

STATEMENT OF WITNESS**STATEMENT OF STEPHEN BURNSIDE**

DATED THIS 14 DAY OF September 2009

I, STEPHEN BURNSIDE, 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. During the period 1998-1999, I worked for the Director of Public Prosecutions ("DPP") as a Senior Legal Assistant at Belfast Crown Court. My responsibility was primarily dealing with disclosure aspects of cases which were before the Crown Court, and I had been in the role since 1994.
3. Once a committal had taken place at the Magistrates' Court, the officer within the DPP who had supervised that committal would refer the papers to my department, where the trial briefs would be prepared. In the case with which the Inquiry is interested, *R v Hobson*, the Magistrate had ruled that Marc Hobson should face trial at Belfast Crown Court, and that is where I became involved.
4. In dealing with a case, I would work with Counsel who had been appointed, and, in this instance, that person was Gordon Kerr. I would take Counsel's views and use their assistance, but the ultimate decision as to disclosure of documents would be taken by me.
5. Usually a case would proceed under the Criminal Procedure and Investigations Act ("CPIA"), and primary disclosure of documents would be handled by the DPP officer

who directed the case, whilst I would have only dealt with any secondary disclosure matters once the case was at the Crown Court. However, because the *R v Hobson* case was a common law case, I would have dealt with all the disclosure arising after committal.

6. Mr Hobson was represented by Richard Monteith, solicitor, and there was some correspondence between the two of us relating to various aspects of the case.
7. On 25 February 1998, my office received a letter from Richard Monteith (28230) in which he says that he had previously met with the Assistant Director, Mr Kitson, with whom he had discussed the tape recorded interviews of his client. Mr Monteith made the argument that a substantial portion of the tape recordings should be removed, because they refer to the evidence of two witnesses who do not feature in either the Preliminary Enquiry papers or the disclosed documents. I understand this was referring to Witness A and Witness B, who I now know to be Tracey Clarke and Timothy Jameson, respectively.
8. On 12 August 1998, Mr Monteith wrote again to my office (31541) stating it was apparent that a considerable volume of material relating to Crown witnesses and Police Officers had not been disclosed to his team, and requesting that this be done forthwith. I replied on 17 August 1998 (51540) informing Mr Monteith that, should he wish to inspect the unused material, the officer-in-charge, Detective Inspector Irwin, would be able to assist. This was normal procedure; the defence solicitor would have the opportunity to inspect the unused material and would get back to us with any material he considered should be copied to him.
9. On 15 September 1998, Mr Monteith wrote to my office (31536) informing us that he had, in the absence of Detective Inspector Irwin, met with Detective Sergeant Bradley in order to go through the unused material, however he was still awaiting certain documents to be disclosed to him, in particular the statements of Tracey Clarke and Timothy Jameson.
10. At the same time as the case against his client, there was a public complaint of neglect of duty against Constable Neill and Reserve Constable Atkinson made by

the Hamill family, and an issue against Reserve Constable Atkinson for assisting an offender, made by Tracey Clarke, both of which were being handled by the DPP. Obviously this was of interest to Mr Monteith, as both police officers were key witnesses against his client, and on 23 September 1998, (31534) he wrote to my office for confirmation from the DPP as to whether or not any police officer involved in the Hobson case was to be prosecuted for any other offence. My reply of 29 September 1998 (31532) says that I can confirm a file has been received by the DPP, but that no decision to prosecute has yet been taken. I was not dealing with disclosure in the cases against the police officers and I cannot recall whether I was aware at the time that they were being held back until after the Hobson case. Regardless of whether a decision had been taken in these other cases, Mr Monteith would have been provided with all the material relevant to an issue in the case in which he was acting.

11. On 2 October 1998, the DPP received a further letter from Mr Monteith (31527) in which he refers to his letter of 12 August 1998 (31541) and requests documents concerning the initial reasons for the arrest of his client. Specifically, he says,

"It would appear clear that matters relating to the basis for Hobson's initial arrest have not been fully disclosed, i.e. details, statements and documents relating to at least two persons who purported to give evidence at some stage."

12. I replied to Mr Monteith's letter on 9 October 1998 (31526), stating that two persons, Witness A and Witness B, had made statements identifying a number of people of alleged involvement in the incident, but that these two witnesses had later indicated that they were not prepared to give evidence in court. I informed Mr Monteith that the parts of the statements relevant to his client had been put to his client in interview, but that the Crown considered the remaining portions of these statements were not relevant to an issue at the forthcoming trial, and therefore would not be disclosed at this stage.

13. Mr Monteith followed this with further correspondence stating that he did not agree with our decision, and that the matter had been referred to Counsel. In this instance, I would usually have spoken to our Counsel and, having taken their views

on board, I would have come to a decision. I do not specially remember doing so in this case, however I maintained my position that the statements would not be disclosed. However, by letter dated 21 December 1998 (31479), Mr Monteith wrote again, stating that our Counsel, Mr Kerr, had given an undertaking before the trial judge on 13 November 1998 that the two witnesses would be disclosed. In such circumstances, I would usually have discussed the matter with Counsel as I would not have been present in Court. I do not specifically remember such a conversation but it is clear that I then agreed with Counsel and carried out our commitment to the Court and, on 4 January 1999 (31469), I disclosed edited copies of the two statements to Mr Monteith.

14. I was surprised that Counsel had agreed to disclose the documents to the Court, and surprised that the Law Clerk had not informed me of the commitment to disclose the statements. On review of the issues, I concurred with Counsel's commitment to disclose the statements.
15. Prior to the two statements being disclosed to Mr Monteith, I would not simply hand over the statements, I would have spoken with Counsel and taken advice as to whether portions of the statements should be edited out. In relation to these two statements, the information that was removed related to the identities of persons names in the statements. The allegation against Reserve Constable Atkinson was disclosed though the names were edited out.
16. Whilst there should be a record in the court files of Mr Kerr agreeing to provide Mr Monteith with the two witness statements, conversations between myself and Mr Kerr regarding the editing of the statements and so on, would not have been recorded.
17. I have been asked whether there was a duty on us to inform the police before disclosing documents to defence Counsel, in particular the statements of Witnesses A and B, and whether we considered if doing so may pose a risk to a person's safety. I would not have considered it necessary to tell the police what was happening every time a document was disclosed, primarily because in these types of cases involving a police officer, Crime Branch would ordinarily send the

Investigating Officer or a representative along to the Court hearings and would be aware of what we were proposing to disclose. Additionally, in this particular case, the statements were received from the police as statements in evidence, and whilst I would have been content myself that there was nothing within them which would obviously place anyone's safety at risk, I would not have felt the need to inform the police of their disclosure. Had the statements been included on the sensitive schedule received from police, I would have immediately been more cautious and may well have had discussions with the police prior to disclosure. I do not remember which course I adopted in relation to these statements. However, as all the details identifying individuals were edited from the statements, it is clear that I was mindful of potential risk to individual's safety.

18. Mr Monteith did not write further on this matter and appeared to be satisfied with the disclosure.

SIGNED: *Stephen Burnside*

STEPHEN BURNSIDE

DATED: *14 September 2009*