

STATEMENT OF WITNESS

STATEMENT OF GORDON KERR Q.C.

DATED THIS DAY OF 2009

I, GORDON KERR QC, declare that this statement is true to the best of my knowledge and belief and I make it knowing that if it is tendered in evidence at the Inquiry I will be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

1. The Inquiry has disclosed a number of documents to me. Where I make specific reference to a document in my statement, I have given the number of the relevant page.
2. I was instructed by the Director of Public Prosecutions [DPP] in relation to the death of Robert Hamill. Responsibility for directing the prosecution of cases lay with the DPP. Between 1997 and 2002, if the DPP instructed counsel, the complete police file was usually forwarded to counsel. This should have contained a report from the police to give an outline of the incident together with comments on the witnesses and various addresses for people who could be contacted, whether the case included forensic evidence plus any unused material. No papers were sent directly to counsel by the police.
3. I was sent papers at an early stage of the Robert Hamill case and asked to give an opinion on the case after consideration and consulting with witnesses as necessary. I cannot now recall from whom at the DPP's office the initial instructions came but it was either Mr Kitson, Mr McCarey or Mr Davison. A case of this nature would have probably been assigned by an area director.

4. At a later stage I was asked to consider a file against the police and to consider their position in relation to any criminal liability, particularly in relation to the offence of unlawful neglect of duty. This related to the four police officers in the Landrover.
5. I was asked to consult with a number of specified witnesses in this case to assess their evidence and give opinion. Counsel rules in Northern Ireland would be that I should not consult with a witness without an attending solicitor, and that requirement was fulfilled by the DPP officer. At this time, I certainly had received the police file, but whether or not it was complete at that stage I do not know. It is not unusual for further statements to come to light during the course of an investigation.
6. I had consultations with four witnesses. They were Jonathan Wright, Witness A, Witness B, and Colin Prunty. I cannot fully recollect who instructed me on that particular matter but a handwritten report produced and shown to me at **28455** suggests I was instructed by Mr Roger Davison. I saw Colin Prunty with both Mr McCarey and Mr Kitson on separate occasions. It was primarily the DPP who determined who should be present at those meetings but on one or two occasions I may have looked at a witness's statement and said that I thought that there should be a consultation with that witness.
7. I consulted with Jonathan Wright on 17 October 1997. The purpose of the consultation was to assess his credibility as a witness and the reliability of his statements. I can see from my advice at page **28339** that Mr Roger Davison was in attendance but I cannot recall who else was there and I have not recorded it. I have been shown Mr Roger Davison's note of the consultation which refers to Detective Sergeant Bradley and Detective Superintendent Cooke being present. That note is produced and shown to me containing the page numbers **17591 to 17592**.
8. The presence of DSupt. Cooke suggests to me that this was being handled as a high profile case and it was considered appropriate for a senior officer to be present.

Frequently, in a case of this nature, the head of the local crime squad would be in attendance at a consultation. I recall that the police were very anxious to get evidence to the court in this case and the presence of Mr Cooke was partly an indication of how seriously they were treating the matter. The police did not play any role during consultations unless I directly asked them a question.

9. After speaking to Jonathon Wright, I was satisfied he was a competent and careful witness, subject to the fact that he had contradictory statements. This opinion was in my note to the DPP.
10. On the same date, 17 October 1997, and in the same office; I met Witness A. Prior to the consultation, I was told that the police were satisfied with the evidence of this witness but that there could be problems with her giving evidence as she had a relationship with one of the potential accused. The purpose of the consultation was to test witness A's ability to give evidence. It appears DSupt. Cooke, Detective Sergeant Bradley, and DC McAteer were present, as well as Mr Davison, and Witness A's parents.
11. My impression of witness A was that she did not want to give evidence at all. She denied that it was as a result of fear and maintained that she was in love with one of the potential accused. The witness also considered other people involved with the case as friends. For these reasons, it was evident Witness A was unwilling to give evidence. My recollection is that Witness A's parents were supportive of her.
12. With regards to compellability, Witness A was as compellable as any other witness but it is not the practice in Northern Ireland to call witnesses in most situations like this. In Northern Ireland, we are not in the same position as in England where, if a witness can give reasonable evidence, they will become compelled. We have very different considerations. Witness A was associating with a group of people who potentially, could not only cause her harm, but also harm to her family. My recollection is that there was discussion at the end of the consultation or the next

consultation, whichever sequence they were in, at which the police expressed the view that it was the influence of Witness A's friends rather than fear. If it had been fear, I would have wanted statements to that effect and considered submitting the evidence under Article 3 of the Criminal Evidence (NI) Order 1988. The police also expressed the view that Witness A could potentially be in danger if she was to be pursued as a witness. I do not have a note of that but that is my recollection of that particular incident.

13. I can confirm I attended a consultation with Witness B on 21 October 1997. I cannot recall where this took place. Prior to the consultation, I was told that the witness was claiming that his statement was not true, and he was reluctant to give evidence. With regards to vulnerability of Witness A and B, the very fact that they were being referred to as Witness A and Witness B was enough to alert me that there was concerns about their safety. I do not doubt that at some stage I would have spoken to the police about their vulnerability.
14. The purpose of the consultation with Witness B was to test the evidence but also to ascertain if this person was going to give any evidence at all.
15. I have been asked if DI Irwin was present at this consultation. It is not in my notes and the only time I recall meeting DI Irwin in relation to witnesses was one trip to Portadown Police Station.
16. Witness B's father was present at the consultation. I recall that he sat with a very long face and looked exceedingly uncomfortable and miserable throughout. At the end of the consultation, he said that his son would not be giving evidence. It was thought by the police that his demeanour was due to the fact he owned a local business and feared a family member giving evidence in a sensitive case would not be good for trade. I can recall being told that he had a shop of some sort which was in the local area although am not 100% certain.

17. My impression of Witness B was that this person lacked credibility and reliability in giving evidence. In my view, compulsion of Witness B was irrelevant in view of the fact that he was going to claim his statement was made up and he was ordered to sign it by the police. I did not see any point in compelling a witness who was clearly incredible.
18. In terms of sectarian conflict, I was told that both sets of parents had no connections to any particular side although I cannot be certain about that.
19. I had two consultations with Colin Prunty. The first was on 30 October 1997 at the High Court. Mr McCarey and Mr Prunty's representative from ██████████'s solicitors office were present. The second consultation took place some days later at Portadown Police Station. A note of consultation written by Mr McCarey lists myself, Miss Brady from ██████████'s office, Mr Prunty, and Mr McCarey being present. This note was produced and shown to me containing page number **18062**.
20. I thought that Mr Prunty was an impressive witness when I first met him. He seemed to stick to his statement and described the circumstances well. He also did not exaggerate or take an opportunity to latch on to something that I might say to expand his evidence.
21. On the Monday after the consultation, I was informed that Mr Prunty had seen a news programme which showed Dean Forbes being released from prison. Upon seeing Mr Forbes, he was sure this was the man he had been referring to in his first statement. Previously, it had been understood Mr Prunty was referring to Wayne Lunt, putting him directly at the scene of the attack.
22. At the second consultation, I asked the police to produce photographs of Wayne Lunt and Dean Forbes, along with other individuals. These were shown to Mr

Prunty and he picked out Dean Forbes as the man he had been referring to in his first statement.

23. Mr Prunty was called as a witness at trial on the basis that I still considered his account of the incident a sound one, but clearly he was in a position where no matter whom we prosecuted (Wayne Lunt or Dean Forbes); he was going to effectively give evidence that would damage the case against the other. I have absolutely no doubt, the evidence he gave at the trial did not correspond to his earlier witness statement.
24. After I had consulted with these four individuals, I then went through the case against each of the people concerned and gave advice and opinion to the DPP. I would say that I did not feel it was necessary to consult with any other witnesses. However, there is an issue in that witnesses had to be arranged through [REDACTED] the solicitor dealing with virtually all the witnesses on the Hamill side of the attack; and I am aware that on occasions the police had severe difficulty in getting communication to these witnesses. I believe they were informed there should be no contact with the witnesses directly because the witnesses would not speak to them. That is my recollection. I may have asked if other witnesses were available and I may have been told that they were not. I cannot be 100% sure.
25. With regards to identification, my recollection is that identification parades were offered to a number of accused and they were turned down. I also believe, from recollection, that there was some difficulty with finding witnesses willing to even attempt to ID. I would say there were certainly attempts for identification, but they came to nothing.
26. I made my original opinion relating to murder charges in November 1997 without a pathology report. I am not in a position to place this particular case in historical context in Northern Ireland but I would have thought that it was not unusual at opinion stage for Counsel not to have a pathology report. In fact, it is not unusual

sometimes to be without one for trial. Given the state of affairs at that stage, an opinion by November for an incident that occurred in May would actually have been quite quick.

27. In the absence of the pathology report, I made it absolutely clear that I would not be content advising on a joint enterprise case without an opinion as to the cause of the injury. In December 1997, following the receipt of the pathology report, I advised murder charges against Marc Hobson. A note to this effect is produced and shown to me containing the page number **17631**.
28. My recollection is vague in relation to the forensics report of a blood spot from Stacey Bridgett on Robert Hamill's jeans. I would be surprised if I did not speak directly to Lawrence Marshall, or have the situation clarified for me. I do not know whether this evidence was ever put to Stacey Bridgett but I would have expected the police to have questioned him on it. Again, forensic science was under tremendous pressure at the time. It was not unusual for us not to have a full forensics report until over a year and a half after an event.
29. I have been asked why Stacey Bridgett was never asked for an explanation as to why his blood had landed on the trousers. All I can say is that this would have been a matter for the police. One would normally anticipate that it would be a piece of evidence he would be asked about.
30. A letter, dated 20 May 1999, produced and shown to me containing the page number **19388**, covering the disclosure of transcripts of evidence was used to form a further opinion on 1 July 1999. That opinion contains page numbers **37752 to 37762** and relates to the allegations against the police in the Land Rover. I had no involvement with the RUC in this aspect of the Robert Hamill investigation.
31. I have some recollection of perhaps consulting with Mr McDowell, the forensic scientist who did a mock up of the position of the Land Rovers. Mr McDowell gave

evidence or made a statement relating to what could or could not be seen from various points.

32. I was not in the practise of using a word processor until after 1999 and it is likely I typed my opinions on a typewriter or wrote them by hand, and gave the notes to the DPP. It was also not my practise at the time to date opinions.
33. I have been asked about my second advice at page 19343 at paragraph 5 and the reference to paragraph 8 (c) of a previous advice. Clearly, I had not produced the advice in the format of a, b, c as I thought I had and I must have been looking at an earlier draft of my opinion. The point that I was making was that it appears to be common sense that the police had in fact intervened while the fight was continuing in some shape in form but on the evidence of Vincent McNiece and Colin Hull, whose statements I had received
34. After trial, I was asked to comment on allegations made against police officers. I did not believe there was anything from the trial concerning the police officer's evidence. It seemed to me the transcript showed even more dispute about the positions of various parties.
35. There was nothing in the consultation with witnesses which gave me any concern about the way the police had actually dealt with them. It was my impression, the police were very anxious to get evidence to the court in this case.

SIGNED: Gordon W Kerr

DATED: 4th February 2009