious Robert Hamill’s injuries were at the time of the incident and that assault was a regular occurrence in most town centres on weekends. Such incidents would not ordinarily warrant taping off the scene. However Superintendent V did conclude that once the police had received the information that Robert Hamill’s condition was critical they ought to have sealed off the area, started a scene log and commenced the process of securing and preserving evidence.

2.168 With regard to the individual officers, Superintendent V concluded that Constable E should be admonished in connection with her poor notebook keeping, poor file-report

management and the omission of important evidence from her initial statement. Her report stated:

“Constable E whilst making a mention of the arrest of Mr J in her initial witness statement dated 27 April 1997 failed to make any mention of the fact that a male person approached her and gave information to the effect that Mr J was involved in the serious assault until interviewed by CID on 24 June 1997. In addition the Constable took no steps to have Mr J properly interviewed at a later date for alleged assault on police (herself) and possession of an offensive weapon (a bottle)”.

2.169 Officer V also concluded that Inspector L should be admonished in connection with his lack of supervision, poor scene management and failure to brief–debrief in connection with the incident. She stated:

“In hindsight Inspector L should have concentrated more on debriefing those under his command thus ensuring that all relevant witness statements were completed.

I feel that Inspector L is open to criticism for not taking a more active leadership role by supervising and assisting those uniformed members under his command.

Inspector L was the senior officer on duty who appears to have taken an insufficient hands on approach to the incident.”

2.170 This same conclusion was also expressed in respect of Sergeant J, then retired. It appeared that neither supervisor took responsibility for the actions of officers under their control. This was said to demonstrate a clear failure of leadership.

2.171 Officer V concluded that while informal disciplinary measures should be taken against Officer E and Officer L, a decision as to what disciplinary action should be taken had to be balanced against the passage of time, the Merrill judgement and the

fact that retired members including other supervisors had not assisted in this investigation.

- 2.172 Constable E received an admonishment and fully accepted the imposed sanction. However Inspector L refused to accept any form of admonishment.
- 2.173 There were two additional police investigations arising from this incident. One had to do with the manner in which the police dealt with the witnesses known as “A” and “B” during the initial investigations. No actions or conclusions have emerged as a result of that inquiry. The next dealt with the conduct of Reserve Constable B and an alleged conspiracy to pervert the course of justice. For my purposes it is particularly important to review carefully all the documents and statements pertaining to the allegations of misconduct against Reserve Constable B.

Conspiracy to pervert the course of public justice: the conduct of Reserve Constable B

- 2.174 Some reference has already been made to the statement made by Witness “A”. Among other things, this witness reported a conversation with Mr O, in which Mr O stated that Reserve Constable B telephoned him the morning after the affray and told him to dispose of the clothing he was wearing the night Robert Hamill was assaulted. This alleged telephone call and the subsequent events relating to Officer B and Mr O are significant in considering whether these acts could constitute collusion by a police officer.
- 2.175 At the outset it may be helpful to set out the relationship which existed between the Bs, the Xs and the Os. All these people came to know each other through a Tae Kwon Do club run for several years by Mr X. Mr X’s wife [firstname redacted – Mrs X] helped him with the business from the time it was commenced until some time in the year 1998 when she helped to wind it up.
- 2.176 Mr O attended the club. He was instructed by Mr X and did extremely well in the Tae Kwon Do discipline. He won numerous contests and titles and was apparently listed as No. 2 in the world in this sport. Obviously for some years he spent a great deal of

time in and about the Tae Kwon Do club. His father is [Mr O's father] and his uncle is [Mr O's uncle].

2.177 The Tae Kwon Do club and its gymnasium were located in a building owned by Mr Z. At one time Reserve Constable B had been one of the officers detailed to provide security for Mr Z. Indeed it was apparently through Officer B that Mr X met Mr Z, and this in turn led to the lease of the gymnasium premises to Mr X.

2.178 Witness "A" attended the Tae Kwon Do club primarily to keep fit. There she met and became involved with Mr O. At the outset it was a turbulent relationship. Around 27 April 1997 this "on and off" relationship was more off than on.

2.179 Reserve Constable B became involved in the activities of the club through his daughter [first name redacted] who was taking Tae Kwon Do instruction. His work for the club appears to have increased over time. There can be no doubt that he was shown as Treasurer of the club and that he regularly signed for deposits made by the club. Reserve Constable B's wife [first name redacted – Mrs B] worked at the electricity company as did Mr O.

2.180 Following the attack on Robert Hamill, Witness "A" was first interviewed at her home on the evening of 8 May by Detective Sergeant T and Detective Constable X. She declined to make a statement at that time. That same evening these two officers spoke to Mrs X. She told the officers what Witness "A" had said to her about the assault and subsequent events. The police officers obtained the telephone billings for the B home and the O residence. These records are relevant and could be very significant. They reveal that the first call was made from the B home to the O home on 27 April 1997 at 8.37am and lasted 1min 35seconds. A second call was made from the B home to the O home on 2 May 1997 at 4.24pm and lasted 1min 41 seconds.

2.181 On the evening of 9 May 1997, Witness "A", accompanied at all times by Mrs X, went to the police and gave her statement. At that time she recounted her observations of the assault on Robert Hamill and identified those persons who had assaulted him. She also referred to her conversation with Mr O who said that Reserve Constable B had called him the morning after the assault and instructed him to get rid of his

clothing. She said that Mr O also told her that Reserve Constable B was in touch with him on a regular basis to let him know how the police investigation was progressing.

2.182 On 9 May police took a statement from Witness “B”. He identified various people who had been involved in the assault on Robert Hamill including Mr O. He said that he saw Mr O “kick and punch this fellow who was lying on the ground”. Mr O was one of several persons arrested on 10 May 1997.

2.183 At that time Mr O gave statements under caution in which he denied any involvement in the murder of Robert Hamill. He stated that he had walked out to his uncle [Mr O’s uncle]’s after the incident and that he remained there until he was picked up by his father [Mr O’s father] the following morning. He said that he was wearing a black “CAT” jacket on the night of the incident.

2.184 On 11 May the police spoke to [Mr O’s uncle]. He stated that he was lying on his sofa when Mr O arrived sometime between 3 and 4 in the morning. He said that Mr O stayed until his father picked him up that morning between 9.30 and 9.45. He said that Mr O was wearing a navy or black jacket, that was quilted like a bomber jacket.

2.185 It may be significant that the only individuals who claimed that Mr O was wearing a black or quilted jacket on the night of the incident were Mr O and his uncle [Mr O’s uncle]. A number of other eye-witnesses stated that Mr O was wearing a very different kind of jacket. For example, on 11 May 1997, the police spoke to Mr W who stated that Mr O had been wearing “light blue jeans, a tracksuit top grey colour with a zip up the front of it”. According to Mr W, the top had orange stripes on both arms which went down to the elbow. Constable I referred to a “grey jacket”. There is evidence to indicate that [name redacted] (Witness “A”) did purchase a grey or silver jacket with orange stripes on the sleeves for Mr O as a Christmas gift in 1996. This was confirmed by Witness “A” herself, as well as her stepfather. Yet, according to Mr O, the black “CAT” jacket that he claimed to be wearing on 27 April 1997 was the only jacket he owned. The police conducted searches for clothing of suspects on 10 and 11 May 1997. However no grey jacket or tracksuit top was ever recovered from Mr O’s home, or the home of his uncle, [Mr O’s uncle].

- 2.186 In October 1997 Witness "A" withdrew her evidence. She spoke of her "feelings for Mr O". Later it became apparent that she was frightened for her safety. It may be significant that she did not then deny the truthfulness of her statement.
- 2.187 Witness "B" and Mr W also withdrew their statements. As a result of these retractions the murder charge against Mr O was formally withdrawn by the DPP on 31 October 1997. As a historical note it now appears that Witness "A" is living with Mr O and that they have a child.
- 2.188 On 9 September 1997 Detective Chief Superintendent R and Detective Inspector S interviewed Officer B. When confronted with the telephone calls, he said that he had no knowledge of the telephone call made from his residence in the morning of 27 April. He did not refer to the Xs.
- 2.189 A second interview took place on 9 October 1997. Officer B said that since the time of his first statement he had learned from his wife that two friends, Mr and Mrs X, had stayed overnight at his home on the night of 26 April. He said that after finishing his tour of duty in the town centre on 27 April he went home and went to bed in the early hours of the morning. He said that he was awakened by a telephone call requiring him to return to duty at around 6.00am to make a statement as to what he had witnessed at the scene. This he did and then returned home around 8.00am and went straight to bed. He said that he did not know that the Xs were staying over at his house. He went on to tell the interviewers that his wife had an explanation for the telephone calls appearing on the billing records. His wife said that Mr X had phoned the home of Mr O in order to inquire about the well being of his niece, [name redacted, Witness A]. Mrs B further stated that she had made the telephone call of 2 May in order to make inquiries about Tae Kwon Do boots and books for her daughter who was a member of the club. She said that she spoke to [Mr O's father] at the time of the second call.
- 2.190 On 9 October witness statements from Mr X and Mrs B were recorded by the police. Mr X stated that he did make a telephone call sometime before 9.00am on 27 April from the B home. He said he did so in order to find out if his niece was alright. Mrs B also made a statement supporting Reserve Constable B's explanation for the telephone calls.

- 2.191 On 29 October Mrs X gave a statement to the police to the same effect.
- 2.192 On 25 November 1997 Detective Inspector S interviewed [Mr O's father] and [Mr O's mother]. They declined to make a formal statement. However [Mr O's father] did state that it was he who received the phone call from Mr X on 27 April 1997 and that Mr X was looking for [name redacted, Witness A]. [Mr O's father] said that the call had woken him up and that upon checking Mr O's bedroom he saw that neither Mr O nor [name redacted, Witness A] were in the home. He thought then that Mr O must be at his brother's house and said that he gave this information to Mr X.
- 2.193 With regard to the second call on 2 May neither [Mr O's father] or [Mr O's mother] could be sure who had received it although [Mr O's mother] thought it might have been her.
- 2.194 In December 1997 Officer R submitted a file to the DPP. With regard to the allegation against Officer B, Officer R concluded that, in the absence of any evidence apart from the phone records to substantiate Witness "A's" allegation, there should be no prosecution.
- 2.195 The conduct of Officer R's investigation has since been criticised. Some three years later, Officer Z of the Police Ombudsman's office pointed out that more could have been done in the early stages of the investigation, such as securing the billing records for all participants, identifying where people were when they claimed to have made or witnessed phone calls, following up on [name redacted, Witness A]'s claim that she purchased a jacket for Mr O, and examining police duty rosters. According to Officer Z: "there is every likelihood that thorough examination of these areas at the time would have shown that the Reserve Constable and others had lied and may have altered the direction of the murder enquiry".
- 2.196 It should also be noted that Officer R's deputy, Detective Inspector S was present when [name redacted, Witness A] gave her statement to the police, accompanied by Mrs X. Mrs X did not say anything to contradict [name redacted, Witness A]'s account of the telephone calls. To the contrary, Mrs X had related [name redacted, Witness A]'s statement to the police before [name redacted, Witness A] herself did.

Detective Inspector S was also present when Mrs X provided her later explanation for the telephone call that was completely at odds with [name redacted, Witness A]'s statement. Yet, this was neither followed up during the interview nor seen to cast any doubt on Mrs X's credibility.

2.197 At the time, the DPP was probably unaware of these concerns. He ultimately agreed with Officer R's recommendation that no charges should be laid.

2.198 However, things changed. In April 1999, Mrs and Mr X separated, with Mr X moving to Cork and Mrs X to Wales. These events led to a re-opening of the investigation into the Officer B/Mr O affair.

2.199 In June 2000 the police again spoke to both Mr and Mrs X. Mr X said he had nothing to say. Mrs X, on the other hand, said that her earlier statement had been false and said that she now wished to tell the truth. She said that they did not spend the night at the Bs' nor did they make the phone call to the O house. She said that Mr X had been approached by Officer B and asked to cover up the phone call that went from the B house to the O house. Once Mr X had agreed to this and had given his statement Mrs X felt that she had no alternative but to speak to the police in support of that untruthful statement. She did say that over the years she and Mr X had become friends with the Bs and that Mr X and Officer B were particularly close friends.

2.200 [Mr O's father] has admitted to receiving a telephone call from Officer B. If that telephone call was made by Officer B to [Mr O's father] on the morning following the event, it might well lend support to the statement of Witness "A" that Officer B had left a message that Mr O should get rid of the clothing he was wearing at the time of the incident.

2.201 It will be remembered that [Mr O's uncle] said that Mr O was at his house at the time the call would have been placed. He said that Mr O arrived at his home between 3 and 4 in the morning and stayed until his father picked him up around 9.00am. Yet there is evidence that indicates that Mr O's bank machine card was used to withdraw £10 out of the Ulster Bank on High Street in Portadown at 8.46am on 27 April. There is no allegation that the bank card had been stolen or lost. The bank machine is close to the

home where two other youths, [names redacted], stated that they were with Mr O following the incident. They remained there until some time later in the morning. They said that they had been at a party and they called a taxi to take them home from this location. The bank machine transaction would seem to indicate that Mr O was neither at his own home nor at his uncle's at any time that morning before 9.00am.

- 2.202 As a result of the statement of Mrs X a new investigation was launched pertaining to two related criminal acts: first, Officer B's telephone call to instructing him to destroy his clothing the morning after Robert Hamill was attacked; and secondly, the fabrication of a story to cover up Officer B's call and account for the incriminating telephone records.
- 2.203 On 25 October 2001 Mrs X was re-interviewed by Detective Chief Inspector Y and Detective Inspector S. At that time she confirmed her earlier statement that Mr X had been approached by the Bs to provide a cover story for a phone call that had been made from the B home. She said that the details of the false story were made up by Officer B and that it was agreed that Mrs B and the Xs would make false statements to support the original lie.
- 2.204 Mrs X also confirmed that on the night of 26 and 27 April she and Mr X actually had visitors at their own home. Those visitors were either Mr & Mrs FF or Mr EE and Ms BB.
- 2.205 The telephone billing records for the Xs' house showed that at 1.30am on 27 April a call was made to [taxi company name redacted] taxi which lasted 39 seconds. The taxi log showed that a taxi went to the X residence at 2.15am. The fare was in the name of [surname redacted – same surname as Mr EE] who could well have been Mr EE.
- 2.206 While they could not be precise about dates, Mr EE and Ms BB confirmed that during 1997 they often would spend time at the Xs' house and would take a taxi home if they had been drinking.

2.207 On 26 September 2000 Mr X produced a letter he had received from Mrs X in which she said she had changed her story and had told the truth to the police. By the time he received this letter Mr X was living with a woman by the name of Ms AA.

2.208 According to Ms AA, Mr X called the Bs' home from a public telephone shortly after he received Mrs X's letter. Some time later Officer B and his wife came to their home where Officer B and Mr X had a private meeting. In a statement given in 2001, Officer B asserted that Mr X was having a nervous breakdown. On the other hand, Mr X said that during this meeting Officer B was concerned about what he, Officer B, was going to do.

2.209 On 5 December 2000 Mr X reported to the police that he had received a threatening letter containing a bullet. The letter was printed in capital letters with these words: "keep your mouth shut the next one is for your head".

2.210 Mr X told the police in April 2001 that after receiving the letter and bullet he telephoned Officer B's home on 5 December 2000 to ask why he had received it. The telephone records confirm that a call was made to the B home from a public phone booth in Gilford.

2.211 On 10 April 2001 both Mrs and Mr X made the following admissions to the police:

1. That neither of them was present in the B house on the night of 26/27 April 1997.
2. That they were not present when the call was made at 8.37am and that Mr X was not the person who made that call.
3. That they conspired with the Bs to provide false statements to the police indicating that Mr X had made the phone call in order to provide an alibi for Officer B.

2.212 The mother of Witness "A" confirmed that sometime in 1997 she had a conversation with Mrs X. At that time Mrs X said that Mr X had to make a statement to "cover for

Officer B ringing Mr O's house". She remembered that Mrs X had stated that Mr X's statement was all lies.

2.213 The Xs denied having any contact with Os regarding the false cover. The telephone records establish that there were no calls made from the Xs' household to the Os' during the relevant period. From this, it could be inferred that one of the Bs had counselled [Mr O's father] to provide the same false account to cover up the telephone call made to him at 8.37am in the morning of 27 April.

2.214 It should be remembered that a second call was made from the Bs' house to the Os' on 2 May which Mrs B said that she had made. It may be significant that the police records indicate that this was a rest day for Officer B. Further the employment records for Mr O showed that he did not work until the night of 2 May.

2.215 On 7 May 2002 Mrs X and Mr X entered pleas of guilty to perversion of justice. Mrs X had, by that time, entered into a new relationship and was the sole care giver for a child. She was given a suspended sentence. Mr X was sentenced to six months in jail.

2.216 On the basis of the re-investigation, a new report was submitted to the DPP. On 5 December 2002 the Director of Public Prosecutions recommended that Officer and Mrs B be prosecuted jointly on an indictment for conspiracy to pervert the course of justice in that they gave false information to the police concerning the telephone call made from the B house on 27 April 1997. The DPP further recommended that [Mr O's father] be prosecuted for intentionally doing an act that had the tendency to pervert the course of public justice, namely, telling the police that it was Mr X who made the telephone call on 27 April 1997.

2.217 Obviously, the question of criminal liability can only be determined after a trial. Whether there is sufficient evidence to warrant a prosecution for criminal culpability and whether there is sufficient evidence of state collusion to merit a public inquiry are questions that are worlds apart. They require very different considerations. I do not and would not comment upon an issue of criminal liability. However, the actions of Officer B and those with whom he is said to have conspired are directly relevant to the issue of collusion. I have examined the statements and documents referred to

earlier for the sole purpose of determining whether there is sufficient evidence of state collusion in the murder of Robert Hamill to warrant a public inquiry.

2.218 Before turning to the definition of collusion and applying it to the evidence it is necessary to set out other disquieting aspects of the conduct of Reserve Constable B.

Other disquieting aspects of the conduct of Reserve Constable B

2.219 There are other disquieting aspects of the conduct of Reserve Constable B. He knew Mr O very well through the Tae Kwon Do club. Yet it is obvious that he was loathe to identify Mr O by name. He failed to name Mr O as a person he saw at the scene in either of his early debriefing statements: the first between 6 and 8am on 27 April and the second on 28 April. Indeed Mr O was not mentioned by name until Officer B was interviewed under caution on 9 September 1997. Even then Officer B suggested that he had only a passing acquaintance with Mr O and that Mr O had long since left the Tae Kwon Do club. He also said that his only connection with the club was through his daughter. Yet it is obvious from the financial records that he was playing a significant role in the affairs of the club.

2.220 If Officer B did indeed call Mr O to tell him to destroy his clothing it might be inferred that the only reason for giving such instructions was because Mr O was implicated in the assault on Hamill and a forensic test of his clothing would confirm that. If he did not call for that purpose, one might wonder why he would involve the Xs in a fabrication that would cover the record of his phone call.

2.221 It may now be convenient to consider the definition of collusion and its application in this case.

Collusion

A. Definition Of Collusion

- 2.222 Let us consider the definition of collusion and attempt to apply it to the facts of this case. The definition in this case will be substantially the same as that set out in the Finucane case. The only difference is that in the Finucane case more than one Government agency was involved while in this case only one agency, the police force, was involved.
- 2.223 How should collusion be defined? Synonyms that are frequently given for the verb to collude include: to conspire; to connive; to collaborate; to plot; and to scheme.
- 2.224 The verb connive is defined as to deliberately ignore; to overlook; to disregard; to pass over; to take no notice of; to turn a blind eye; to wink; to excuse; to condone; to look the other way; to let something ride; see for example the Oxford Compact Thesaurus Second Edition 2001.
- 2.225 Similarly the Webster dictionary defines the verb collude in this way: to connive with another: conspire, plot.

It defines the verb connive

1. to pretend ignorance or unawareness of something one ought morally, or officially or legally to oppose:
to fail to take action against a known wrongdoing or misbehaviour – usually used with connive at the violation of a law.
2.
 - (a) to be indulgent, tolerant or secretly in favour or sympathy:
 - (b) wink at youthful follies:
 - (c) to cooperate secretly: to have a secret understanding.

2.226 In the narrower context how should collusion be defined for the purposes of the Robert Hamill case? At the outset it should be recognised that members of the public must have confidence in the actions of Governmental agencies, particularly those of the police force. There cannot be public confidence in a Government agency that is guilty of collusion or connivance in serious crimes. Because of the necessity for public confidence in the police, the definition of collusion must be reasonably broad when it is applied to police actions. This is to say that police forces must not act collusively by ignoring or turning a blind eye to the wrongful acts of their officers or of their servants or agents. Nor can the police act collusively by supplying information to assist those committing wrongful acts or by encouraging them to commit wrongful acts. Any lesser definition would have the effect of condoning, or even encouraging, state involvement in crimes, thereby shattering all public confidence in important Government agencies. This case is unique in that it will turn on whether or not police officers, by assisting or counselling the Protestant rioters or by turning a blind eye to their misconduct, acted in a collusive manner.

2.227 In determining whether there are indications of state collusion in the murder of Robert Hamill, it is important to look at the issue from two perspectives. First, it must be seen whether the documents indicate that the action or inaction of the police might have directly contributed to the killing of Robert Hamill or hindered the investigation of his murder or perverted the course of justice. In addition it is necessary to examine collusive acts which may have indirectly contributed to his killing by the Protestant rioters on 27 April 1997 or frustrated the investigation of his death. In this regard it is necessary to examine collusive acts which may have indirectly contributed to the killing by generally facilitating or encouraging or turning a blind eye to the actions or behaviour of the Protestant rioters. That is the evidence may reveal a pattern of behaviour by a Government agency that comes within the definition of collusion. This evidence may add to and form part of the cumulative effect which emerges from a reading of the documents. Both perspectives will be considered in determining whether the evidence indicates that there have been acts of collusion by the police. However the aspect of a direct contribution by the police will have a greater significance in my consideration of what may constitute collusive acts in this case.

B. Importance of the police force to the community

2.228 The vital importance of the police force to the community as a whole and to the administration of justice cannot be over emphasised. The first contact members of a community have with the justice system is through police officers. As members of the justice system, police officers must act judiciously. They must always strive to enforce and apply the law fairly, evenly, without bias or discrimination. It can never be forgotten that the role of the police is to serve and protect the entire community not just one segment of it.

2.229 The report on the Finucane case referred to the role of the police. Perhaps I can usefully quote three paragraphs from that report.

“The role of the police requires great physical courage, absolute integrity, patience, sensitivity, understanding, and firm discipline both from the individual officer and from the police force as a unit. To perform their duties in today’s society police officers must be both intelligent and highly trained. The police must serve and protect all within their community without regard to the colour of their skin, their religion or country of origin. They must act without preference or bias.

The role of the police in a democratic society is of the highest importance. They must exercise all the highest attributes of a police force operating in the most despotic countries. Yet the police in a democracy must go much further. They must recognise that they are subject to the rule of law and always operate within and under the rule of law, no matter how difficult and how frustrating that may be. The police must serve and protect their community but always in a manner that complies with the law. They must protect their community and enforce its laws fairly and without discrimination. Prejudices must be set aside and personal preferences rejected. It is an extremely difficult role. Yet the work of the police is of fundamental importance to their community and country. It is the police who must serve as the role model for all, standing as examples of disciplined courage and fairness. Good police officers deserve the support, recognition and admiration of their community.

...

The present reformed police force, designated as The Police Service of Northern Ireland (PSNI) , may serve as an example to all the residents of Northern Ireland. It will demonstrate that police officers, whether Catholic or Protestant can work well together. I am sure that these officers will, in the course of their work, display that requisite high degree of courage, impartiality and fairness. The officers themselves will, with the passage of time, learn that they can place their safety and their lives in the hands of a partner of a different religion. From this will develop confidence and trust in their fellow officers and eventually friendship. This cooperation, trust and friendship will truly serve as an example to all in Northern Ireland. This may sound trite, overly optimistic and of only passing relevance to this inquiry. Nonetheless I believe that it is important to state for the benefit of both the Police Service of Northern Ireland and the people they serve.

2.230 There is another aspect of police work that must be mentioned. As I have said it is fundamentally important that the police serve and protect the entire community not just one segment of it. It is equally true that all segments of the community should cooperate with the police. It is only with that cooperation that the police will be able to provide the high degree of service and protection that all communities deserve.

C. What actions of the police could constitute collusion

i. The conduct of Reserve Constable B

2.231 First and foremost the actions of Reserve Constable B, if established, are capable of being found to constitute the most flagrant type of collusion. His actions did not constitute the simple turning of a blind eye. Rather they could be found to be carefully planned and premeditated actions taken to frustrate a murder investigation and to protect or to exonerate an individual who might have been guilty of murder. The instruction to dispose of Mr O's clothing was an invitation to destroy possible evidence of participation in a murderous assault. If it is established, this action in itself is a dangerous abuse of his position as a police officer and could be found to constitute a flagrant and deliberate act of collusion. Ever since Cain slew Abel,

murder has been considered by all societies to be the most serious of crimes. Every democratic country expects a murder case to be investigated fully, fairly, thoroughly and carefully. Yet the actions of Reserve Constable B could be found to have frustrated a full and careful police investigation of Robert Hamill's murder

- 2.232 It is true that Officer B has always denied making the call to the O home shortly after 8.00am on the morning of 27 April. It is obviously not for me to make findings of fact. However the evidence referred to in the segment headed "Conspiracy to pervert the course of justice: the conduct of Reserve Constable B" is of such a worrisome nature that it, of itself, requires that there be a public inquiry to resolve the issue. If the acts alleged against Officer B are established then it could be found that he deliberately committed a very serious and flagrant act of collusion. If the clothes were destroyed then no forensic testing of them could be carried out and a party to murder may have avoided detection and identification with the deliberate collaboration and assistance of a police officer. The investigation of a murder may have been frustrated and the administration of justice obstructed and perverted by the actions of a police officer.
- 2.233 One might wonder why Officer B would take the step of phoning Mr O's home to advise his parents to tell him to get rid of his clothing if Officer B had not seen Mr O taking part in the assault. If Mr O was never closer to the assault than ten yards and took no part in it then there would be no need to be alarmed about the condition of his clothing or what the testing of the clothing might reveal.
- 2.234 If it was an innocent call or indeed one simply to advise the parents that he had seen their son at the scene of a riot would he take such pains to have a friend (Mr X) falsely state that he was the one who had made the telephone call? The fabrication involved the participation of another couple with all the ramifications and possibilities of disclosure that this would necessarily entail.
- 2.235 The questions raised by the actions alleged to have been taken by Officer B to advise Mr O to get rid of his clothes are so serious that they must be explored in a public inquiry. There is no other way in which to restore public confidence in the PSNI. These alleged actions of a very experienced Reserve Constable, in themselves,

warrant the holding of a public inquiry. Moreover it may be that this act affected and permeated the approach of the police to their entire investigation of the Robert Hamill murder.

2.236 There are other actions of Officer B that are worrisome. First although he had known Mr O well for a number of years he never mentioned him by name in his earlier statements. It is only in a statement he gave in September 1997 that he first mentioned him by name. Even then he referred to him only in a passing way and indicated that Mr O was no longer active in the Tae Kwon Do club. Yet he identified Mr O to Sergeant J so it is apparent that he knew he was at the scene.

D. Other aspects of police conduct a Public inquiry may wish to explore

2.237 There are other actions or inactions of the police which a public inquiry may wish to explore. Let us assume that, when the police were aware of fights taking place, they took all reasonable steps to ensure that order was restored and that victims were protected. Nonetheless the following serious questions still remain.

i. The warning of Mr V and the movement of the Land Rover

2.238 The first issue arises from the police reaction or failure to react to Mr V's warning that others were on the way up from St Patrick's Hall. At that moment the police were also aware that there were others coming up from the bus stop at the bottom of town. The rival groups of Protestants and Catholics were bound to meet. The intersection was a flash point and the police must have been aware that the emotions of both groups were well fuelled by alcohol and could readily ignite.

2.239 Police records indicate that over the six months prior to 27 April, 17 incidents had occurred at this junction. In light of this, was it reasonable to move the Land Rover to its third and final position where the officers would have great difficulty seeing those coming up Thomas Street from the Hall? Although these actions may well be simply manifestations of an error in judgment on the part of the police, they could also be found to be collusive acts taken to assist the Protestant rioters. Only a public inquiry could determine the issue.

ii. What could be heard from inside the Land Rover?

2.240 There is conflicting evidence from the officers in the Land Rover as to what could be heard. There can be little doubt that with the vehicle closed up and the motor running it would be difficult for the officers to hear what was being said outside. Yet Constable D noted that he could hear shouting outside while chatting with Mr R and Mr Q. In addition, Constable C could hear yelling while the doors of the vehicle were shut and the engine was running.

2.241 If the shouts and screams of Joanne and Siobhan Girvan could be heard and were ignored that could constitute an act of collusion that encouraged or aided the Protestant rioters by turning a blind eye to their behaviour.

iii. Why were the officers in the Land Rover unaware of the identity of the members of the Protestant participants in the riot?

2.242 It might be found significant that it was only one of the back up officers who had no difficulty naming several of those present. This was a small community, and many of the civilians seemed to know the police. Was there a reluctance on the part of the police to name those present? If this is established, this could be found to amount to a collusive act that would assist the Protestant rioters

iv. Failure to seal off the scene and take blood and liquid samples when the police were advised that the injuries to Robert Hamill were life threatening.

2.243 The scene was not identified and sealed off until after 7.00am. Forensic evidence was not collected until some hours, and in some cases, days, later. It will be remembered that the hospital phoned to advise of the gravity of Robert Hamill's injury about 4.35am. After that time this was no longer another minor Saturday brawl. This was a case of a serious assault. From that moment the scene should have been taped off and samples taken of the liquid, (blood or alcohol), near the location of Hamill and Girvan. Steps should have been taken to obtain the clothing of Robert Hamill and those identified at the scene as taking part in the assault. This may be the counsel of

perfection. Yet the failure to take these steps may indicate a bias in the police force that could amount to institutional collusion.

v. The release of Mr J

2.244 The public inquiry may wish to explore the reasons for Mr J's release from the Land Rover even though someone at the scene told Constable E that he was "one of the ones" who assaulted Robert Hamill. Mr J was not arrested until 10 May 1997. Why was there not a more timely follow-up on this suspect and evidence that might be gathered from him? Once again this could be found to be no more than an error in judgment or it could be found to be a collusive act undertaken to assist the Protestant rioters.

vi. Mrs X and her presence during the time that Witness "A" gave her statement to the police

2.245 Witness "A" gave her statement to Detective Inspector S in the presence of Mrs X. In that statement she related Mr O's account of Officer B's phone calls. Mrs X said nothing to rebut or contradict this account.

2.246 It was also Detective Inspector S who later took Mrs X's first statement in which she asserted that it was her husband, rather than Reserve Constable B, who called the Os at 8.37am on the morning of 27 April. There is a clear discrepancy or conflict between the statements of Witness "A" and Mrs X that should have appeared obvious to the Inspector. Yet, this was not followed up, and Mrs X's account, which exonerated Officer B, was simply accepted. This is something that that a public inquiry might wish to explore.

vii. The failure to proceed with and follow up on tests of blood and liquid found at the scene

2.247 The blood on the collar and back of Robert Hamill's jacket, and bloodstains taken from the road at the junction of Thomas and Market Street might have revealed relevant evidence, had they been subject to proper forensic testing. These acts could

be found to be no more than errors in judgment, mistakes made in the course of a very stressful incident or they could be found to be collusive acts or omissions undertaken to assist the Protestant rioters.

Cumulative effect

2.248 Perhaps taken individually some of the items set out under headings i to vii could not be found to be acts of collusion. However, taken in combination with each other and particularly with the alleged acts of Officer B, they are capable of supporting an inference of collusion. It is the cumulative effect of all these matters which must be taken into account in reaching a conclusion as to whether there is evidence of collusive acts committed by the police. The cumulative effect of the issues raised in headings i to vii combined with the alleged acts of Officer B convince me that there is sufficient evidence of police collusion to warrant the holding of a public inquiry.

2.249 As a result I must conclude that a Public inquiry should be held to review the actions of the police during the period just prior to the disturbance, during the course of the disturbance itself, and during the subsequent investigation into the murder of Robert Hamill.

2.250 I must note that this report has been completed without reference to papers filed with the Criminal Injuries Compensation Agency although they were requested some three months ago.

2.251 Apparently the agency obtained an opinion of counsel that the papers should only be released to me if the consent of the claimant or witnesses were obtained by the agency.

2.252 It would, of course, have been helpful to read that material. However, I am satisfied that although it may have supported my conclusions it would not change or vary them because they were based on other documents. It is simply not worth the time and expense involved to seek a judicial review of the decision to refuse access to the material no matter what view I might take of the legal opinion upon which it is based.

The basic requirements for a Public inquiry

2.253 When I speak of a public inquiry, I take that term to encompass certain essential characteristics. They would include the following:-

An independent commissioner or panel of commissioners.

The tribunal should have full power to subpoena witnesses and documents together with all the powers usually exercised by a commissioner in a public inquiry.

The tribunal should select its own counsel who should have all the powers usually associated with counsel appointed to act for a commission or tribunal of Public inquiry.

The tribunal should also be empowered to engage investigators who might be police officers or retired police officers to carry out such investigative or other tasks as may be deemed essential to the work of the tribunal.

The hearings, to the extent possible, should be held in public.

The findings and recommendations of the Commissioners should be in writing and made public.

The importance and necessity of holding a Public inquiry in this case

2.254 At this stage I must paraphrase and repeat much of what was said under this heading in the Finucane Report.

2.255 During the Weston Park negotiations, which were an integral part of the implementation of the Good Friday Accord, six cases were selected to be reviewed to determine whether a public inquiry should be held with regard to any of them.

- 2.256 The Hamill case was specifically chosen as one of the six cases to be reviewed to determine if there was sufficient evidence of collusion to warrant the directing of a public inquiry. In light of this provision in the original agreement, the failure to hold a public inquiry as quickly as it is reasonably possible to do so could be seen as a denial of that agreement, which appears to have been an important and integral part of the peace process. The failure to do so could be seen as a cynical breach of faith which could have unfortunate consequences for the peace accord.
- 2.257 Further if, as I have found, there is evidence capable of constituting collusion, then members of the community undoubtedly would like to see the issue resolved quickly. Indeed a speedy resolution is essential if the public confidence in the police, and the administration of justice is to be restored. In this case only a public inquiry will suffice. Without public scrutiny, doubts based solely on myth and suspicion will linger long, fester and spread their malignant infection throughout the Northern Ireland community. Yet in this case a public inquiry might, for example, find that the police on the scene did react reasonably and quickly when they became aware of the dangerous situation created by the cowardly actions of the group who attacked and kicked Robert Hamill.
- 2.258 The Attorney General has an official duty to consider whether prosecutions will have to be brought in light of the further evidence which has been brought to light. If it is determined that prosecutions are to proceed then a public inquiry would in all probability have to be postponed, since it is extremely difficult to hold a public inquiry at the same time as a prosecution. This would be a bitter disappointment to the Hamill family and a large segment of the community. It is a difficult decision that only the Attorney General can make. If the evidence makes it apparent that an individual has committed an offence then, as a rule, there should be a prosecution. Society must be assured that those who commit a crime will be prosecuted and if found guilty punished.
- 2.259 However there are other factors that will have to be considered. For example it cannot be forgotten that Robert Hamill was murdered over 6 years ago. Since that time witnesses may have moved. Certainly their memories will have faded. It must also be noted that, in the past, a number of arrests made in connection with Robert Hamill's

murder could not proceed to prosecution due to the unwillingness of key witnesses to testify. The one case that did proceed resulted in an acquittal on the murder charge due to a lack of evidence. It remains to be seen whether eye-witnesses to the fatal assault would be any more willing to come forward and cooperate at this time.

2.260 In light of the finding that there is sufficient evidence which could constitute collusion to warrant a public inquiry, the community might prefer a public inquiry over a prosecution even if that means that some witnesses must receive exemption from prosecution. Relatives of the victim, supported by many members of the Northern Ireland community, have for many years sought a public inquiry. The difficult decision to be made by the Attorney General will require him to undertake a careful and sensitive balancing of all the relevant factors.

2.261 If this public inquiry is to proceed and if it is to achieve the benefits of determining flaws in the system and suggesting the required remedy, and if it is to restore public confidence in the police and the judicial system, it should be held as quickly as possible.

2.262 Concerns may be raised regarding the costs and time involved in holding public inquiries. My response to that is threefold:

1. If public confidence is to be restored in public institutions then in some circumstances such as those presented in this case a public inquiry is the only means of achieving that goal.
2. The original agreement contemplated that a public inquiry would be held if the requisite conditions had been met. That there is evidence of collusion has been established in this inquiry. Thus, in this case, the requisite condition has been met.
3. Time and costs can be reasonably controlled. For example, a maximum allowance could be set for counsel appearing for every party granted standing. That maximum amount should only be varied in extraordinary circumstances duly approved by a court on special application.

Counsel and the Commissioner or Commissioners would have to undertake to devote their full time to the inquiry until it is completed.

If the Commissioner found that the actions of a counsel were unnecessarily and improperly delaying the proceedings the costs of that delay could be assessed against that counsel or his or her client.

2.263 These are simply suggestions for controlling the unnecessary expenditure of public funds. Obviously there are many variations that could be played upon the important theme of cost reduction of public inquiries. They might lead to a significant reduction in the expenditure of public funds and as well to greater harmony and fewer discordant notes in the inquiry process.

2.264 The Good Friday Accord and the Weston Park Agreement, which set out the selected cases as an integral part of the Accord, must have been taken by both Governments to be a significant step in the peace process. Six cases were chosen and the Agreement was negotiated and entered into on the basis that, if evidence which could constitute collusion was found, a public inquiry would be held. In those cases where such evidence has been found, the holding of a public inquiry as quickly as is reasonably possible is a small price to pay for a lasting peace.

2.265 At the time of the Accord, the parties would have had in mind a public inquiry as that term was known in 2001. Yet all reasonable people would agree that an inquiry should proceed as expeditiously and economically as possible. They are not designed, and should not be considered, as a means of enriching the legal profession. No reasonable person could object to strictures being placed on the inquiry to ensure these goals. These strictures would benefit all.