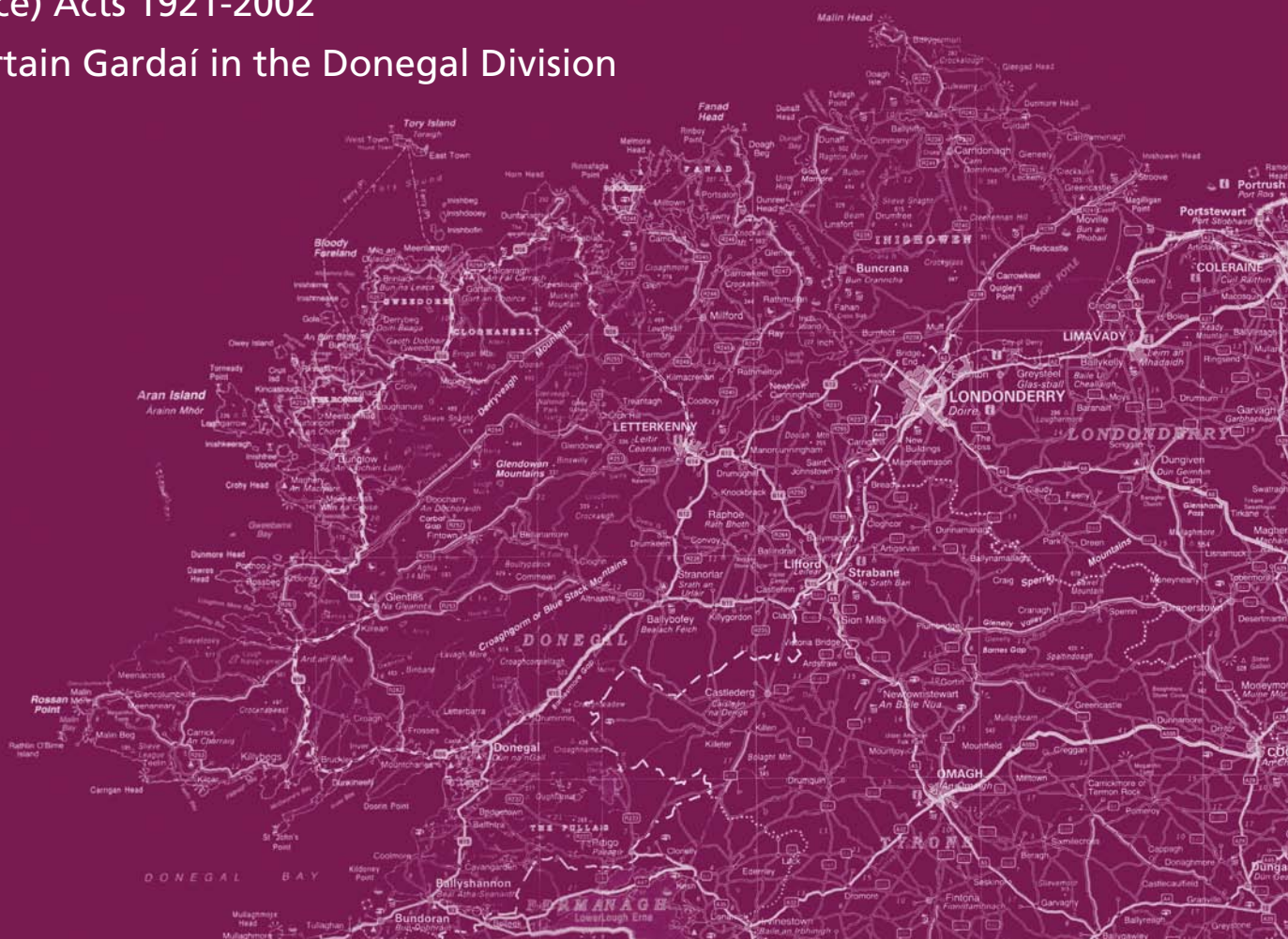




REPORT OF THE TRIBUNAL OF INQUIRY

Set up Pursuant to the Tribunal of Inquiry
(Evidence) Acts 1921-2002
into Certain Gardaí in the Donegal Division



CHAIRMAN:
The Honourable Mr. Justice Frederick R. Morris

Solicitor to the Tribunal: Hugh Dockry
Registrar to the Tribunal: Brendan O'Donnell

**REPORT ON THE DETENTION OF 'SUSPECTS' FOLLOWING THE DEATH OF
THE LATE RICHARD BARRON ON THE 14TH OF OCTOBER 1996 AND
RELATED DETENTIONS AND ISSUES**

Term of Reference (b), (d) and (f)

VOLUME 2



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VOLUME 2

Chapter 7 The Arrests and Detentions of Frank McBrearty Junior

7.01.	Introduction.....	455
PART I The Arrest and Detention on the 4th December 1996 – Key Questions		
7.14.	Summary of Mr. McBrearty Junior’s Account.....	461
7.28.	Summary of the Garda Account.....	466
7.49.	Summary of Events as per the Custody Record.....	474
7.51.	Planning The Arrest of Mr. Frank McBrearty Junior.....	476
7.54.	The Arrest.....	477
7.61.	Bringing the McBrearty Junior Children Home.....	480
7.70.	The Journey to Letterkenny Garda Station.....	484
7.74.	Arrival at Letterkenny Garda Station.....	486
7.78.	The First Interview.....	487
7.82.	Arrival of the Solicitor.....	489
7.89.	The Interviewing Gardai.....	492
7.92.	The Garda Frame of Mind.....	493
7.95.	The Statement of Robert Noel McBride.....	495
7.100.	The First Interview – Garda Evidence.....	496
7.107.	Conclusions on the First Period of Interview.....	499
7.113.	The Second Period of Interview 12.04 Hours – 13.30 Hours.....	500
7.126.	Conclusions on the Second Period of Interview.....	505
7.131.	Extension of the Period of Detention.....	506
7.136.	The First Afternoon Interview.....	508
7.144.	Conclusions on the Third Period of Interview.....	510
7.145.	The Fourth Period of Interview 17.01 Hours – 18.10 Hours.....	510
7.158.	Conclusions on the Fourth Period of Interview.....	518
7.161.	The 18.00 Hours Conference.....	519
7.194.	Conclusions on the 18.00 Hours Conference Issue.....	535
7.200.	The Evening Interviews.....	537
7.211.	The Release of Frank McBrearty Junior from Detention.....	542
7.216.	Evidence Given in Cross-Examination.....	544

7.226.	Frank McBrearty Junior’s Account Given to his Solicitor	549
7.232.	The Second Page of the Letter	553
7.235.	Other Accounts Given by Frank McBrearty Junior	554
7.240.	Interview with Mr. William Flynn	556
7.248.	The Civil Action	559
7.250.	The Garda Complaints Board.	561
7.253.	Meeting with Inspector Hugh Coll	562
7.255.	Interview with Mr. Brian Garvie	563
7.259.	Interview with Mr. Patrick Cummins	565
7.263.	An Assertion Made to the Tribunal	566
7.267.	The Garda Response to the Allegations of Frank McBrearty Junior.	568
7.273.	The Garda Version of the Confession Interview	570
7.283.	The Confession	576
7.295.	A Visit from the Member in charge	581
7.298.	Conclusion of the Interview.	583
7.305.	The Final Interview	586
7.309.	The Second Statement.	589
7.313.	Garda Profile of Frank McBrearty Junior	590
Subsequent Accounts Given by the Gardaí		
7.316.	Statements of Detective Sergeant Melody and Detective Garda Fitzpatrick	591
7.325.	Statements of Sergeants Eamon O’Grady and Gerard McGrath	596
Handwriting		
7.332.	The Signatures of Frank McBrearty Junior	599
7.334.	Expert Evidence on the Signatures	600
7.338.	The Evidence of Mr. Seán Lynch	602
7.346.	The Evidence of Mr. James Nash.	605
7.352.	The Evidence of Mr. Kim Harry Hughes	609
7.354.	Sequence of Writing	611
7.363.	The Evidence of Mr. Robert Radley.	615
7.364.	Sequence of Writing	615
7.369.	Signatures	618
7.375.	Conclusions on the Handwriting Issues	621

Conclusions in Respect of the Arrest on the 4th of December 1996

7.376. Preamble – Difficulties with Mr. McBrearty Junior’s Testimony	623
7.390. General Conclusions	627
7.390. Conclusion on the Confession Issue	630
7.390. The Second Statement.	639
7.390. Final Conclusion	639

PART II The Case of Edmond Moss

7.395. The Garda Investigation	643
7.401. Reaching a Compromise	647
7.406. A Further Statement from Edmond Moss	650
7.412. The Superintendent’s Direction	653
7.417. A Further Statement from Edmond Moss	654
7.424. A Further Letter from the Solicitor	658
7.429. Sergeant White’s Report	661
7.439. Further Letters from the Solicitor.	667
7.446. The Criminal Trial.	670
7.448. Conclusions on the Garda Investigation	671

The Arrest and Detention of Mr. Frank McBrearty Junior on the 4th of February 1997

7.452. Introduction.	674
7.456. The Arrest	675
7.462. The Custody Record	678
7.464. First Interview.	682
7.466. Consultations with the Solicitor	683
7.477. The False Allegation Repeated.	689
7.487. Conclusions on the Assault Allegation	694
7.491. Subsequent Events on the 4th February 1997	696
7.506. Extension of Period of Detention.	701
7.507. A Consultation with the Solicitor	701
7.510. A Further Medical Examination	703
7.514. The Final Interview	704
7.518. Conclusions on the Detention of Frank McBrearty Junior on the 4th of February 1997.	705

Chapter 8 The Arrest and Detention of Mark Quinn

8.01.	Background	711
8.15.	Mark Quinn's Account	717
8.18	The Garda Account	718
8.23.	Journey to Letterkenny Garda Station.	720
8.33	At Letterkenny Garda Station	724
8.34.	Mark Quinn's Testimony	724
8.35.	The Interviews	725
8.36.	First Interview.	728
8.41.	Second Interview	729
8.46.	Third Interview	730
8.50.	Fourth Interview	733
8.59.	Fifth and Sixth Interviews	736
8.65.	Mark Quinn's Complaints	739
8.66.	Donna Quinn's Visit	739
8.70	The Making of a Complaint	741
8.75.	Removal of Shoes	743
8.80.	The "Dragging" Incident	744
8.87.	The Post-Mortem Photographs.	747
8.112.	Alleged Assault by Garda John O'Dowd	758
8.116.	Alleged Assault by Detective Garda Keating	760
8.124.	Detective Garda Padraic Scanlon	764
8.130.	Release from Custody	766
8.134.	Conclusions	768

Chapter 9 The Arrest and Detention of Katrina Brolly

9.02.	Issues Arising	774
9.04.	Denials and Admissions.	775
9.07.	An Eventful Day	775
9.09.	Letterkenny Garda Station	776
9.12.	Visit from the Gardaí	777
9.14.	The Arrest	778
9.19.	Conflict Over the Arrest	780

9.21.	The Detention of Mrs. Katrina Brolly	781
9.22.	Visit from Solicitor	782
9.23.	Garda Joan Gallagher	783
9.26.	The Early Interviews.	783
9.28.	An Unpleasant Encounter.	784
9.35.	Extension of Detention.	787
9.39.	The Contentious Interviews.	788
9.45.	The Following Interview	790
9.48.	Analysis	791
9.51.	The Final Interview	792
9.54.	The Release	793
9.55.	The Next Day.	794
9.58.	Garda Denial	796
9.62.	A Change of Heart by Detective Garda Dooley	798
9.64.	Detective Sergeant White's Response	801
9.66.	Garda Joan Gallagher's Response	804
9.67.	Evidence of Detective Garda John Dooley	808
9.73.	Evidence of Detective Sergeant White.	812
9.77.	Evidence of Garda Joan Gallagher.	813
9.83.	The Member in Charge.	820
9.85.	The Road to Damascus	821
9.94.	Omissions	824
9.97.	Analysis	825
9.98.	Conclusions.	826

Chapter 10 The Arrest and Detention of Frank McBrearty Senior

10.01	Introduction.	831
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PART I The Legality of the Arrest of Mr. Frank McBrearty Senior

10.03.	The Legal Framework.	832
10.08.	Background Facts Relevant to the Search of the Dwelling House of Mr. Frank McBrearty Senior and his Subsequent Arrest.	833
10.13.	Statements re Frank McBrearty Senior	835

10.24.	Meeting on the 20th of November 1996	838
10.31.	Aileen Campbell	840
10.35.	Information from Robert Noel McBride	841
10.53.	Garda Philip Collins	852
10.57.	The Search Warrant and Decision to Arrest Mr. Frank McBrearty Senior	854

PART II

10.70.	The Search of Mr. Frank McBrearty Senior's Premises and his Arrest	859
10.95.	The Journey to the Garda Station	868
10.101.	The Detention	871
10.102.	Overview of Detention of Mr. McBrearty Senior	884
10.104.	Arrival at Garda Station	885
10.114.	First Interview	888
10.136.	First Period of Hospitalisation from the 5th of December 1996 to the 12th of December 1996	897
10.158.	Medical Condition of Mr. McBrearty Senior	902
10.160.	Mr. McBrearty Senior's Discharge from Hospital and Subsequent Continued Detention in Letterkenny Garda Station	903
10.184.	The Letter	912
10.200.	The Obtaining of Information from Blanchardstown Hospital	921
10.205.	Second Interview	924
10.225.	Third Interview	933
10.246.	Sleeping Arrangements for the Night of the 12th/13th of December	946
10.251.	The Fourth Period of Interview	948
10.260.	The Fifth Period of Interview	950
10.276.	Hospitalisation and Release from Custody	956
10.280.	Subsequent Events	957
10.281.	Conclusions	957

CHAPTER 7

THE ARRESTS AND DETENTIONS OF FRANK MCBREARTY JUNIOR

Introduction

7.01. Mr. Frank McBrearty Junior was arrested on two occasions. He was arrested on the 4th of December 1996 at common law on suspicion of having murdered Richard Barron on the 14th of October 1996. This is dealt with in Part I. He was subsequently arrested on the 4th of February 1997 on suspicion of having committed an offence contrary to section 18 of the Offences Against the Person Act, 1861, in particular of having assaulted Mr. Edmond Moss on the 30th of December 1996. In addition, the Tribunal carried out a more extensive inquiry into the events surrounding the investigation of the alleged assault on Edmond Moss and the subsequent prosecution of Frank McBrearty Junior in respect of that matter, of which he was ultimately acquitted. The Tribunal was required under Term of Reference (f) to enquire into:

The circumstances surrounding the arrest and detention of Frank McBrearty Junior on the 4th of February 1997 and his subsequent prosecution in the Circuit Criminal Court in relation to an alleged assault in December, 1996 on Edward [sic] Moss with particular reference to the Garda investigation and the management of both the investigation and the role of the Gardaí in the subsequent prosecution.

This is dealt with in Part II. The Tribunal was required to carry out an inquiry into issues arising in connection with these arrests. This chapter sets out the issues that arose in connection with each arrest and gives the conclusions reached by the Tribunal in respect of those issues. The Tribunal will deal with each of the arrests in turn.

PART I

The Arrest and Detention on the 4th of December 1996 – Key Questions

7.02. In the course of Mr. Frank McBrearty Junior's detention on the 4th of December 1996, it is alleged that he made a statement of admission to Detective Sergeant John Melody and Detective Garda John Fitzpatrick which he signed at 20.25 hours. A further shorter statement was allegedly made to Sergeants Gerard McGrath and Eamon O'Grady and was also allegedly signed by him. The main statement in issue is as follows:

Statement of Frank McBrearty, born 22/5/1969 67 Elmwood Downs, Letterkenny, Co. Donegal Made to Detective Sergeant John Melody after being cautioned as follows “you are not obliged to say anything unless you wish to do so but anything you do say will be taken down in writing and may be used in evidence”.

Listen I’ll tell you what happened on 14/10/96. I heard that Richie Barron was up to his old tricks again mouthing about the McBrearty’s. Mark McConnell, he’s my first cousin told me that he had a row with him in Quinn’s Pub that evening. His wife Roisin was also there. Mark was very annoyed over the row and what Richie Barron said to him. When he came over to the club, that is Mark McConnell, he told me that he had seen Richie Barron heading towards home and that he was drunk. We decided that we would head him off at the top of the road. We went up the back way across the car park and got onto the main road. We waited for Richie Barron there. We intended having a word with him. We saw Richie coming. He was on his own. I picked up a bit of timber. When we stopped him he lashed out at us but he missed. I hit him a slap on the head and he fell back. We then ran. I dropped the timber I had on the way back. We got into the pub and it wasn’t until later that I heard that Richie had been knocked down by a hit and run. Michelle Scott told me. My father found out about what happened and he said he would look after it for us.

2

My father never intimidated anyone. He never offered, to my knowledge, money to anyone to not give evidence against me. This statement has been read over to me and it is correct.

Frank McBrearty Junior

John Melody, Detective Sergeant. 8.25 p.m.

John Fitzpatrick D/Garda. 4/12/1996

- 7.03. It is important to recall that a number of findings were made by the Tribunal in respect of the likely cause of death of the Late Richard Barron, and his last movements on the evening of the 13th/14th of October 1996. As a result of the conclusions reached by the Tribunal I decided to proceed with the hearing of evidence in respect of the arrest and detention of Frank McBrearty Junior on the 4th of December 1996, including the issues surrounding the taking of the alleged statement made to Detective Sergeant Melody and Detective Garda Fitzpatrick, on the basis that the contents of this alleged statement are untrue. Amongst the

conclusions contained in the second report of the Tribunal that enabled me to adopt this approach were:

4.82. There is no possibility that the Late Richie Barron met his death in any other way than by collision with the roadway caused as a result of impact with some kind of a vehicle. While his injuries appear to be atypical, bruising to his shins or knees cannot be excluded. While much about this case is atypical, the reality is that the Late Richard Barron was attempting to find his way home while staggering as a result of alcohol consumption and attempting to hold himself up by clutching on to walls. He could have been in any position on the roadway, crawling, lying or falling, when the collision which killed him occurred.⁸⁹³

3.35. ... The Tribunal is satisfied that Mr. Barron turned up Irish Row at some time between 00.30 and 00.40 hours and had completed his journey, with fatal consequences, at some time between 00.40 and 00.55 hours. In considering this matter, The Tribunal has made all due allowance for the disparity in times furnished by various witnesses ... There was a very short interval between the last sighting of the Late Mr. Barron and his death. From the times given in evidence, the incident which gave rise to his death (whatever it was) had to have occurred between 00.40 and 00.55 hours approximately.⁸⁹⁴

3.264. The Tribunal is satisfied that in respect of the relevant period 00.30 and 01.30 hours on the morning of the 14th of October 1996 there was evidence to support the proposition that Mr. McBrearty Junior was indeed working in his father's nightclub and could not, given the short period of opportunity available, have been involved in any attack on the Late Mr. Barron ... There was nothing in the contents of the statements to support a proposition that Frank McBrearty Junior was taking any steps to establish an alibi by way of positive assertion that he was specifically at a particular location between 00.40 and 01.00 hours. However, the statements gathered suggest that he was carrying out his duties at the nightclub during that period. As might be expected, if witnesses were being honest, there were times during which no-one could account specifically, or minute by minute, for his presence at Frankie's nightclub. Within that period there was no evidence to contradict his general assertion that he was at his work. There was absolutely no evidence that put him in contact with or in the company of Mark McConnell. The Garda Síochána made an

⁸⁹³ Second Tribunal Report, page 358.

⁸⁹⁴ Second Tribunal Report, pages 92-93.

assumption of guilt. An aura of suspicion was created in respect of a short period of fifteen to twenty minutes which was not capable of proof on the basis of the statements obtained. This thesis of guilt, once proposed and shared, was treated as fact. It was not sustainable in respect of Frank McBrearty Junior on the basis of any statement obtained from persons who were actually present in Raphoe that evening.⁸⁹⁵

- 7.04. There were other findings by the Tribunal in its second report concerning various aspects of Garda misbehaviour and negligence in respect of the investigation of the death of the Late Richard Barron.
- 7.05. In this sub-module the Tribunal was enquiring into how Mr. Frank McBrearty Junior made a confession to his involvement in events surrounding the death of the Late Mr. Barron which coincided with the Garda view that the case was one of unlawful killing, if not murder, and of which they suspected Frank McBrearty Junior and Mark McConnell were guilty; in circumstances in which the Tribunal is satisfied that the death of the Late Mr. Barron was caused by a vehicle colliding with him. There are a number of avenues to explore. A confession may be concocted. It may be the product of oppression or some form of ill-treatment which breaks the will of the detainee and causes him to confess to a crime of which he could not possibly be guilty. A detainee may be tricked into making or signing a confession. The Tribunal has also received evidence suggesting that there are a number of different psychological reasons as to why people confess to crimes they have not committed. Some of these reasons may seem unusual. The case-law and the psychological studies that exist demonstrate that they occur. People have been known to come forward and admit to crimes they have not committed for the purpose of seeking notoriety. Confessions have been volunteered by persons who seek to protect a real criminal who may be a relative or a friend; or indeed they may have been coerced into doing so by a person other than a police officer. A person may confess involuntarily because of the pressures placed upon him/her by interviewers or by means of inducement. In some instances detainees came to believe during police interrogations that they had committed the crime of which they were accused, although they had no actual memory of having done so, and were later shown to have been innocent of the crime. Such confessions can arise solely by reason of the nature of the person confessing. They may be psychologically vulnerable or dysfunctional. They may be susceptible to subtle or overt manipulation or suggestion. A person can make a false confession as a kind of revenge or resentment at having been falsely accused in the first place. Psychological weakness and the vulnerability of the detainee may well contribute to the making of a false confession and may occur without police

⁸⁹⁵ Second Report of the Tribunal, page 178.

misbehaviour. On the evidence presented to me I am satisfied that proper interviewing techniques employed in the interviewing of suspects help to reduce the danger of obtaining a false confession.⁸⁹⁶

- 7.06. The Tribunal has attempted to sift through the evidence in order to ascertain whether it can establish the facts of what actually happened during the course of Mr. McBrearty Junior's detention as a matter of probability. In examining the evidence, the Tribunal heard the testimony and observed the demeanour of each witness. Many of the witnesses had made prior statements and had been interviewed by Tribunal investigators. In respect of the core issue as to whether Mr. Frank McBrearty Junior signed a number of documents, including the alleged statement of admission, the Tribunal was greatly assisted by the evidence of a number of handwriting experts. I was satisfied, on the basis of this evidence, as a matter of probability, that the signature on the alleged statement of admission was the authentic signature of Frank McBrearty Junior. Though the inquiry was considerably advanced by this evidence and conclusion, it still left open the further questions as to why and how Mr. Frank McBrearty Junior came to sign the statement and other documents and why he did not admit that these signatures were his.
- 7.07. The central character in this matter was, of course, Mr. Frank McBrearty Junior. He and the other two interviewers present, Detective Sergeant Melody and Detective Garda Fitzpatrick, had valuable information to give concerning what happened during the course of the interview in which it is said that the alleged statement of admission came into existence. There are aspects of these witnesses' evidence that I do not find credible. They did not tell me the full truth as to what happened. This is more fully discussed later in this chapter.
- 7.08. Mr. McBrearty Junior proved to be a most truculent and difficult witness at the Tribunal. As will be seen, he made many complaints against Gardaí in respect of his arrest and detention on the 4th of December 1996. This was his opportunity to tell his story fully to the Tribunal in order to assist me in discovering the truth. In the course of his testimony, periods of calm were interrupted by outbreaks of rage. Regrettably, Mr. McBrearty Junior chose to adopt a position whilst giving evidence at the Tribunal that was at times belligerent, threatening, abusive or sullen. On occasions he told me that he was under medical care, or that he had made prior statements when he was under psychiatric care. I sought his assistance in procuring medical reports and evidence in this respect, but Mr. McBrearty Junior declined to assist me in this matter. The Tribunal made what I regard as strenuous efforts to facilitate Mr. McBrearty Junior's attendance at the Tribunal by travelling to Donegal and adjourning various hearings to suit his

⁸⁹⁶ Gudjonsson 'Psychology of Interrogations and Confessions, A Hand Book', Wiley (2003); and see further Chapter 15.

personal convenience when requested. Mr. McBrearty Junior interrupted the proceedings by staging a number of walkouts. These matters are referred to in the body of this chapter.

- 7.09. In dealing with Mr. McBrearty Junior, I was acutely aware that he was a lay litigant, that is, he was unrepresented by lawyers. A number of steps were taken by the Tribunal in order to assist Mr. McBrearty Junior by meeting him before and during the course of his evidence. His lack of legal representation does not, however, excuse his behaviour to the Tribunal or to other parties at the Tribunal. As a victim, whether represented or not, his duty was to tell the unvarnished truth and to do so as best he could. As far as the Tribunal was concerned, the question of Mr. McBrearty Junior's arrest and detention was approached on the basis that it had been established to my satisfaction that he was a victim of a terrible injustice in the course of the investigation of the death of the Late Richard Barron by An Garda Síochána. I reached the conclusion that the statement alleged to have been made by him on the 4th of December 1996 was entirely false. Notwithstanding this, Mr. McBrearty Junior did not give anything like his full co-operation to the Tribunal. His approach and demeanour made the hearing of this sub-module extremely difficult. Nevertheless, Mr. McBrearty Junior was examined and cross-examined on the relevant issues concerning the making of the alleged statement of admission and the signing by him of a number of documents.
- 7.10. As appears from studies carried out in other jurisdictions, ascertaining exactly how a false confession came to be made is a very complex and difficult task. The reasons why a person may make a false confession may be quite complex or relatively straightforward. The complexity and difficulties that can be experienced in trying to elicit the truth about these matters are amply demonstrated by what follows in this chapter. These difficulties may be alleviated in the future by the audio-visual recording of Garda interviews with suspects. If lessons are to be learnt from these events, they should be looked at in the context of the wider experience in this and other jurisdictions of the phenomenon of false confessions and how the risk of such occurrence can be reduced, if not avoided, by the adoption and implementation of best police practice in investigative and interviewing techniques. These are more fully considered in Chapter 15 of this report.
- 7.11. The following questions arose for determination by the Tribunal in its investigation into the arrest and detention of Mr. Frank McBrearty Junior at Letterkenny Garda Station on the 4th of December 1996:
- (a) Was Mr. McBrearty Junior abused at the time of his arrest on the morning of the 4th of December 1996?

- (b) Was Mr. McBrearty Junior abused during his period of detention in Letterkenny Garda Station on the 4th of December 1996?
- (c) Did Mr. McBrearty Junior sign the permission to search his home at 13.25 hours?
- (d) Did Mr. McBrearty Junior sign the statement of admission while in custody?
- (e) If he did not sign the statement of admission, how and by whom was the forgery produced?
- (f) If Mr. McBrearty Junior did sign the confession, how did he come to make a false confession, or was it obtained by a trick?
- (g) Did Mr. McBrearty Junior sign the second statement allegedly made to Sergeants O'Grady and McGrath during the last period of interview?

7.12. There is a large conflict between Mr. McBrearty Junior and the Garda witnesses concerning the events which are alleged to have occurred during his period of detention on the 4th of December 1996. Both parties are agreed that he was arrested on Thorn Road, Letterkenny, at approximately 09.20 hours. There is a dispute between Mr. McBrearty Junior and the Gardaí as to the manner in which that arrest was effected; there is a dispute as to what was said in the patrol car on the way to Letterkenny Station; there is a dispute as to who was in the vehicle. There is a large area of dispute as to what occurred within the Garda station. In short, there is a dispute between Mr. McBrearty Junior and the Garda witnesses on almost every aspect concerning his period of detention at Letterkenny Garda Station that day. Even the exact time of this release from custody is disputed.

7.13. The easiest way in which to outline the extent of the areas in dispute between Mr. McBrearty Junior and the Garda witnesses, is to set out in summary form the account given in evidence by Mr. McBrearty Junior, followed by the account recorded in the custody record and given in evidence by the various Garda witnesses. It will then be necessary to look at each of the disputed areas in detail as they arose in the course of the period of detention on the 4th of December 1996.

Summary of Mr. McBrearty Junior's Account

7.14. Mr. McBrearty Junior described how on the morning of the 4th of December 1996, he was bringing two of his children, then aged seven and six years of age, to the national school in Raphoe. Not long after leaving the rented accommodation in which he was then living with his family in Letterkenny, he encountered a Garda vehicle checkpoint. Sergeant Joseph Hannigan stepped out onto the road and beckoned Mr. McBrearty Junior to stop his vehicle. Having

done so, Mr. McBrearty Junior stated that Sergeant Hannigan asked him to get out of the car and when he asked the sergeant why he would have to do that, the sergeant replied “get out of the fucking car”. Mr. McBrearty Junior stated that he got out of the car and was then arrested by Sergeant Hannigan on suspicion of having murdered Mr. Richard Barron on the morning of the 14th of October 1996. According to Mr. McBrearty Junior, he was then subjected to a torrent of verbal abuse from other Gardaí who were standing in the area. He alleged that Detective Garda Cafferkey shouted “shut up you murdering bastard”, and that the same detective said to Sergeant Hannigan “get the murdering bastard handcuffed”. He stated that Detective Garda Anderson was standing behind him saying “poor old Richie never stood a chance”. Mr. McBrearty Junior stated that at one point Sergeant Hannigan lent down towards the open window of his vehicle and said to the children, who were still sitting in the car, “do you know your Daddy is a murderer?”. Mr. McBrearty Junior stated that he requested the arresting Gardaí to allow him the opportunity to take his children back to the house, but this was refused.

7.15. Mr. McBrearty Junior stated that while being taken to the patrol car and when his hands were handcuffed, he received a forceful “push” in the back from either Detective Garda Cafferkey or Detective Garda Keating. While in the vehicle and on the way to Letterkenny Station, he was poked and punched in the ribs by Detective Gardaí Cafferkey and Keating, who were sitting on the back seat with him. He stated that Sergeant Hannigan was in the front passenger seat and made a comment that Mr. McBrearty Junior always wanted to be like his father and when questioned on this comment, Sergeant Hannigan is alleged to have responded “you’re just like your father now, you’re a murderer”. Mr. McBrearty Junior was adamant that Garda John O’Toole was the driver of the vehicle with Sergeant Hannigan sitting in the front passenger seat and Detective Gardaí Cafferkey and Keating sitting on the rear seat with him. He was equally adamant that Detective Sergeant John Melody was not in the vehicle. We will see that this account, not only of what happened in the car, but also of who was in the vehicle, is strongly contested by the Gardaí.

7.16. Mr. McBrearty Junior alleges that at Letterkenny Garda Station, he was subjected to more verbal abuse from a number of Gardaí and that one particular Garda, Detective Garda Cafferkey, pushed him back onto a chair and placed his knee forcefully into his chest. Mr. McBrearty Junior was then processed by the member in charge who inserted the relevant details into the custody record. It is worth noting at this point that Mr. McBrearty Junior accepts that he did sign the custody record at this stage. He states that once the formalities had been completed, he was being taken to the interview room for his first interview when he alleges that

he overheard Inspector John McGinley telling the two interviewing officers, Sergeants Eamon O’Grady and Gerard McGrath to “when you get him into the room give it to him”, or words to that effect. He stated that during the first period of interview, the interviewing officers verbally abused him, poked him with a pen, kicked him on the shins and slapped him on the ears. He also alleged that he was slapped on the face by Sergeant Eamon O’Grady. He says that he was not shown any notes of interview for this period, nor was he asked to sign any notes. It is noteworthy that during this period of interview, Mr. McBrearty Junior had a consultation with his solicitor and did make certain complaints to him. This will be looked at in detail later in this chapter. The first period of interview ended at 12.04 hours.

- 7.17. Mr. McBrearty Junior’s second interview started immediately on the conclusion of the first interview. It commenced at 12.04 hours and was conducted by Detective Sergeant Melody and Detective Garda Fitzpatrick. It lasted for a little over an hour, concluding at 13.25 hours. Mr. McBrearty Junior stated that he was constantly verbally abused in the course of this interview. He also alleged that he was poked in the neck with a pen and that Detective Sergeant Melody kicked him on the shins. He also alleged that the interviewing Gardaí slapped him on the ears. He alleged that they also made abusive comments about his father being like someone out of the Mafia. He denied that during the course of that interview he gave written permission to Detective Sergeant Melody to search his dwelling house. This is a serious conflict between Mr. McBrearty Junior and the Gardaí. They have a written document allegedly signed by Mr. McBrearty Junior which was allegedly furnished by him at 13.25 hours authorising the search of his house. Mr. McBrearty Junior did accept that at some stage during the day he gave written authorisation to search his dwelling house. However, he stated that this was given later in the afternoon and was given to Sergeant Niall Coady, who was then a Detective Garda.
- 7.18. The first interview after the lunch break commenced at 14.48 hours and was conducted with Sergeants O’Grady and McGrath. During the course of this interview Mr. McBrearty Junior had a telephone consultation with his solicitor. This was in relation to whether or not he should consent to giving a blood sample to the Gardaí. He did in fact give his consent to giving a blood sample, and one was taken from him. He was also fingerprinted and photographed during the course of this interview. As is already noted, Mr. McBrearty Junior is of the opinion that it was some time during the afternoon that he gave written permission to Sergeant Niall Coady to search his house. Apart from that, this interview was largely uncontroversial. However, Mr. McBrearty Junior did allege that Inspector John McGinley had come into the room once during each of the

interviews and had encouraged him to tell the truth and make a confession. We will see that this was strongly denied by all of the Garda witnesses, including Mr. McGinley. Mr. McBrearty Junior did not accept that the notes of this interview were accurate. He stated that the notes were fabricated so as to stand up the subsequent “confession” and to make a case against his father.

- 7.19. The second interview in the afternoon ran from 17.01 hours to 18.10 hours. It was conducted by Detective Sergeant Melody and Detective Garda Fitzpatrick. This interview was important because the Gardaí allege that it was during the course of this interview that Frank McBrearty Junior appeared to have a change of heart, culminating in his agreeing to consider making a statement. Mr. McBrearty Junior strongly denied that he had any such change of heart or that he had said the things which were written in the notes of that interview as taken by Detective Sergeant Melody. He stated that the physical and verbal abuse continued. He also stated that the notes of that interview were a complete fabrication. He denied that he had any change of heart whatsoever. He stated that he had protested his innocence for the entire day right up until the moment that he was released.
- 7.20. In the course of this interview at 17.40 hours Mr. McBrearty Junior was checked by the member in charge. He apparently requested paracetamol tablets for long-standing back pain. He was noted as having no complaints at the time. Mr. McBrearty Junior disputed that that was an accurate record. He stated that he had asked for medication, due to the fact that the chair on which he was sitting had been kicked from under him causing him to fall to the ground. He alleged that this had been done by Detective Sergeant Melody. He stated that was how he had injured his back and requested the medication. The conclusion of this interview is very important. The Gardaí allege that it was put to Frank McBrearty Junior that he should consider telling the truth and make a written statement about what had happened on the night in question. He is alleged to have replied “I’ll think about it”. Frank McBrearty Junior absolutely denied ever making any such comment or answer, or giving any indication that he would think about making a statement in the matter. That interview concluded at 18.10 hours.
- 7.21. At the conclusion of the interview Frank McBrearty Junior was taken to the cells by Garda William Cannon for a meal and a rest period. Mr. McBrearty Junior had no complaints whatsoever to make against Garda Cannon. He received a meal at 18.25 hours. After the meal and rest period the critical period of detention commences. The reader will become aware that there is a vast divergence between Mr. McBrearty Junior’s account of what transpired after that rest period and the Garda account of the same period. This was an area of critical conflict

which the Tribunal had to resolve. However, at this juncture it is necessary to set out in summary form Frank McBrearty Junior's account of the remainder of the detention period.

- 7.22. Mr. McBrearty Junior stated that having had his meal break and rest period, he was taken back from the cells to the interview room. There followed a number of intense and aggressive interviews. He stated that the first of these was with Sergeants McGrath and O'Grady. He alleged that they introduced post-mortem photographs showing the dead body of Mr. Richard Barron. He stated that they said words to the effect of "look what you did to the poor man". He stated that there was intense pressure put upon him, but that he did not change from his position of protesting his innocence. He stated that the first set of interviewers were then replaced by Detective Sergeant Melody and Detective Garda Fitzpatrick. He stated that Detective Garda Fitzpatrick shoved his face into the photographs, at which point Mr. McBrearty Junior alleged that he threw the photographs from the table across the floor. He stated that he then got up in an effort to leave the room, but that Detective Garda Fitzpatrick pinned him against the wall and that in response to that, Mr. McBrearty Junior then pushed Detective Garda Fitzpatrick back across the table. He stated that at all times he continued to forcefully protest his innocence.
- 7.23. Mr. McBrearty Junior stated that at the conclusion of these two intense periods of interview, he was left alone in the room for a short while. He stated that Sergeants McGrath and O'Grady then returned to the interview room. However, they were much less confrontational on this occasion. They had a discussion about boxing and also about one of them supporting Chelsea Football Club. He stated that he was asked by the two interviewing Gardaí to make a statement about his movements, which he did. There was also a portion at the end of that statement concerning his father. He stated that during this period Detective Sergeant Melody would open the door and put his head in and say "five minutes to go Frank, then you'll be charged". He stated that Detective Sergeant Melody did this a number of times. Mr. McBrearty Junior stated that the statement that he gave to Sergeants McGrath and O'Grady concerning his movements and his work duties on the night of the 13th/14th of October 1996 ran to about two pages in length. It was written on ruled paper. He stated that he initialled a number of mistakes and corrections in the statement and that at the end of the statement he had put in a reference to his father not intimidating any witnesses. He stated that he signed both pages of that statement.
- 7.24. Mr. McBrearty Junior stated that having given the statement in relation to his movements to Sergeants McGrath and O'Grady, the interviewing Gardaí were

then replaced by Detective Sergeant Melody and Detective Garda Fitzpatrick. He stated that he refused to make any further statement to them. However, he did make a very short statement to them indicating that he had already made a statement to the other two Gardaí and that he would make no further statement on the matter. He stated that shortly after that he was released from Garda custody.

- 7.25. Mr. McBrearty Junior alleged that at some time during the day a statement was read out to him which was purportedly a confession given to the Gardaí by Mark McConnell. He stated that it was read over to him by one of the four Dublin Gardaí, but he was not sure which one actually read it to him. He stated that this statement was five to six pages in length. He stated that he did not believe that it was a true confession, due to the fact that the name “McConnell” was spelt wrongly in the signature portion. He was unable to give an exact time when the statement was allegedly shown to him, but he stated that it was after the time when the doctor had been in and at around the same time that the post-mortem photographs were shown to him.
- 7.26. Having made the short statement to Detective Sergeant Melody and Detective Garda Fitzpatrick, Mr. McBrearty Junior states that he was brought down the corridor by Sergeant O’Grady for the purpose of being released. He stated that while going down the corridor he saw Superintendents Shelly and Fitzgerald and a number of other Gardaí who were lining the corridor, at which point he got down on his hands and knees and said “if it’s the last thing I do I swear to God I’m going to expose what was done here today”. After that he states that he was brought to the reception area near the main door where he signed the custody record and left the Garda station. Mr. McBrearty Junior admits that he signed the custody record. However, he disputes the time of release, which is recorded therein as 21.18 hours, maintaining that he was in fact released some twenty minutes later at approximately 21.40 hours. On leaving the station he met Mark McConnell and his brother-in-law, Paul Quinn. Frank McBrearty Junior said to Mark McConnell “don’t you believe anything they have said about me in there” and with that he walked off down the street.
- 7.27. That is a brief summary of the account given in evidence in chief by Frank McBrearty Junior of his period of detention at Letterkenny Garda Station on the 4th of December 1996. It will be seen that this account differed from earlier accounts given by Mr. McBrearty Junior. It was also modified somewhat when tested under cross-examination.

Summary of the Garda Account

- 7.28. The logistics of effecting the arrest of Frank McBrearty Junior were discussed at

the pre-arrest conference held at Letterkenny Garda Station on the evening of the 3rd of December 1996. It was known that Mr. McBrearty Junior's wife had recently been discharged from hospital following an operation. It was also known that his normal routine was to bring his two children to the national school in Raphoe each morning. It was decided that the arrest would be effected by means of having a vehicle checkpoint located on the main road close to Mr. McBrearty Junior's rented accommodation. The reason for the location was so that the children could be brought back immediately to the family home. To this end Garda Tina Fowley was directed to be part of the arrest party. Her specific function was to look after the children following the arrest of their father. It was also known that Mr. McBrearty Junior was of a volatile temperament. The Gardaí anticipated that there might be some resistance given by Mr. McBrearty Junior to his arrest. Accordingly, a fairly large arrest party was sent out that morning. Sergeant Hannigan was the arresting officer and he was assisted by Sergeant Brennan and Detective Gardaí Keating, Anderson, Cafferkey and Garda Fowley. In addition, the four Dublin based Gardaí from the NBCI were also in attendance. According to Detective Inspector O'Grady, their function was twofold: to provide assistance if necessary in the event of resistance by Mr. McBrearty Junior to the arrest, and secondly to have an opportunity to observe Mr. McBrearty Junior prior to commencing their interviews with him.

- 7.29. It is common case between the parties that Mr. McBrearty Junior's vehicle was stopped by Sergeant Hannigan on Thorn Road, Letterkenny that morning. The Gardaí state that the arrest was effected in a relatively smooth manner. They state that there was no abuse given to Mr. McBrearty Junior by any Gardaí present. Sergeant Hannigan vehemently denied making any comment to the children, who had remained sitting in Mr. McBrearty Junior's vehicle. It is accepted that Mr. McBrearty Junior was handcuffed and placed in a patrol car. Detective Gardaí Cafferkey and Keating have denied punching or pushing Mr. McBrearty Junior as alleged by him, or at all. The Gardaí state that it was Mr. McBrearty Junior who was loud and abusive at the time of the arrest. They state that he was giving out about the fact that he was arrested in front of his young children. They deny that there was any provocation on their part, or that there was any verbal abuse directed at Mr. McBrearty Junior at that time. Mr. McBrearty Junior had also alleged that while he was being driven away in the patrol car, he looked out the rear window and saw his son attempting to run after the car, but being held back by Detective Garda Anderson. This was denied by Detective Garda Anderson and by a number of the other Gardaí present.
- 7.30. As to the people present in the patrol car, the Gardaí were adamant that Mr. McBrearty Junior was incorrect in his recollection as to who was in the vehicle. In

particular, Mr. McBrearty Junior had stated that the car was driven by Garda O'Toole with Sergeant Hannigan in the front passenger seat and that Detective Gardaí Cafferkey and Keating were sitting alongside him on the back seat. The Gardaí state that the vehicle was driven by Detective Garda Keating with Sergeant Hannigan occupying the front passenger seat and that Detective Garda Cafferkey and Detective Sergeant John Melody were sitting on the back seat alongside Frank McBrearty Junior. Sergeant Hannigan denied that there was any verbal abuse directed at Mr. McBrearty Junior during the journey back to Letterkenny Garda Station. He stated that there was no discussion between them. He said that Mr. McBrearty Junior was upset and distressed about the fact that his children had been present at the time of the arrest. Sergeant Hannigan stated that he reassured Mr. McBrearty Junior that the children would be taken back to the family home. He stated that Mr. McBrearty Junior then became angry and started cursing and swearing and giving out generally and calling the Gardaí names. It was accepted that the siren had been activated by Detective Garda Keating and that they drove back at some speed to Letterkenny Garda Station.

- 7.31. The Gardaí who were present in the day room while Mr. McBrearty Junior was waiting to be processed by the member in charge have stated that he was extremely aggressive and abusive during that period. They stated that he attempted to get up off his chair and said that he wanted to take on the Gardaí present in a fight. It was accepted that on one occasion Detective Garda Cafferkey was obliged to put Mr. McBrearty Junior sitting back down onto his chair. However, they denied that he put his knee into the prisoner's chest, or lifted his leg in any such manner. The Gardaí state that Detective Garda Cafferkey only put his hand on Mr. McBrearty Junior's shoulder and put him sitting back down on the chair. In the custody record it is noted that when Mr. McBrearty Junior was being initially processed, the member in charge wrote the following remarks in relation to the prisoner: "very abusive, violent".
- 7.32. Sergeants McGrath and O'Grady stated that they conducted the first interview with Mr. McBrearty Junior. They denied that any comment was made to them by Inspector McGinley while they were on their way to conduct that interview. They denied that they had verbally abused Frank McBrearty Junior, or had physically assaulted him in any manner. They stated that Mr. McBrearty Junior was a very difficult prisoner to interview, due to the fact that he was of a very volatile personality. He was prone to becoming aggressive and agitated for no apparent reason. However, they stated that he was reasonably co-operative with them and answered the questions put to him, albeit in a somewhat aggressive and abusive manner. They stated that the notes of interview which they took for that period were a true record of what had been said during that period of interview. They

stated that the notes had been read over to Frank McBrearty Junior at the conclusion of the interview; he had agreed that they were correct, but refused to sign them. They accepted that during this period of interview Mr. McBrearty Junior vehemently denied playing any part in the death of Mr. Richard Barron.

- 7.33. The second morning interview was conducted by Detective Sergeant Melody and Detective Garda Fitzpatrick. Mr. Melody stated that during this interview Mr. McBrearty Junior was loud and at times aggressive. He was cursing at the Gardaí during this interview. He would answer questions, but he refused to elaborate on any matter. He continued to maintain his innocence of the murder of the Late Richard Barron. Mr. Melody stated that during this interview Mr. McBrearty Junior was always loud, and would become aggressive if the questioning touched on a particular subject that annoyed him. In the course of that interview Mr. McBrearty Junior was alleged to have signed a consent to Detective Sergeant Melody authorising him to search Mr. McBrearty Junior's rented accommodation at Elmwood Downs, Letterkenny. Mr. Melody stated in evidence that they had been discussing the question of looking at the clothes that Mr. McBrearty Junior had been wearing on the night in question and that Mr. McBrearty Junior had simply said to them words to the effect that they could go up to the house and take whatever they wanted. Mr. Melody stated that given that attitude, he then wrote out a short memo giving authority to search the house, which Mr. McBrearty Junior freely signed. He stated that he then countersigned the document. Mr. Melody stated that that permission was freely given at 13.25 hours. He was adamant that it was Mr. McBrearty Junior's signature on the document. Detective Garda Fitzpatrick stated that he was present when Mr. McBrearty Junior signed the document. Mr. Melody stated that the notes of interview which were taken during that period were read over to Mr. McBrearty Junior, but that he refused to sign them. He accepted that it was somewhat inconsistent that Mr. McBrearty Junior would sign a permission to search the house literally moments before refusing to sign the notes of interview. However, he said that that was the nature of the prisoner as he found him that day. He stated that the notes were read over to Mr. McBrearty Junior and that they were then signed by the two detectives. Mr. Melody and Mr. Fitzpatrick both denied in evidence that they had abused or assaulted Mr. McBrearty Junior in any way.

- 7.34. The first interview in the afternoon was largely uncontroversial. It was interrupted by a phone call between Mr. McBrearty Junior and his solicitor in relation to the giving of a blood sample. Mr. McBrearty Junior was also fingerprinted and photographed during the afternoon and subsequently gave a blood sample after the arrival of the doctor at the station.

- 7.35. The interviewing Gardaí state that the notes of interview were read over to Mr. McBrearty Junior at the end of the interview at 17.00 hours. He refused to sign the notes and they were countersigned by Sergeants O’Grady and McGrath.
- 7.36. The next interview, which took place from 17.01 hours to 18.10 hours, is an important interview from the Garda standpoint. This interview was conducted by Detective Sergeant Melody and Detective Garda Fitzpatrick. They state that it was during this interview that there was a change of attitude by Frank McBrearty Junior. They state that towards the end of the interview he became considerably less aggressive and strident in his answers. It is alleged that he concluded that interview by agreeing to consider over the rest period whether or not he would make a statement to the Gardaí. This is vehemently denied by Mr. McBrearty Junior.
- 7.37. The interview began with the prisoner vehemently denying that he had murdered anybody. The interviewing Gardaí maintain that when they put it to Frank McBrearty Junior that he had been involved in the murder of Richard Barron, he at all times denied that proposition. However, they stated that when they moved away from the word “murder”, there seemed to be a change in his attitude. They stated that towards the end of that interview when they put it to Mr. McBrearty Junior that he and Mark McConnell only meant to give Richie Barron a hiding to teach him a lesson, for the first time, Mr. McBrearty Junior made no reply to that proposition. They maintained that a series of questions was put to Mr. McBrearty Junior, but that he refused to say anything positive in response to the propositions put to him. They say that this series ended with him agreeing to think about making a written statement about what happened on the night in question. Detective Sergeant Melody and Detective Garda Fitzpatrick maintained that the notes were read over to Mr. McBrearty Junior and that he agreed that they were correct, but refused to sign them. They signed the notes at 18.10 hours.
- 7.38. For the first time in this account a dispute arises among the Gardaí themselves. The interviewing Gardaí were adamant that there had been a conference in Letterkenny Garda Station at 18.00 hours that day. This had been an arranged conference as Sergeant O’Grady was told about it at the time that he finished the afternoon interview at 17.00 hours. The conference was to begin at 18.00 hours. Sergeants O’Grady and McGrath maintained that they gave an account as to how they had got on in their interviews with Frank McBrearty Junior up to that time. Detective Sergeant Melody and Detective Garda Fitzpatrick entered the conference somewhat late and indicated that Frank McBrearty Junior was continuing to deny any involvement in the murder of Mr. Barron, but that he had also indicated that he was thinking of making a statement about what happened

on the night in question. The conflict arises due to the fact that the Gardaí who were based in Letterkenny, who were supposed to have attended at this conference, denied that any such conference had been held at 18.00 hours that evening. This controversy will be dealt with in more detail later in this chapter.

- 7.39. The critical interview took place between 19.05 hours and 20.30 hours. There are no notes of this interview. This is due to the fact that Detective Sergeant Melody and Detective Garda Fitzpatrick maintain that upon going back into the interview room with Mr. McBrearty Junior, he immediately indicated to them that he would make a statement on the matter. The Gardaí stated that due to this attitude on the part of the prisoner, they did not commence any question and answer session, but instead proceeded to take a formal written statement from him. That statement was written by Detective Sergeant Melody on a lined sheet of A4 paper. The first side is completely covered in writing, with four and a half lines of writing on the second side of the single sheet. At the end of the narrative the signature of Frank McBrearty Junior appears, along with the signatures of the two interviewing Gardaí. Both Gardaí state that this statement was dictated to them by Mr. Frank McBrearty Junior.
- 7.40. The Gardaí state that it took the entire of the interview period to obtain the statement from him. They accept that if the statement was dictated to them as one flowing narrative, it would have only taken about fifteen to twenty minutes to take down the entire statement. However, they state that this was not the way that it was dictated by Frank McBrearty Junior. In particular, they state that for long periods of time he would digress from the narrative that he was giving them and would go off on a tangent, talking about matters that were of concern to him. In particular he had three main topics on which he would expound at length. These were his relationship with his father, his relationship with the local Gardaí in Raphoe and his relationship with the local people in Raphoe. This statement was written down by Detective Sergeant Melody. He stated that he would lift the pen whenever Mr. McBrearty Junior digressed onto one of these topics. Having allowed Mr. McBrearty Junior to talk about the topic for a period of time, he would then ask him if he wanted to put anything concerning that topic into the statement. He stated that on all but one occasion, Mr. McBrearty Junior stated that he did not want this material put into his statement. Detective Sergeant Melody stated that he would then re-read the last portion of the statement and continue with the narrative. In this way he stated that he was able to take down a coherent narrative from Mr. McBrearty Junior.
- 7.41. The narrative allegedly given by Mr. McBrearty Junior indicated that he heard that there had been a row in Quinn's pub between Mark McConnell and Mr. Barron;

that Mark McConnell was annoyed about the row and that when Mr. McConnell came over to the nightclub he told Frank McBrearty Junior that he had seen Mr. Barron at the top of the road heading towards home and that he was drunk. Mr. McBrearty Junior stated that they decided to go up the road to have a word with Mr. Barron. They saw him coming up the road on his own. Mr. McBrearty Junior picked up a piece of timber. When they stopped Mr. Barron, he lashed out at them, but missed. Mr. McBrearty Junior hit him a slap on the head and Mr. Barron fell back. They then ran back across the open ground and headed towards the nightclub. They dropped the timber on the way back to the premises. Mr. McBrearty Junior allegedly stated that it was later that he heard from one Michelle Scott that Richard Barron had been knocked down in a hit and run. The statement concludes with an assertion that Mr. McBrearty Senior found out about what had happened and said that he would look after it for Frank McBrearty Junior and Mark McConnell. The portion written on the reverse side of the statement was to the effect that Mr. McBrearty Senior never intimidated anyone or offered them money not to give evidence against Frank McBrearty Junior.

- 7.42. Mr. Melody stated in evidence that having read the statement back over to Frank McBrearty Junior he then passed it across the table to him. Mr. McBrearty Junior had refused to initial the caution, but did place his signature at the foot of the statement on the second side of the sheet. He then said “that’s it”. At that point the interview terminated.
- 7.43. Mr. Melody stated that he then left the interview room and read the statement which they had obtained to Sergeants McGrath and O’Grady, who were standing in the corridor. They were asked to go into the interview room to see if they could progress the matter further. Mr. Melody stated that he then went along with Detective Garda Fitzpatrick to look for Superintendent Fitzgerald. Some short time later they located Superintendent Fitzgerald along with Detective Superintendent Shelly and Inspector McGinley and showed them the confession, that had just been obtained from Mr. McBrearty Junior.
- 7.44. At 20.30 hours Sergeants O’Grady and McGrath re-entered the interview room. At this time Frank McBrearty Junior was sitting at a table. The Gardaí say that when they indicated to Frank McBrearty Junior that they were continuing to investigate the death of Mr. Barron, he exploded and told them to “f – off”; that he had made a statement to the other two detectives; that he was fed up talking about Mr. Barron and that he was not talking any more about him. Detective Inspector O’Grady in his evidence stated that they then spent quite some time trying to calm Frank McBrearty Junior down and get him talking to them. To this

end, they raised topics such as boxing and his interest in football. This lightened the mood somewhat and Mr. McBrearty Junior became calm. He was asked how things would be for his father now, meaning in the light of the fact that the confession had been made. This question seemed to set the prisoner off again in a bad mood. When they managed to calm him down again, Sergeant McGrath asked Mr. McBrearty Junior would he tell them about Richard Barron or words to that effect. He said that he had made a statement and would say no more about it. Sergeant McGrath asked him to make a statement to that effect and he said that he would. Sergeant McGrath then took the brief two lined statement from Frank McBrearty Junior which read: "I have already made a statement to the other two Gardaí I have co-operated with them. I told them the truth about what happened". The Gardaí state that Mr. McBrearty Junior then put his initials to the caution at the top of the statement and signed the bottom of the small statement itself. They then countersigned that statement. The interview ended at 21.16 hours.

- 7.45. At the conclusion of the interview, Sergeant O'Grady brought Mr. McBrearty Junior down the corridor for the purpose of being released. He stated that on the way down Mr. McBrearty Junior did have a short verbal altercation with Superintendent Fitzgerald, when he stated to Superintendent Fitzgerald that he would get revenge for what had been done to him that day. He denied that Mr. McBrearty Junior got down on his hands and knees in the corridor. He stated that he then brought Mr. McBrearty Junior to the public office where there was a further exchange of words between Mr. McBrearty Junior and Garda Philip Collins. When the formalities had been completed and Mr. McBrearty Junior had signed the custody record, Sergeant O'Grady brought him to the front door where he was released. He said that Frank McBrearty Junior was calm on leaving the station.
- 7.46. The Gardaí deny that during the periods of interrogation, there was any physical abuse of Mr. McBrearty Junior whatsoever. They state quite simply that Mr. McBrearty Junior did not assault them, nor did they assault him. They state that his allegations of physical abuse are completely false. The Gardaí also deny that post-mortem photographs were shown to Mr. McBrearty Junior at any stage. They also deny that any statement or confession from Mark McConnell was ever shown to him.
- 7.47. The Garda belief is that Mr. McBrearty Junior is guilty of gross confabulation in that he has looked at the stories and complaints of other persons detained at Letterkenny Garda Station and has adopted various elements thereof to his own case. For example, it is suggested that he lifted the allegation in relation to the

showing of post-mortem photographs from Mrs. Róisín McConnell's account of her ill-treatment and made that allegation against the Gardaí who interviewed him. Similarly in relation to the allegation that an alleged confession from Mark McConnell was shown to him, they state that this mirrors a similar complaint made by Mr. McConnell. They state that the allegation in relation to being thrown off a chair and requiring medication was an allegation which was conveniently made due to the fact that he had in fact sought medication for a sore back when the member in charge came into the room on a routine visit at 17.40 hours.

- 7.48. The Gardaí state that Mr. McBrearty Junior's account of the sequence of interviews after the evening meal break at 18.10 hours is completely and utterly false. They state that it is also inconsistent with earlier versions given by Mr. McBrearty Junior in various interviews prior to giving his evidence before the Tribunal. They deny any impropriety in obtaining the statement, which is admittedly a false confession, from Mr. McBrearty Junior on the night of the 4th of December 1996. They state that Mr. McBrearty Junior has told a large number of lies due to the fact that he cannot admit that, for whatever reason, he made a false confession to Detective Sergeant Melody and Detective Garda Fitzpatrick that evening.

Summary of Events as per the Custody Record⁸⁹⁷

- 7.49. The following is a summary in tabular form of the main events as set out in the custody record maintained at Letterkenny Garda Station in relation to the detention of Mr. McBrearty Junior on the 4th of December 1996:

Occurrence on 4th of December 1996	Detail of Occurrence	Comment
09.20 hours	Arrested at Thorn Road, Letterkenny.	Sergeant Hannigan.
09.30 hours	Processed by member in charge.	Garda Martin Leonard.
09.40 hours	First Interview commences.	Sergeant O'Grady, Sergeant McGrath.
10.20 hours	Consultation with solicitor.	Mr. James Sweeney.
10.50 hours	Consultation ends.	
10.51 hours	First interview resumes.	
11.10 hours	Tea and toast provided.	
12.04 hours	Second interview commences.	Detective Sergeant Melody and Detective Garda Fitzpatrick.

⁸⁹⁷ A copy of the original of this custody record may be viewed at Appendix B3.

12.35 hours	Prisoner checked by member in charge.	
13.25 hours	Permission to search house.	Questioned signature.
13.30 hours	Second interview ends.	
13.35 hours - 14.25 hours	Meal break.	
14.30 hours	Fingerprinted and photographed.	
14.45 hours	Prisoner telephones solicitor	
14.48 hours	Third interview commences.	Sergeants O'Grady and McGrath.
14.50 hours	Period of detention extended by Superintendent Fitzgerald – prisoner notified.	
16.05 hours	Blood sample taken by Dr. McColgan.	
17.01 hours – 18.10 hours	Fourth interview commences.	Detective Sergeant Melody and Detective Garda Fitzpatrick.
17.40 hours	Prisoner requests analgesics.	
18.15 hours	Prisoner given two Hedex tablets, has meal break and rest period.	
19.05 hours – 20.30 hours	Fifth interview.	Detective Sergeant Melody and Detective Garda Fitzpatrick. Confession obtained.
20.00 hours	Prisoner checked by member in charge.	
20.30 hours	Sixth interview commences.	Sergeants O'Grady and McGrath. Second statement obtained.
20.58 hours	Prisoner checked by member in charge.	
21.16 hours	Prisoner released.	
21.18 hours	Prisoner signs custody record.	

7.50. Having summarised the events of the 4th of December 1996, according to both Mr. McBrearty Junior's version and the Garda version and having highlighted the conflicts that arise between these versions, it is necessary now to look at the evidence in respect of each of the areas of conflict in detail and, so far as it is possible, to determine the truth of the matter.

Planning The Arrest of Mr. Frank McBrearty Junior

- 7.51. It is common case that Mr. Frank McBrearty Junior was arrested at approximately 09.20 hours at Thorn Road, Letterkenny, on the morning of the 4th of December 1996. At the time he was in the course of bringing two of his young children to school in Raphoe. The first question which arises is as to whether there was any deliberate decision on the part of Garda management to effect the arrest in the presence of children so as to gain some sort of unfair psychological advantage over Mr. McBrearty Junior.
- 7.52. The Tribunal has heard detailed evidence as to the discussions which took place at the pre-arrest conference held at Letterkenny Garda Station on the night of the 3rd of December 1996. The Tribunal is satisfied that, given the legal provisions which were in operation in 1996, it was not possible for the Gardaí to forcibly enter Mr. McBrearty Junior's dwelling for the purpose of effecting an arrest therein. Accordingly, it was necessary for them to wait until he had left his house before making the arrest. The Gardaí were left with two choices: they could attempt to effect the arrest as Mr. McBrearty Junior was leaving his children to school, or they could effect the arrest at some time after he had dropped the children off at school. The Tribunal understands that the former course of action was taken due to the possibility that once he had left the children to school, Mr. McBrearty Junior may have taken a number of routes to go to different places and may thereby have avoided being arrested at that time.
- 7.53. In the circumstances the Tribunal is satisfied that it was reasonable to elect to effect the arrest while Mr. McBrearty Junior was still reasonably close to his rented dwelling accommodation. A further factor which would indicate the reasonableness of this decision was that it enabled the transfer of the children back to the custody of their mother within a very short period of the arrest. Accordingly, the Tribunal is satisfied that in making the decision to effect the arrest of Mr. McBrearty Junior close to his home on the morning of the 4th of December 1996, Garda management in charge of the operation were not trying to use the children as a means of gaining a psychological advantage over Mr. McBrearty Junior. While in the normal course it would have been preferable to have effected the arrest other than in the presence of the children, in the circumstances that presented themselves to the Gardaí at that time it was a reasonable decision to take. Having taken that decision, Garda management put in place the necessary arrangements to have the children taken care of, in particular, Garda Tina Fowley was specifically

directed to take charge of the children and she along with Sergeant Brennan and Detective Garda Anderson were directed to return the children immediately to the care of their mother. The Tribunal is satisfied that reasonable provision was made to look after the welfare of the children on this occasion.

The Arrest

- 7.54. Due to the fact that Mr. Frank McBrearty Junior walked out of the witness box before counsel on behalf of the Garda Commissioner, who was representing the interests of Detective Garda Martin Anderson, Mr. P.J. Keating, Mr. Patrick Cafferkey and Mr. John McGinley, had an opportunity to cross-examine Mr. McBrearty Junior on the allegations that he had made against his clients, it is not possible for the Tribunal to proceed to make any finding against these men on the basis of the untested allegations made in evidence by Mr. McBrearty Junior. The persons against whom allegations are made have basic constitutional rights. They are entitled to have notice of the allegations made against them and have notice of the evidence backing up those allegations, and are entitled to have an opportunity to cross-examine the person who is making the allegations against them. This is basic fair procedure. The Tribunal was very concerned that the constitutional rights of these men were infringed when Mr. McBrearty Junior walked out of the witness box. However, on a consideration of all of the evidence which follows, the Tribunal is satisfied that it can proceed to make final determinations in the matter, notwithstanding the fact that these men were not given the opportunity to defend themselves fully before the Tribunal. This is due to the fact that the Tribunal has rejected the allegations made by Mr. McBrearty Junior against these men.
- 7.55. As to the actual effecting of the arrest, there is considerable conflict between the version given by Mr. McBrearty Junior and that given by the Gardaí. Mr. McBrearty Junior gave the following account in his evidence:

I stopped my car and he says, can you please get out of the car? And I said what for? He says, get out of the fucking car, you murderer you. That's the exact words he said to me. So I got out of the car and guards around the car started shouting, get the murdering bastard handcuffed, in the presence of my children ... Now when Sergeant Hannigan seen that he wasn't getting me provoked he shouted into the car, you know your Daddy's a murderer. But at this stage anyway my children were hysterical and I was pleading with the guards, please let me take my children home and they wouldn't let me take them home ... They abused

*my children, that's what happened. Severely physically and mentally abused my children ... Patrick Cafferkey called me a murdering bastard, P.J. Keating called me a murdering bastard. Martin Anderson from the other side of the car called me a murdering bastard. Tina Fowley was there, I couldn't hear what she said. Strange guards from ... shouting get the murdering bastard handcuffed and I was pleading with them, please let me take my children home. Patrick Cafferkey and P.J. Keating took me into the back of the patrol car and as I was being put into the back of the patrol car, one of them punched me in the back.*⁸⁹⁸

- 7.56. It should be noted that later in his evidence, Mr. McBrearty Junior changed this account somewhat to the effect that Detective Gardaí Cafferkey or Keating did not actually punch him in the back, but with a closed fist “pushed him in the back while on the way to the patrol car”.⁸⁹⁹ Mr. McBrearty Junior also alleged that Detective Garda Cafferkey was shouting “get the murdering bastard handcuffed” and that Detective Garda Anderson was shouting “we’ve got you now you murdering bastard”. He stated that this was all done in an effort to provoke him.
- 7.57. The Tribunal heard evidence from the arresting officer, Sergeant Hannigan, and also from the other members of the arrest party, being Sergeant Brennan and Detective Gardaí Keating, Cafferkey, Anderson and Garda Fowley, together with the four NBCI members, being Detective Sergeant Melody, Sergeants O’Grady and McGrath and Detective Garda Fitzpatrick. Each of them denied that there had been any verbal abuse of Mr. McBrearty Junior at the time of his arrest. They stated that he was quite upset by virtue of the fact that he had been arrested in front of his children. They also stated that his children became quite emotionally distressed at the time of the arrest and subsequent thereto. Mr. McBrearty Junior did not allege that Mr. Michael Brennan, who has since retired from An Garda Síochána, abused him in any way at the time of the arrest. Accordingly, he can be seen as somewhat of a neutral observer. He vehemently denied that there was any abuse, verbal or otherwise, of Mr. McBrearty Junior or his children at that time.⁹⁰⁰ Similarly, Mr. McBrearty Junior did not make any specific allegation against Garda Tina Fowley. She stated that the entire arrest and removal of Mr. McBrearty Junior in the patrol car occurred over a very short space of time: approximately three minutes. She stated that the children did become quite distressed and that she tried to comfort the boy who was sitting in the front passenger seat of the car. She stated that he became distressed and started kicking out at her. As a result, she handed him to Sergeant Brennan who was standing just outside the vehicle and she then got into the rear of the car beside

⁸⁹⁸ Transcript, Day 505, pages 26-27.

⁸⁹⁹ Transcript, Day 513, page 19.

⁹⁰⁰ Transcript, Day 517, pages 97-98.

the young girl. Sergeant Brennan placed the boy in the back seat beside Garda Fowley. She denied that Sergeant Hannigan had made any abusive comment towards the children sitting in Mr. McBrearty Junior's car. She also denied that the young boy had made any attempt to run after the patrol car and was held back by Garda Anderson or any other Garda. She accepted that the whole episode was distressing for the children. She did not agree with the turning on of the siren on the patrol car as Mr. McBrearty Junior was being taken from the scene. She did not think that that was necessary.⁹⁰¹

7.58. Detective Garda Martin Anderson gave evidence to the Tribunal to the effect that the only conversation that he heard at the time of the arrest was a request made by Frank McBrearty Junior to be allowed to bring his children back to the house. He said that Sergeant Hannigan replied by stating that Detective Garda Anderson and Garda Fowley were going to bring the children back home. He stated that there was no other conversation other than that exchange between them. However, he recalled that Mr. McBrearty Junior was in a very agitated state and was shouting and using foul language. He denied that he or any of the other Gardaí present reacted to Mr. McBrearty Junior's remarks or made any abusive comments towards him. He denied that he ever called Mr. McBrearty Junior a "murdering bastard". He also denied that Sergeant Hannigan leaned into the car and said to the children words to the effect of did they know that their father was a murderer.⁹⁰²

7.59. Detective Inspector Eamon O'Grady was then a Sergeant working in the NBCI. He had been deputed to attend at the scene of the arrest that morning. He stated that they were directed to attend at the arrest for two reasons. Firstly, so that they could provide assistance in the event that Mr. McBrearty Junior tried to resist the arrest and secondly, so that they might have an opportunity of observing the man that they would question back at the station later that day. He stated that the car in which he was travelling was parked some distance back from the actual scene of the arrest. He was able to observe the arrest and could hear some of the things that were said. He stated that Mr. McBrearty Junior was loud and was certainly annoyed at being arrested in front of his children. He stated that he did not hear any of the Gardaí who were close to Mr. McBrearty Junior making any comments of an abusive nature towards him or indeed saying anything to Mr. McBrearty Junior. He stated that although Mr. McBrearty Junior was loud in his protests, the arrest itself went off very smoothly.⁹⁰³

7.60. **There is no truly independent evidence open to the Tribunal to assist it in resolving this conflict. However, having carefully considered all of the evidence given, the Tribunal is of the view that the accounts given by the**

⁹⁰¹ Transcript, Day 521, pages 12-24.

⁹⁰² Transcript, Day 507, page 21.

⁹⁰³ Transcript, Day 554, pages 28-32.

parties against whom no allegations were made by Mr. McBrearty Junior, being Garda Tina Fowley, Mr. Michael Brennan and on this aspect at least, Detective Inspector Eamon O’Grady, represent accurate accounts of the manner in which the arrest of Mr. Frank McBrearty Junior was effected that morning. Accordingly, the Tribunal rejects the allegations made by Mr. McBrearty Junior to the effect that he and his children were grossly verbally abused by the Gardaí at the time of his arrest. This was not the case. The Tribunal is satisfied that the arrest was carried out in an efficient and dignified manner.

Bringing the McBrearty Junior Children Home

7.61. When Frank McBrearty Junior had been arrested on Thorn Road, Letterkenny, he was removed from the scene in the patrol car. His two children were left in the care of Sergeant Brennan, Detective Garda Anderson and Garda Fowley. Garda Fowley stated in evidence that she sat into Mr. McBrearty Junior’s vehicle so as to comfort his son who was sitting on the front passenger seat. Both children were in a very distressed state at the time of the arrest. Frank McBrearty Junior’s son was aged seven and his daughter, who was sitting in the back seat, was aged six at the time of the arrest. Garda Fowley stated that she tried to comfort the children by telling them that the Gardaí were only going to ask their father some questions and that he would return home shortly. She told them that they were going to be brought home to their mother. It was put to her that at some time during the whole arrest procedure, Frank McBrearty Junior’s son made an attempt to run after the patrol car and was restrained by Detective Garda Anderson. Garda Fowley stated that this did not occur. She gave the following account:

The child never left the vicinity of the car. The only time that the child was outside the car was when I handed him, having lifted him over to Sergeant Brennan who was beside me and I got into the back of the car, Sergeant Brennan then sat for a moment with the young boy in the front as I was getting into the car and talking to the girl and then he passed the boy into me. I would say that the child’s feet would never have been set on the ground. Now maybe Mr. McBrearty has the view of me lifting him out, I think he refers to the child’s legs kind of dangling, some reference like that. But the child never left the vicinity of the car.⁹⁰⁴

7.62. There was a divergence in the evidence between Mr. Michael Brennan and Garda Fowley as to the vehicle in which the children had been returned to the family home. Mr. Brennan thought that they had been placed in a patrol car and then

⁹⁰⁴ Transcript, Day 521, page 27.

returned home, whereas Garda Fowley's recollection was that they were returned home in Mr. McBrearty Junior's own vehicle. This latter account is supported by the evidence of Mrs. Patricia McBrearty, who in her evidence stated how she recalled seeing her husband's car returning down the driveway and then hearing voices. Accordingly, on this aspect, the Tribunal prefers the evidence of Garda Fowley to the effect that the children were returned to their family home in their father's vehicle.

- 7.63. Mrs. Patricia McBrearty described in evidence how the children arrived home in a distressed state. She stated that her son, Frank, appeared to have been crying. Her daughter, Chantelle, was also very upset. Patricia McBrearty had been upstairs in her bedroom when she saw the car coming down the driveway. When she heard the distressed sounds coming from the front door, which had been opened by her sister, she made her way downstairs. It was common case that there was quite a lot of noise in the hallway at that time. Mrs. McBrearty stated that her son was shouting "Mummy, they said Daddy's a murderer". She stated that her daughter was screaming and shouting saying, "Daddy didn't kill anybody, Mum. Mummy, tell them". Mrs. McBrearty stated that her voice was raised due to the fact that her children were shouting at the time. She accepted that Garda Fowley asked to come in and did so in a polite way. She stated that Garda Fowley was not rude. She stated that Sergeant Brennan did not take any part in the conversation, but remained at the vehicle. Mrs. McBrearty alleged that when she did not allow Garda Fowley into the house, Detective Garda Anderson was rude and abusive saying "leave her fucking to it, leave her alone".⁹⁰⁵
- 7.64. Garda Tina Fowley stated that while the little boy had been distressed in the car, and had stated that his Daddy was not a murderer, he was reasonably calm as they approached the front door. He only became upset on going into the house and meeting his aunt and mother. Garda Fowley was of the opinion that the reason why the boy made the statement was that he would have heard what Sergeant Hannigan stated to Frank McBrearty Junior at the time of the arrest, due to the fact that the car door was open and the arrest itself took place in the immediate vicinity of the car. Garda Fowley stated that when they got back to the house the young girl was quiet, whereas the boy became more agitated. Garda Fowley gave the following account of her conversation with Mrs. McBrearty at the door of the house:

I know I informed Mrs. McBrearty that he had been arrested and she started shouting. I don't recall those actual words, but I know there was a kind of a scene at the house. She could well have said [did you have to arrest him in front of the kids?] ... as Mrs. McBrearty was talking back to me ... There was more discussion

⁹⁰⁵ Transcript, Day 552, page 9.

there at the door. I told her that we were retaining the car, that the car was being retained for forensic examination. I told her that she could come down to the station at any stage to see Frank if she wished to do so ... Well it was me who told Mrs. McBrearty that the car was being retained for forensic examination. When she was informed that Frank McBrearty was arrested she became extremely agitated over the situation. She did make the comment that he was working in the place that night. I said to her she could come down to see him at any stage and Martin Anderson did come and say, look, there's no point trying to talk to her. I did ask on a number of occasions could we come in, could I come in and speak to her in the house. But she really was having none of it. [Did Garda Anderson treat her abruptly in any way?]. No. It was me he spoke to, to say come, there's no point in trying to – I don't – there wasn't much – I don't know if there was any interchange between D. Garda Anderson – other than maybe to try and calm her down. I don't remember him informing her of a whole lot. I told her that her husband had been arrested. I told her that the car had been seized. I suppose I would have been the main person dealing with Mrs. McBrearty. Maybe because I was a woman, Sergeant Brennan and Detective Garda Anderson kind of stood back.⁹⁰⁶

- 7.65. In his evidence, Detective Garda Anderson stated that Garda Fowley had gone to the front door just behind the children so as to inform their mother as to what had happened. He stated that the door was opened by Mrs. McBrearty's sister and very soon afterwards Mrs. McBrearty arrived at the door. He stated that both women became quite agitated and were abusive towards Garda Fowley. Garda Fowley had asked if she could go into the house to explain what had happened. She was refused entry. He stated that when they were not making any headway, they decided to return to the vehicle. He denied that he said to Garda Fowley "leave her fucking alone", or words to that effect.⁹⁰⁷ He also denied having any conversation with Mrs. McBrearty at the time that the children were returned home.
- 7.66. In his evidence to the Tribunal, Mr. Michael Brennan strongly denied that any comments were ever made to the children at the time of the arrest, or while they were in the car, to the effect that their father was a murderer. He stated categorically that no such comment was made to the children in his presence at any time:

But what I do reject is the serious allegation that was made at the Tribunal last Monday two weeks, that we were abusive to the kids.

⁹⁰⁶ Transcript, Day 521, pages 45-48.

⁹⁰⁷ Transcript, Day 507, page 38.

I reject that totally and utterly. I think it was very offensive of Mr. McBrearty to say that we did assault, or be abusive to the children. I had been on the job a long time. I was very sensitive, I have children of my own and so has Detective Garda Martin Anderson, I found that very unfair ... There were allegations put to me afterwards, we've got you now you murdering bastard. I totally disagree with that. That was not said to the kids or anything like that. Whether it was said after he left the scene ... but it certainly wasn't said in the presence of the kids, or in my presence. Most certainly. I totally deny that. Because the arrest took place so fast that Mr. McBrearty was placed in the back of the patrol car very quickly and he was, it was quite upsetting for the kids and I totally and utterly ... it was totally and utterly very distressing for the two kids.⁹⁰⁸

7.67. Mr. Brennan did not hear what comments were made by the children as they entered their home.

7.68. Having carefully considered the evidence given by the three Gardaí who were responsible for returning the children to their home and the evidence given by Mrs. Patricia McBrearty, it is clear that there was quite an agitated atmosphere at the front door of the McBrearty Junior house at the time the children were returned home. This was due to the fact that the children themselves were in a distressed state. Added to that they were shouting, thereby necessitating other persons who wished to talk using raised voices. The Tribunal accepts the evidence given by Garda Tina Fowley in relation to how the children were treated both at the time of the arrest and when they were returned to their home. Mrs. McBrearty accepts that Garda Fowley was attempting to explain matters to her and was polite in the way that she did this. It is also clear that for a number of reasons Garda Fowley was not permitted into the house to explain matters in a calm and rational way. It is understandable that Mrs. McBrearty, who was herself recovering from a recent surgical operation, would be very distressed on hearing of her husband's arrest and on seeing the emotional state of her children that morning. The Tribunal is satisfied that Garda Fowley did all that she could to ensure that the children were properly cared for at the time of the arrest. She also acted in a proper and humane manner in attempting to explain matters to Mrs. McBrearty that morning. While Detective Garda Anderson may well have indicated to Garda Fowley that they should return to the vehicle when it was clear that no progress was going to be made in the matter that morning, the

⁹⁰⁸ Transcript, Day 517, pages 96-97.

Tribunal does not accept that he did so in an abusive manner or by using bad language.

- 7.69. The Tribunal is of the opinion that while Frank McBrearty Junior's son may well have said words to the effect of "Mummy, tell them Daddy's not a murderer", or "Mummy, they said Daddy's a murderer", it does not accept that these statements were made due to any improper remark having been made by Sergeant Hannigan directly to the children at the time of the arrest of their father. The Tribunal is of the view that at the time of the arrest the children probably heard the words that were spoken by Sergeant Hannigan to Mr. McBrearty Junior, to the effect that he was being arrested at common law on suspicion of having murdered Mr. Richard Barron. The Sergeant was obliged to inform Mr. McBrearty Junior as to the reason for which he was being arrested. The Tribunal rejects the allegation made by Frank McBrearty Junior to the effect that Sergeant Hannigan at any stage shouted into the rear of the car "do you know your Daddy's a murderer?" or any such words to that effect. This is an occasion where Mr. McBrearty Junior has used words that were overheard by the children and statements made by them when they were returned to their mother, as a means of making an unfounded allegation against Sergeant Hannigan. His evidence in this regard is rejected.

The Journey to Letterkenny Garda Station

- 7.70. The next dispute which arises is as to who was actually in the vehicle going from the arrest scene back to Letterkenny Garda Station. Mr. McBrearty Junior maintains that the vehicle was driven by the then Garda John O'Toole, with Sergeant Hannigan in the front seat, along with Detective Gardaí Cafferkey and Keating sitting beside him in the rear of the vehicle. The Gardaí state that the vehicle was in fact driven by Detective Garda Keating, with Sergeant Hannigan in the front passenger seat and with Detective Sergeant Melody and Garda Cafferkey in the rear of the vehicle alongside Mr. McBrearty Junior. Sergeant O'Toole has stated in evidence that he was not the driver of the vehicle and indeed was not even at the arrest scene that morning. This is a peculiar conflict of evidence. Mr. McBrearty Junior is absolutely adamant that Detective Sergeant Melody was not in the car during that journey. **The Tribunal can see no reason to reject the evidence of all the Gardaí, including that of Sergeant O'Toole, in favour of the evidence of Mr. McBrearty Junior. Accordingly, the Tribunal has come to the conclusion that Mr. McBrearty Junior is mistaken in his recollection as to who was in the vehicle that morning. How Mr. McBrearty Junior would make such a mistake, given the central**

role that Detective Sergeant Melody would play later in the day, is hard to understand. Nevertheless the Tribunal is satisfied that Mr. McBrearty Junior is mistaken in his recollection as to who was in the vehicle.

- 7.71. In his evidence, Mr. McBrearty Junior alleged that Sergeant Hannigan verbally abused him on the way back to Letterkenny Garda Station. He alleged that Sergeant Hannigan had said to him that he always wanted to be like his father and now he was a murderer just like his father.⁹⁰⁹ Sergeant Hannigan denied that any such comment had been made by him on the journey back to the Garda Station. Mr. Patrick Cafferkey had retired from the Gardaí by the time he gave evidence before the Tribunal. He denied that there had been any verbal abuse or any comment made by Sergeant Hannigan in the course of the car journey. He stated that there was no reference at all to Frank McBrearty Senior in the patrol car. He said there may have been some small chit chat, but he could not recall the content of it.⁹¹⁰ Mr. P.J. Keating confirmed that he had been the driver of the vehicle that day. He could not recall having any words with Frank McBrearty Junior either on Thorn Road or on the way back to the Garda Station. It had been alleged by Frank McBrearty Junior that Detective Gardaí Keating and Cafferkey had punched him in the back while he was getting into the car. This was denied by Mr. Keating and Mr. Cafferkey. He also alleged that he had been continually prodded and poked by them while they were sitting beside him in the rear of the car. This was also denied by the Gardaí and in particular by Mr. Keating, who stated that he was in actual fact driving the vehicle at the time. He recalled that Mr. McBrearty Junior was quite annoyed about being arrested and was somewhat agitated. He did make enquiry about his children. He was certainly annoyed about being arrested in front of them. However, Mr. Keating denied that the Gardaí responded to this annoyance by giving Mr. McBrearty Junior the alleged verbal abuse.
- 7.72. The Tribunal rejects the allegation that Mr. McBrearty Junior was punched in the back by either Detective Garda Cafferkey or Detective Garda Keating when he was being placed into the patrol car. At the time Mr. McBrearty Junior was handcuffed and there is no evidence that he physically resisted arrest in any way. The Tribunal is satisfied that Mr. McBrearty Junior was not punched in the back by the Gardaí nominated by him, or by any Gardaí.
- 7.73. The Tribunal accepts the evidence given by Sergeant Hannigan, and by Mr. Cafferkey and Mr. Keating, to the effect that there was no verbal abuse of Mr. McBrearty Junior in the car on the way to Letterkenny Garda Station. Mr. McBrearty Junior has painted a picture of a frenzied arrest at Thorn

⁹⁰⁹ Transcript, Day 505, page 30.

⁹¹⁰ Transcript, Day 516, page 19.

Road, during which he was verbally abused by many officers. The Tribunal has already rejected that portion of his evidence. Mr. McBrearty Junior also alleges that this abuse continued, both in a physical form and by means of verbal abuse on the car journey back to Letterkenny. The Tribunal accepts the evidence given by Sergeant Hannigan and by Mr. Cafferkey and Mr. Keating to the effect that there was no verbal abuse of Mr. McBrearty Junior in the car on the way to Letterkenny Garda Station. The Tribunal also accepts their evidence that they did not punch or poke Mr. McBrearty Junior during this car journey. The Tribunal is satisfied that this relatively short car journey of approximately ten minutes was uneventful.

Arrival at Letterkenny Garda Station

- 7.74. Frank McBrearty Junior alleged that while he was waiting to be processed by the member in charge, he was subjected to a torrent of verbal abuse from various Gardai who were in the day room at Letterkenny Garda Station. He stated that they told him to “shut up” and called him a “murdering bastard”. He alleged that after some time Detective Garda Cafferkey became physically abusive towards him. He alleged that Detective Garda Cafferkey grabbed hold of his clothing and then put him back sitting down on the chair and then put his knee into his chest. He stated that his retort to this behaviour was to tell Detective Garda Cafferkey that he was a brave man inside the Garda Station, but that he might not be so brave if he were to go out with Mr. McBrearty Junior into the back yard.⁹¹¹
- 7.75. Mr. McBrearty Junior went on to allege that Detective Gardai Cafferkey and Keating pushed him down the corridor when he was taken to be processed by the member in charge. He described this as being a pushing with a closed fist into the back. However, he said that it was not a punch.⁹¹² It is to be noted that in a statement made to the Garda Complaints Board on the 9th of February 1998, Frank McBrearty Junior had stated that he was punched in the back frequently by Detective Garda Keating as he was going down the corridor.⁹¹³ Mr. McBrearty Junior stated in evidence that he did not remember saying that in his statement to the investigating officers appointed on behalf of the Garda Complaints Board. He said that he was not well at the time he made that statement.
- 7.76. Mr. Keating and Mr. Cafferkey accepted that when Mr. McBrearty Junior was in the area waiting to be processed by the member in charge, he was put sitting on a chair, and that at one time he did make a lunge out of the chair. It was accepted that he was put back sitting on the chair by Detective Garda Cafferkey. However, both men stated that this was done by Detective Garda Cafferkey merely putting

⁹¹¹ Transcript, Day 513, pages 44-46.

⁹¹² Transcript, Day 513, page 50.

⁹¹³ Tribunal Documents, page 325.

his hand on Mr. McBrearty Junior's shoulder and placing him back sitting on the chair. They denied that Detective Garda Cafferkey placed his knee into Mr. McBrearty Junior's chest. They also denied punching Mr. McBrearty Junior in the back or pushing him in the back while he was being brought down to the member in charge. They stated that Mr. McBrearty Junior was loud and abusive while he was in the foyer waiting to be processed. The Tribunal can readily understand that there was a heated atmosphere in the day room at that time. The Tribunal accepts the evidence given on behalf of the Gardaí that Mr. McBrearty Junior was loud and abusive. Indeed, on his own account he was remonstrating with the Gardaí and asking them to go outside saying that he would take them on man-to-man in the back yard. It is also accepted that at one stage he got up out of the chair and had to be put back sitting on it. The Tribunal does not accept the evidence given by Mr. McBrearty Junior that he was pushed into the chair and then restrained therein by Detective Garda Cafferkey putting his knee into his chest. It is noteworthy that when he saw his solicitor some short time later in the morning at approximately 10.20 hours, Mr. McBrearty Junior did not make any specific complaint to his solicitor in this regard. While Mr. McBrearty Junior did make a complaint about being poked in the ribs, both in the car and during his first period of interrogation, he did not make any complaint about Detective Garda Cafferkey putting his knee into his chest while sitting in the day room. Indeed, this specific complaint was first made in his statement to the Garda Complaints Board on the 9th of February 1998. **While the Tribunal is satisfied that there was a heated atmosphere in the day room and that Mr. McBrearty Junior was put sitting back on the chair on one occasion, it does not accept that Mr. McBrearty Junior was assaulted by Detective Garda Cafferkey at that time. The Tribunal is satisfied that Detective Garda Cafferkey's behaviour in the circumstances was reasonable and proportionate.**

- 7.77. Frank McBrearty Junior was then processed by the member in charge, Garda Martin Leonard. This is a significant event because it is one of the few times on the 4th of December 1996 that Mr. McBrearty Junior accepts that he placed his signature on the custody record. It would appear from the entry in the custody record to the effect that Mr. McBrearty Junior was "very abusive. Violent."; while he was certainly annoyed about the manner of his arrest and indeed about the fact of his arrest, he was compliant in so far as he was prepared to sign the custody record at that time.

The First Interview

- 7.78. The Tribunal has gone into elaborate detail in tracing and recounting all the evidence available to it in connection with Frank McBrearty Junior's detention.

This was necessary for two reasons: firstly, to enquire as to whether his detention was in accordance with law and in accordance with the Treatment of Persons in Custody Regulations; secondly, and possibly of more importance, was the question as to whether this treatment in any way contributed towards the fact that while in custody he is alleged to have made a written statement falsely admitting to the murder of Richard Barron.

- 7.79. The first interview was conducted by Sergeants McGrath and O’Grady. It ran from 09.40 hours to 12.04 hours, with a break between 10.20 hours and 10.51 hours to facilitate a consultation between Mr. McBrearty Junior and Mr. James Sweeney, solicitor. Mr. McBrearty Junior alleged that just before he was brought to this interview Inspector John McGinley said to the two detective sergeants “when you get him into the room give it to him”.⁹¹⁴ Mr. McBrearty Junior alleged that during this interview he was informed by the interviewing Gardaí that they were Gardaí from Dublin who had investigated a number of serious crimes. He alleged that they had stated that they were not cowboys like the Donegal Gardaí. He stated that the interviewing Gardaí abused him and called him a murderer during this interview. He said that this went on all day. He stated that during the course of the day he was slapped in the face by Sergeant Eamon O’Grady and that this had occurred approximately three or four times. He also alleged that he had been poked, kicked and slapped on the ears during his interviews. He alleged that he had been poked with a pen by Sergeant McGrath.⁹¹⁵ He stated that he thought that the slapping only occurred after he had received a visit from his solicitor that morning.⁹¹⁶
- 7.80. Mr. McBrearty Junior stated that the Gardaí might have been writing notes during this period of interview. However, he denied that he was ever shown the notes or asked to sign any notes of interview. He said that no notes were read over to him at the end of the interview.⁹¹⁷ He denied that the notes which had been produced were a true record of what was actually said during that period of interview. He pointed to a number of phrases which he denied were used by him in common speech. He said that the Gardaí did not ask him questions in the way they were recorded in the notes. He stated that they did not ask him the questions in a civilised manner, but were screaming at him that “he was at the f - ing scene” and that the Gardaí knew “he was at the f – ing scene that night”. They shouted that they “had the f – ing witnesses” to prove that he was there. He said that they were repeating these assertions to him over and over again. He stated that he denied them equally vehemently.
- 7.81. Towards the end of the notes of interview there were questions relating to Mr. McBrearty Junior’s father. He denied that any such questions were asked of him

⁹¹⁴ Transcript, Day 505, page 36 and Day 513, page 51.

⁹¹⁵ Transcript, Day 505, page 55.

⁹¹⁶ Transcript, Day 513, page 123.

⁹¹⁷ Transcript, Day 513, page 77.

at that stage in the day. He also denied that he had said in the course of that interview that Michelle Scott had told him that Mr. Barron had been involved in an accident and that he had been knocked down. He said that that had to be a fabrication in the notes because she did not tell him this information; she was actually speaking to his father at the time.

Arrival of the Solicitor

7.82. The first period of interview was broken so as to allow Mr. McBrearty Junior to have a consultation with his solicitor. This lasted from 10.20 hours until 10.50 hours. It is an important consultation because it represented the first occasion upon which Frank McBrearty Junior could make a complaint to someone he trusted about any matters that were of concern to him. In the light of that consultation, the solicitor did in fact make a complaint to the member in charge. The complaint was recorded in the custody record.

7.83. Mr. James Sweeney is a partner in the firm of V.P. McMullin and Son, who are a firm of solicitors practising in Letterkenny. He had acted for the McBrearty family in various civil and commercial matters over a number of years. He described how he found Mr. McBrearty Junior at the time that he first saw him at 10.20 hours on the morning of the 4th of December 1996:

I think you are all fairly familiar with Mr. McBrearty's demeanour when he is upset and I am sure you can imagine ... he was simply upset. He was crying, he was emotional. He found it hard to talk coherently and in a methodical way as to what had happened. He was simply distressed and emotional.⁹¹⁸

7.84. Mr. Sweeney described how he had to spend quite an amount of time trying to calm down Mr. McBrearty Junior. He stated that Mr. McBrearty Junior was very upset and distressed by the fact that he had been arrested in front of his children. He was very concerned for their welfare. Mr. Sweeney stated that he tried to reassure Mr. McBrearty Junior that he would make enquiries with Mrs. McBrearty to check that the children were alright.

7.85. Mr. Sweeney stated that in the course of the consultation Mr. McBrearty Junior told him that he had been manhandled in the arrest. He told him that he had been nudged and poked in the car while he was being brought to the Garda station. He also indicated that the interrogating Gardaí had been pushing him around and poking him in the ribs.⁹¹⁹ Mr. Sweeney was satisfied from his memorandum, drawn up at that consultation that Mr. McBrearty Junior was making the allegation that he was being pushed and poked in the ribs, both on the way to the station and while in the car, and also by the interviewing Gardaí.

⁹¹⁸ Transcript, Day 507, page 62.

⁹¹⁹ Transcript, Day 507, pages 61, 65.

- 7.86. Mr. Sweeney stated that Mr. McBrearty Junior was not aware at the time of the names of the Gardaí whom he alleged had punched and poked him. Mr. Sweeney stated that he would endeavour to find out the names of the relevant Gardaí. He also said that he would make a complaint to the member in charge about the treatment which had been given to his client. Mr. Sweeney did in fact make a complaint to the member in charge after the consultation. This complaint was recorded in the custody record in the following manner:

10.51 hours. Solicitor brought to my attention a complaint made by Prisoner that he was poked, pushed about in car on way in. Not Sergeant Hannigan.⁹²⁰

- 7.87. Mr. Sweeney confirmed that the portion of the complaint which read “Not Sergeant Hannigan”, was intended to convey that his client had not been physically abused by Sergeant Hannigan. Mr. Sweeney stated that he spent most of the time that was available to him in the consultation explaining to his client the detention procedure and also reassuring him that he would make enquiries as to the welfare of his children. Subsequently, Mr. Sweeney also drew up a detailed attendance on the matters that had been discussed by him with his client during that consultation:

Note for file:

Attendance at Letterkenny Garda Station.

Wednesday the 4th December 1996.

I received a telephone call from Garda Martin Leonard shortly before 10.00 a.m. on the 4th December 1996 telling me that he had a number of our clients in custody and wanted me to call to the station to advise them.

He explained that they had arrested Frank McBrearty Junior at 9.20 a.m. on suspicion of the common law felony of murder. He was being detained under Section 4 of the Criminal Justice Act and required us to represent him.

They also arrested Mrs. Róisín Mc Connell at 8.18 a.m. on suspicion of being an accessory to the murder after the fact at common law.

They arrested Mark McConnell at 8.22 a.m. on suspicion of the common law felony of murder and were holding him under Section 4 of the Criminal Justice Act.

He said that they were being questioned at the moment and therefore required our attendance at the station. He asked me for how long I would

⁹²⁰ Tribunal Documents, page 444.

wish to interview each client and I said somewhere in the region of twenty five minutes or half an hour.

I arrived in the station at 10.10 a.m. with James O'Donnell. We decided that I would speak to Frank McBrearty while James would speak to Mark McConnell. Either one of us would then be with Róisín McConnell. Garda Leonard explained from the custody record that Frank McBrearty had been arrested at 9.20 and he arrived in the station at 9.30. The arresting officer was Garda Joe Hannigan and he was arrested for the common law felony of murder. Martin Leonard was the member in charge.

I was then brought to an interview room where I spoke with Frank McBrearty Junior. He was very upset and emotional at the time. He said that he was arrested in front of his children while taking them to school. The police car pulled in front of him as he was leaving the housing estate in which he lives, i.e. Elmwood Downs. He was adamant that he was innocent and thought that they were trying to pin the murder of Richie Barron on him. The arresting officer Joe Hannigan said "you're a fucking murderer like your father". Frank was extremely concerned about his children and I said that I would check this matter and make sure that they were back with his wife. During the interrogation which had commenced shortly afterwards they asked Frank about an alleged telephone call that he received on the night of the murder at 11.03 p.m. from Mark McConnell. Frank denied that he received any such telephone call.

Frank also informed me that they had been pushing him around and poking him in the ribs. He also informed me that they had poked him in the ribs in the car while bringing him to the station.

Two detectives from Dublin were questioning him prior to my arrival and were maintaining that he hit Richie Barron with an implement on the night of the murder. I said that I would endeavour to find out the names of the Gardaí in the car who had poked him and pushed him around on the way to the station and also I said that I would arrange to have noted in the custody record the abuse given to him on the way to the station and in the interrogation room. I subsequently went to Martin Leonard, the member in charge at 11.51 and asked him to note in the custody record the complaint of the abuse. I then spoke to Joe Hannigan the arresting officer. He informed me that the officers in the car with him when bringing Frank to the station were Garda John Melody, Garda Patrick Cafferkey and Garda P.J. Keating. He also confirmed the times of the arrest.⁹²¹

⁹²¹ Tribunal Documents, pages 813-814.

- 7.88. According to the custody record Mr. McBrearty Junior was provided with tea and toast at 11.10 hours. The significance of this event arises due to the fact that in an interview which Mr. McBrearty Junior had with Mr. William Flynn at some time in 1997, he told the private investigator that at the beginning of the day the two Gardaí who were interviewing him were “as nice as pie”. He stated that the two interviewing Gardaí were very nice to him and asked him did he want a cup of tea and would he like some toast. He said that as soon as he got the cup of tea, the interviewing Gardaí changed their approach considerably and started calling him a murdering bastard. He said that he responded to this abuse by abusing the Gardaí and calling them lying dirty bastards. He went on to say that he then saw his lawyer and made a complaint to the lawyer that he was getting serious abuse from the interviewing Gardaí and that they were punching him in the ribs and kicking him in the shins. He stated to Mr. Flynn that he got further abuse from the two interviewing Gardaí when he had been brought back to the interview room after the cup of tea. However, this would appear to be an incorrect sequence of events. According to the custody record the cup of tea came after the visit from the solicitor. If his account to Mr. Flynn was correct, that the interviewing Gardaí were as nice as pie to him up to the time that he got the cup of tea, then he could have had no complaint to make to the solicitor at the time of their consultation in relation to the interviewing Gardaí.

The Interviewing Gardaí

- 7.89. Before turning to the response of the two Gardaí concerned in the first interview, it is worthwhile to look at the experience and qualifications of these men. By the time he came to give evidence before the Tribunal, Eamon O’Grady had been promoted to the rank of Detective Inspector. He joined An Garda Síochána in July 1983. Having passed out from Templemore he was stationed in Donnybrook, Dublin until 1987, when he was appointed a detective in the Special Detective Unit based at Harcourt Square. In 1993 he was promoted to the rank of Sergeant and transferred to Kevin Street Garda Station. In 1995 he was seconded to the Cobra Unit which was a unit set up to deal with the upsurge in large scale cash-in-transit robberies. He remained with that unit until 1997, when he was appointed Detective Sergeant in charge of the Computer Theft Investigation Unit, which was a unit set up to deal with a number of robberies from hi-tech companies in Ireland. There had been a number of large-scale thefts at that time. He remained in that unit until 2002, when he was promoted to the rank of inspector. He was transferred on promotion to Tallaght Garda Station and later in the same year was appointed inspector in charge of the Clerical Child Sexual Abuse Investigation, based at Harcourt Square. He remained in that post until he was appointed Detective Inspector-in-Charge of the Domestic Violence and

Sexual Assault Investigation Unit, also based in Harcourt Square. In September 2005 he was assigned to take charge of two serious crime investigation units at the National Bureau of Criminal Investigation. The Detective Inspector is the holder of a first class honours degree in Human Resource Management and Industrial Relations. He is a member of the Chartered Institute for Personal Development and also holds a diploma in Management Employee Relations.⁹²²

- 7.90. Detective Sergeant Gerard McGrath passed out from Templemore in May 1983. He was posted to Santry Garda Station where he served until 1987. He was then seconded to the Central Detective Unit. In 1995 he was promoted to the rank of sergeant and went on transfer to Blacklion Garda Station for a period of six months, whereupon he was transferred to Dún Laoghaire Garda Station. Following a short period in Dún Laoghaire, he was seconded to the Cobra Unit in Harcourt Square. In 1997 he was appointed a detective sergeant. He has remained at the Cobra Unit since that time. It is now called the National Bureau of Criminal Investigation. He is the holder of the degree of Bachelor of Civil Law and also the degree of Barrister at Law.⁹²³
- 7.91. Detective Inspector O’Grady and Detective Sergeant McGrath stated that while they both worked in the section known as Operation Cobra, they were each in charge of different units in the section. As such, they had not worked with each other on any particular investigation. This was their first time being posted on an investigation together. Neither of them had ever worked with Detective Sergeant Melody or Detective Garda Fitzpatrick before. However, Detective Sergeant Melody had worked on numerous occasions previously with Detective Garda Fitzpatrick.

The Garda Frame of Mind

- 7.92. It is possible to briefly summarise the state of knowledge that Sergeant O’Grady and Sergeant McGrath had at the time of that first interview in the following way: they had travelled up to Donegal on the afternoon of Monday, the 2nd of December 1996. On arrival in Letterkenny Garda Station they had received a general briefing from the interview room staff. They had also been furnished with some briefing files in relation to the main suspects, being Frank McBrearty Junior and Mark McConnell. There had been a briefing conference that night. On the following day they received a more detailed briefing regarding the state of the investigation at that time. They were also brought to various relevant sites in and around the town of Raphoe by Sergeant Moylan. They spent the remainder of the day reading their way into the relevant briefing files. On the evening of Tuesday, the 3rd of December 1996, there was a pre-arrest conference where they learned for the first time that they had been allocated to carry out the

⁹²² Transcript, Day 553, pages 131-133.

⁹²³ Transcript, Day 551, pages 3-4.

interviews of Frank McBrearty Junior. Detective Inspector O’Grady was asked in the course of his evidence as to why he thought all four of the detectives from Dublin had been allocated to the one prisoner. He stated that he did not know the exact reason as this decision was taken by management; however, he presumed that it was due to the fact that it was known that there was considerable animosity between Mr. McBrearty Junior and some of the local Gardaí. Accordingly, he made the assumption that the decision had been taken on the grounds that perhaps the investigation would be better served by having Mr. McBrearty Junior interviewed by Gardaí who were not from the area.⁹²⁴

7.93. Detective Inspector O’Grady and Detective Sergeant McGrath stated that as a result of reading the various files and as a result of the briefings which they received from the incident room staff and the officers leading the investigation, they understood that the Garda theory at the time was generally along the following lines: that there had been a history of bad blood between the McBrearty and Barron families going back over a number of years, that on the evening of the 13th of October 1996 there had been an altercation of some sort between the Late Mr. Richard Barron and Mark McConnell in the Town and Country Pub and that, while no blows had been struck, Mr. Barron had apparently insulted Mark McConnell by saying something to the effect that he was a “poor excuse for a McBrearty”. According to the Garda theory, this remark had annoyed Mark McConnell intensely and also caused him embarrassment in front of his wife and friends.

7.94. The Gardaí thought that there had then been some communication between Mark McConnell and Frank McBrearty Junior, either by way of a telephone call or a face to face meeting at the nightclub; and that as a result of that communication, Frank McBrearty Junior and Mark McConnell decided to go up over an area of rough ground behind the nightclub premises and wait for Mr. Barron on the route that he would take to his home. They intended to teach him a lesson for the remarks that he had made earlier in the evening. The Gardaí thought that some assault had taken place on the road leading to Mr. Barron’s house. In the course of that assault, Mr. Barron had received a blow from some form of blunt instrument which had struck him on the forehead, and as a result he had fallen backwards and hit his head against the road causing a secondary injury to the skull. The Garda theory was that the two assailants then returned back across the rough ground behind the nightclub premises and went down into the car park, and there met a doorman with whom they spoke for a few moments. Mr. McBrearty Junior then knocked on the window of the public house and the two men were admitted into the public house portion of the premises. Nobody had seen Frank McBrearty Junior or Mark McConnell Junior leave the

⁹²⁴ Transcript, Day 555, page 22.

public house premises and go up through the car park or the rough ground area going to the locus of the assault. There were no witnesses to the alleged assault. The main planks of the Garda theory were based on the false statement of Robert Noel McBride, made on the 29th of November 1996.

The Statement of Robert Noel McBride

- 7.95. The reader will be aware that a statement made by Robert Noel McBride on the 29th of November 1996 was a complete fiction. He was not in Raphoe on the night in question. He did not see any of the things that he said he had seen in that statement. The background to the making of that statement is dealt with in extenso in the second interim report of this Tribunal.
- 7.96. However, when the four Gardaí arrived from the NBCI to assist in the investigation in December 1996, they did not know that Robert Noel McBride's statement was a lie. It was presented to them by senior officers leading the investigation as an important statement which had been furnished by a reliable witness. They were entitled to rely on what they were told by the officers. In that statement Robert Noel McBride had recounted in detail how he had left his home on the evening of Sunday, the 13th of October 1996 shortly after 21.00 hours. He stated how he went into the village of Raphoe and there saw and spoke to a number of people in the town. He stated that while he was standing outside the chip shop, the idea struck him that he might break into the local technical school. He stated that he stood around waiting for a long time to carry out his plan. At approximately 01.00 hours, just as he was walking through the car park of McBrearty's premises, he saw two men approaching him from the area of the rough ground. He said that there was good lighting in the area, which lit up the car park. He said that he was sure of the time because he heard the town clock strike for 01.00 hours while he was in the car park. He said that when he saw the two men approach him, he immediately recognised them. They were Frank McBrearty Junior and Mark McConnell. He knew both men well. When he saw them he turned around and proceeded back through the car park. He proceeded back to the chip shop on the far side of the road and then turned around. He saw Frank McBrearty Junior and Mark McConnell speak to the bouncer outside the nightclub part of the premises. He said that they spent about two minutes talking together. When they had finished their conversation Frank McBrearty Junior and Mark McConnell walked around to the entrance of the public house premises. At that point Robert Noel McBride said that he said "hello" to them and both of them said "how is it going?" back to him.
- 7.97. Frank McBrearty Junior then knocked three times on the window and somebody opened the door and he and Mark McConnell entered the pub area of the

premises. In the statement, Mr. McBride stated that he hung around the town for a short further period and then went home. He stated that a few weeks after that incident, he received a phone call from an unnamed caller who told him not to go to the Gardaí. He said that he was very frightened and for this reason he had been living away from the town in the weeks prior to making his statement.⁹²⁵ As the reader will appreciate, this was a statement based on visual identification. It was a case of recognition in a well lit area, supported by an exchange of pleasantries between the people being identified and the person making the identification. The time was fixed by reference to the chiming of the town clock. However, on its own facts it did not put either of the two men at the scene of the Late Mr. Barron's death.

- 7.98. In addition to the statement of Robert Noel McBride, there was the information from John Patton. There were also discrepancies in various statements concerning the timing of the movements of Mark McConnell and his wife, Róisín McConnell, on the night in question. In particular, there were varying accounts as to the time that they left the Town and Country Pub. There was also an area of dispute as to where Mr. McConnell may have stayed that night, given the sighting of him by Martin Laird as he came out of the Town and Country Pub on the morning of the 14th of October 1996. There was also the issue of telephone calls being made from the Brolly household later in the evening to Letterkenny General Hospital. It must not be forgotten that this theory was the product of a completely flawed and negligent investigation, the product of an unjustified rush to judgment by senior officers and deceit on the part of a number of Gardaí. The scenario conceived by the Gardaí was completely false: the Late Mr. Barron was killed as a result of a collision with a vehicle.
- 7.99. The careful reader will note that the Garda theory as outlined to Sergeants O'Grady and McGrath when they arrived in Letterkenny and the theory as articulated to Róisín McConnell by Inspector McGinley on the afternoon of the 4th of December 1996 bear a striking resemblance to the content of the false confession allegedly made by Frank McBrearty Junior to Detective Sergeant Melody and Detective Garda Fitzpatrick on the evening of the 4th of December 1996. The Tribunal's primary task is to find out whether that statement was in fact made by Frank McBrearty Junior that evening and, if so, how it came to be made.

The First Interview – Garda Evidence

- 7.100. Detective Inspector O'Grady and Detective Sergeant McGrath stated that when they approached Frank McBrearty Junior to take him up for the first interview, he was in a particularly irate frame of mind. He was roaring and shouting. The two

⁹²⁵ Tribunal Documents, pages 912-915.

Gardaí introduced themselves to him and said that they would be bringing him upstairs for an interview. They said that he came along with them quite freely. There was no pushing or pulling or force used to get him to go to the interview room. Both Gardaí denied that Inspector McGinley made any comment to them at that time to “give it to him hard in there”, or words to that effect. They said that having brought him into an upstairs interview room, they introduced themselves again to Mr. McBrearty Junior and told him what matter they were investigating. He asked them who they were and they indicated that they had come from Dublin and had a general discussion about what cases they had investigated. Detective Inspector O’Grady gave the following description of Mr. McBrearty Junior in that first interview:

As I have described, he was volatile, he came in particularly irate. I have no doubt he was very very annoyed at having been arrested in front of his children. He was also arrested in public. So he was very irate, he was very angry. It took some time just to get him to calm down. This was in the context of a conversation of us introducing ourselves, telling him who we were, where we were from. We had no agenda with him, but he was very angry at that time.⁹²⁶

- 7.101. The Gardaí described how they commenced that first period of interview, which lasted for approximately half an hour until the arrival of the solicitor at 10.20 hours. During that first session, Frank McBrearty Junior maintained his innocence of the matter under investigation. Elements of the Robert Noel McBride statement were put to him and he denied that he had been up in the car park as recounted by the witness. He also denied that he had been up at the scene where the Late Richard Barron’s body had been found. He stated that he had been working in the nightclub premises continuously from 20.00 hours to 03.30 hours on the following morning. There was then a break in the interview while Mr. McBrearty Junior consulted with his solicitor from 10.20 hours to 10.50 hours. The content of that consultation and the resulting complaint made to the member in charge have been dealt with above. The interview resumed at 10.51 hours and concluded at 12.04 hours.
- 7.102. Mr. McBrearty Junior has alleged that it was during this period of interview that he was slapped in the face by Detective Inspector O’Grady. Detective Inspector O’Grady vehemently denied striking Frank McBrearty Junior at any time during his interviews:

Nothing like that happened. He has given a number of versions, it’s not just that he has given any version, Chairman. He has over the

⁹²⁶ Transcript, Day 554, page 139.

years alleged that it went on throughout the whole day, it was before the solicitor, after the solicitor. He has given many versions of something that didn't happen at all. If I can make a comment, please, Chairman. I have never had a complaint of assault against me in my service in An Garda Síochána. Never, of any type. I served in many stations and in many places, I have interviewed many prisoners. I have been involved in the riots in Lansdowne Road and Public Order Offences and matters in the city centre here in Dublin. I have no complaint, allegation of assault against me in my service. I didn't travel all the way to Donegal to assault a man.⁹²⁷

- 7.103. Detective Sergeant McGrath in his evidence also strongly denied that Sergeant O'Grady slapped Frank McBrearty Junior during the course of any interview.⁹²⁸ He also denied that he had pushed or poked Frank McBrearty Junior in any way, either with a pen or with his hand as alleged by Frank McBrearty Junior. He said quite simply that these were lies on the part of Mr. McBrearty Junior.
- 7.104. Frank McBrearty Junior also disputed the accuracy of the notes which had been taken by Sergeant McGrath in the course of that interview. He stated that the notes were a fabrication. He alleged that he had not given a number of the answers that were recorded as having been given by him, particularly in relation to the activities of his father. One of the things that he pointed to which he alleged proved that the notes were a concoction were the use of the words "lads" and "gobshites" and "shite", which appear in the notes. He said that these were not words which were used by him in ordinary conversation and that this shows that the answers recorded were not correct. Detective Sergeant McGrath insisted that the notes that he had taken were an accurate representation of what had been said during the interview. Mr. McBrearty Junior's allegation in this regard does not stand up when one looks at the interview which he gave in 1997 to Mr. William Flynn. In the course of that interview he uses the word "lads" and also uses the word "shite" on a number of occasions.
- 7.105. At the conclusion of the interview notes it was recorded that they had been read over to Mr. McBrearty Junior, that he had agreed that they were correct, but that he had refused to sign them. In evidence, Mr. McBrearty Junior denied that any notes were read over to him at the conclusion of that interview. Both of the interviewing Gardaí were adamant that the notes had indeed been read over to Mr. McBrearty Junior and had then been signed by them.
- 7.106. Mr. McBrearty Junior also alleged that after the consultation with his solicitor, when he returned to the interview room, he received a large amount of verbal abuse from the interviewing Gardaí. He alleged that they repeatedly called him

⁹²⁷ Transcript, Day 554, page 144.

⁹²⁸ Transcript, Day 551, page 76; Day 553, pages 75-76.

“a lying murdering bastard”. He alleged that it was continually put to him throughout the day that he had been physically abused by his father and that he, in turn, was lying and cheating on his wife. Detective Inspector O’Grady and Detective Sergeant McGrath vehemently denied abusing Mr. McBrearty Junior verbally in any manner at all. Detective Inspector O’Grady stated that he had interviewed many people, some of whom had committed murder, and had never called them a murderer. He said that he was trying to encourage co-operation from Frank McBrearty Junior in the police investigation. With that in mind it would have been completely counter-productive to start abusing him in the manner alleged.⁹²⁹

Conclusions on the First Period of Interview

- 7.107. The Tribunal has carefully considered the allegations made by Frank McBrearty Junior in evidence. It has also considered the other accounts given by him at various stages, in particular his interview with Mr. William Flynn and his statement to the Garda Complaints Board. The Tribunal has had particular regard to the evidence of Mr. McBrearty Junior’s solicitor, Mr. James Sweeney. His evidence was balanced and fair and was of great assistance to the Tribunal. The Tribunal has also had regard to the evidence given by Detective Inspector O’Grady and Detective Sergeant McGrath.
- 7.108. The Tribunal was impressed by the manner in which Detective Inspector O’Grady and Detective Sergeant McGrath gave their evidence. Both men were forthright in the evidence that they gave. They did not attempt to dodge difficult questions. They gave their evidence in a frank and fair manner. The Tribunal is satisfied that their account of that first period of interview is an accurate and honest account of their dealings with Frank McBrearty Junior during that period from 09.40 hours to 12.04 hours.
- 7.109. The allegation made by Frank McBrearty Junior to the effect that Inspector McGinley made a comment to Sergeants McGrath and O’Grady to “when you get him into the room give it to him” as they were bringing Mr. McBrearty Junior for the first period of interview has been denied by all three officers. Detective Inspector O’Grady stated that if any such comment had been made to him, he would have taken great exception to it. He would have regarded it as totally inappropriate behaviour. He stated that it simply did not happen. Having considered the evidence given by the three Gardaí on this aspect, the Tribunal is satisfied that they are telling the truth. The Tribunal rejects the allegation that any such comment was made by Inspector McGinley to the interviewing officers at that time.

⁹²⁹ Transcript, Day 555, page 16.

- 7.110. The Tribunal rejects the allegation that Sergeant O’Grady slapped Frank McBrearty Junior on the face at any time during the interview. The Tribunal accepts the Detective Inspector’s evidence that this incident simply did not occur. Unfortunately this is yet another wild allegation thrown out by Frank McBrearty Junior against any officer who had dealings with him during the course of the day. The Tribunal finds that no such assault took place.
- 7.111. The Tribunal also accepts the evidence of Detective Sergeant McGrath that there was no pushing or poking by him of Frank McBrearty Junior during that period of interview. That evidence was supported by the evidence of Detective Inspector O’Grady. The Tribunal accepts this evidence.
- 7.112. The Tribunal is satisfied that the notes of interview as taken by Sergeant McGrath during that period of interview are an accurate reflection of what was said by Frank McBrearty Junior in answer to the questions posed to him. The Tribunal finds that Frank McBrearty Junior was in a particularly volatile and aggressive humour at the time that the two Gardaí came to interview him. It accepts that they would have spent a considerable portion of the interview period trying to calm him down and keep him on track so that they could further the investigation. The Tribunal does not accept the allegation made by Frank McBrearty Junior to the effect that after the visit from the solicitor, he was subjected to a torrent of verbal abuse by the interviewing Gardaí. The Tribunal is satisfied that this did not happen. This is another unfounded allegation made by Mr. McBrearty Junior.

The Second Period of Interview 12.04 Hours – 13.30 Hours

- 7.113. The interview from 12.04 hours to 13.30 hours was conducted by Detective Sergeant Melody and Detective Garda Fitzpatrick. It was a productive interview insofar as Frank McBrearty Junior is alleged to have given a written permission to the Gardaí to search his house in the course of the interview. This is one of the documents on which Mr. McBrearty Junior’s signature is alleged to appear. Mr. McBrearty Junior has stated that that signature was not his. However, he does say that he did at some stage give a permission to Garda Niall Coady to go out to his house to take the clothes that he was wearing on the night of the incident. He stated that this permission was given in the late afternoon. He denies that he gave any such written permission to Detective Sergeant Melody. The other interesting aspects are that during this interview Mr. McBrearty Junior is recorded as having agreed to give his fingerprints and palm prints and also to give a blood sample to a doctor nominated by the Gardaí.

- 7.114. Mr. McBrearty Junior's version of that interview painted a somewhat different picture. He stated that the two interviewing Gardaí, Detective Sergeant Melody and Detective Garda Fitzpatrick, were extremely aggressive towards him. He stated that for almost the entire time that Detective Sergeant Melody was in the room with him, the Sergeant was sitting beside him and was poking him with a pen and kicking him on the shins. He stated that Detective Garda Fitzpatrick would on occasion get up and slap him around the ears. He said that as a result of this he had developed a chronic ear injury. He said that the Gardaí repeated to him over and over again that they knew that he had committed the crime. He said that they used a lot of bad language.
- 7.115. Mr. McBrearty Junior alleged that at one point in his interviews with Detective Sergeant Melody and Detective Garda Fitzpatrick, he got so tired of the abuse that he got out of his chair in an effort to leave the room. He said that Detective Garda Fitzpatrick grabbed a hold of him and tried to pin him against the wall. He said that he then pushed Detective Garda Fitzpatrick onto the table.⁹³⁰
- 7.116. Mr. McBrearty Junior alleged that at one point before being brought down to the cells for a rest period, the two Gardaí told him that he was going to go to jail for twenty years and that he would be sexually assaulted in Mountjoy Prison. He said that he responded that "if they shag me, I'll shag you". He alleged that in response to this, Detective Garda Fitzpatrick threatened to throw him through a window. Mr. McBrearty Junior alleged that he responded that if Detective Garda Fitzpatrick tried to throw him through the window, he would bring Detective Garda Fitzpatrick with him. Mr. McBrearty Junior also alleged that during the periods of interview these two Gardaí said things to him that were of a very distressing nature concerning his wife. He also alleged that they put it to him very strongly that Mark McConnell had telephoned him on the night of the incident and that the two of them had arranged then to go up and teach the Late Mr. Barron a lesson. He said that these matters were put to him in a very forceful manner.
- 7.117. As this is the first time that Detective Sergeant Melody and Detective Garda Fitzpatrick enter the narrative as interviewing Gardaí, it is appropriate at this juncture to set out something of their background. Mr. John Melody joined An Garda Síochána in 1969. He was stationed in Cabra, Blanchardstown, Harcourt Terrace and the Central Detective Unit. He spent most of his time as a detective in the Central Detective Unit. He was promoted in 1983, and did three years in Harcourt Terrace Garda Station before returning to the Central Detective Unit. He remained in that unit until he retired in February 2006, holding the rank of detective sergeant.⁹³¹ Mr. John Fitzpatrick joined An Garda Síochána in July 1974.

⁹³⁰ Transcript, Day 513, pages 135-136.

⁹³¹ Transcript, Day 538, page 139.

He was stationed in Stepside, Rathfarnham and Tallaght prior to moving to the Central Detective Unit in 1990. During his time there, he spent four years in Unit F and the remainder of the time in Unit A. While in Unit A, he was under the direction of Detective Sergeant John Melody as his unit sergeant. There were eight Gardaí in the unit. He served with Unit A from 1994 until his retirement on the 8th of August 2005.⁹³²

- 7.118. Detective Sergeant Melody gave the following description of his first encounter with Mr. McBrearty Junior in the interview room:

*When we went into the interview room he, you know, appeared to be relatively calm at that stage. But as topics were then discussed with him he became very agitated and displayed a certain amount of aggression and foul language. Depending on the topic he was up and down. We tried to engage him to discuss various topics ... But we were finding it difficult. But he answered some questions for us ... He was loud, he was aggressive. He was cursing at us. He would answer questions for us, but he wouldn't elaborate on anything. It was a question of us asking him a question and getting a response.*⁹³³

- 7.119. Detective Garda Fitzpatrick gave a similar account of the demeanour of Frank McBrearty Junior. He said that at times he was aggressive and loud and was prone to shouting his answers, but at other periods he would be relatively quiet.⁹³⁴ He indicated that going into that interview they had three goals essentially to get three permissions from Mr. McBrearty Junior in relation to searching his house, taking his fingerprints and giving a blood sample. Detective Garda Fitzpatrick stated that while Mr. McBrearty Junior was vehemently asserting his innocence, he gave the relevant permissions quite freely. Both Gardaí denied that there was any physical or verbal abuse during that period of interview. Detective Garda Fitzpatrick did admit that at one stage Mr. McBrearty Junior stood up. He said that he told Frank McBrearty Junior that if he wanted to stand up everyone would stand up as well. He said that both he and Detective Sergeant Melody stood up and then all three of them sat down. He said that at no time did they become aggressive with Mr. McBrearty Junior. They merely explained to him that they had a job to do, to ask him questions and to put certain matters to him.⁹³⁵

- 7.120. Detective Garda Fitzpatrick denied that he put Frank McBrearty Junior up against a wall or a filing cabinet as alleged. He also denied that Frank McBrearty Junior put him over a table or onto a table as alleged by Mr. McBrearty Junior. He stated quite simply that that did not happen. There was no assault either on Mr.

⁹³² Transcript, Day 544, pages 152-153.

⁹³³ Transcript, Day 556, pages 93-94.

⁹³⁴ Transcript, Day 558, page 17.

⁹³⁵ Transcript, Day 557, page 93.

McBrearty Junior, or by Mr. McBrearty Junior, during their periods of interview. He stated that he had a bad back as a result of a long standing injury that had required surgical treatment and that if anybody threw him over a table that could have quite serious consequences for him. He stated that Mr. McBrearty Junior never threw him against or onto a table at any time.

- 7.121. The written permission to search the house which was allegedly given by Mr. Frank McBrearty Junior at 13.25 hours to Detective Sergeant Melody is one of the documents which Mr. McBrearty Junior alleges he did not sign. Detective Sergeant Melody gave the following description as to how that permission was obtained from Frank McBrearty Junior:

Well he was answering questions for us, provided that they were very direct questions. How it came about that I even asked him was that I was told that there was – or I was informed, I assumed that it was Martin Moylan or some of them that had been involved in taking possession of his car and there was blood, what looked like blood was found in his car. So I was asked to know if he would consent to give a blood sample. Then they were also looking for his clothes that he might have been wearing on the night of the 13th into the 14th of October 1996. So those were two issues that we were to cover with him. He consented to give a blood sample and there was some discussion by him that I wasn't going to take it and that that was clarified with him. In relation to the search of his house, I did ask him then did he know what he was wearing or could he remember what he was wearing on the night and he said he didn't. But he did give us permission to go up and take his clothes.⁹³⁶

- 7.122. Detective Sergeant Melody stated that at the time the permission was given, Mr. McBrearty Junior was quite co-operative. He said to them that they could go up to the house and take whatever they wanted. He said that Mr. McBrearty Junior freely signed the brief written permission which had been drafted by Detective Sergeant Melody. It was in the following terms:

I live at 67, Elmwood Downs, Letterkenny, County Donegal. I know why I am arrested. I hereby give permission to the Gardaí to carry out a search of this house and to seize whatever property they consider necessary for the investigation of the murder of Richard Barron.

Frank McBrearty Junior 4/12/96 1.25 p.m.

John Melody, Detective Sergeant.⁹³⁷

⁹³⁶ Transcript, Day 556, pages 96-97.

⁹³⁷ Tribunal Documents, page 767: a copy of the original permission may be seen at Appendix B 4 of this Report.

- 7.123. Detective Garda Fitzpatrick stated that at this time in the interview, Mr. McBrearty Junior was quite co-operative. He said he had no problem about giving a blood sample. The only thing he stipulated was that Detective Sergeant Melody would not be the person to take the blood sample. He then went on to say that he had no problem allowing the Gardaí to take his clothes and freely signed the permission allowing the Gardaí to search the house.⁹³⁸ He said that at this time Mr. McBrearty Junior was maintaining his innocence of the crime and that it was in this context that he was prepared to give a blood sample and allow his house to be searched.
- 7.124. A curious feature is that while Frank McBrearty Junior was alleged to have freely signed the permission to search the house at 13.25 hours, he apparently refused to sign the notes of that interview at 13.30 hours. Neither of the interviewing Gardaí could give any explanation as to why Mr. McBrearty Junior would sign a document just before the conclusion of the interview, but would refuse to sign the interview notes.
- 7.125. In the course of the first interview, Frank McBrearty Junior was recorded by Sergeant McGrath as stating that it was Michelle Scott who had told him that Richard Barron had been knocked down in a road traffic accident. Mr. McBrearty Junior denied that he said any such thing to the first set of interviewing officers. The Tribunal has already held that that set of notes of the first interview is an accurate record of what was said by Mr. McBrearty Junior at the time. Coincidentally there is a further reference to Michelle Scott in the second set of interview notes. In the course of that interview he was recorded by Detective Sergeant Melody as having told the interviewers that Michelle Scott had told him on the night that Richard Barron was knocked down in a hit and run accident. When asked as to who Michelle Scott was, he replied that she was a patron or customer in the nightclub. Mr. McBrearty Junior makes the case that this was a concoction on the part of the Gardaí due to the fact that Ms. Scott did not tell him that Mr. Barron had been involved in an accident, but had given this information to his father. He stated that that was how he had learned of the accident that evening. Mr. McBrearty Junior goes further and states that this element was planted into the interview notes so as to back up a portion of the alleged confession where the name Michelle Scott appears as being the person who told him that Richard Barron had been knocked down in a hit and run accident. The Tribunal is satisfied that this assertion by Mr. McBrearty Junior is not well founded in fact. The Tribunal accepts the evidence of the two sets of interviewing Gardaí that Mr. McBrearty Junior did in fact tell them during the morning interviews that it had been Michelle Scott who had told him that Richard Barron had been knocked down as the result of an accident. While the reality

⁹³⁸ Transcript, Day 558, pages 42-46.

may in fact have been that Ms. Scott was directing her remarks to Mr. McBrearty Senior at the time and that they were overheard by Mr. McBrearty Junior, the Tribunal is satisfied that the notes accurately recorded the way in which Mr. McBrearty Junior related this aspect to the interviewing Gardaí.

Conclusions on the Second Period of Interview

- 7.126. The Tribunal has heard extensive expert evidence in relation to the signature appearing on the permission which was allegedly signed at 13.25 hours. This evidence is dealt with in detail later on in this chapter. As a result of that evidence, the Tribunal is satisfied that Frank McBrearty Junior did in fact sign the document giving permission to the Gardaí to search his house.
- 7.127. The Tribunal accepts the evidence of Mr. Melody and Mr. Fitzpatrick as to the way in which that document came to be signed by Mr. McBrearty Junior in the course of that interview.
- 7.128. Having regard to the fact that Mr. McBrearty Junior did in fact give permission to search his house in the course of that interview and also consented to furnishing fingerprints, palm prints and a blood sample, and also consented to being photographed, the Tribunal does not accept the allegation made by Mr. McBrearty Junior that he was subjected to physical and verbal abuse during this interview. It is unlikely that if the man was being mistreated in the way that he alleged, that is by being called all manner of unpleasant names and by being kicked repeatedly on the shins by one of the interviewing Gardaí, he would in the same short period of interview give the relevant permissions and consents. The Tribunal accepts the evidence given by the Gardaí that there was no physical or verbal abuse of Mr. McBrearty Junior during the course of this interview.
- 7.129. The Tribunal also finds that the notes of the interview as recorded by Detective Sergeant Melody are a fair and accurate account of the responses given by Mr. McBrearty Junior to the questions posed to him at that time. It is clear from those notes that Mr. McBrearty Junior was strenuously asserting his innocence of any involvement in the death of Mr. Barron. At the same time he was prepared to allow the Gardaí to take whatever steps were necessary to fully investigate the matter. It was for this reason that he gave the relevant permissions. The Tribunal cannot explain why Mr. McBrearty Junior was prepared to sign the permission at 13.25 hours, but refused to sign the interview notes some five minutes later at 13.30 hours. It is noteworthy that Mr. McBrearty Junior did not sign any of the interview notes that day. Perhaps this was a fixed idea that

he had in his head that day. Whatever the reason may have been, the Tribunal finds that Mr. McBrearty Junior did sign the permission to search the house, and was given the opportunity to sign the interview notes, but declined to do that. The Tribunal also finds that the notes as recorded by Detective Sergeant Melody are an accurate recording of what took place during the interview.

- 7.130. The Tribunal notes that Mr. McBrearty Junior was visited by the member in charge at 12.35 hours. He was noted as being “ok” at that time. The member in charge again saw him at the conclusion of the interview at 13.35 hours, at which stage he escorted Mr. McBrearty Junior to the toilet and then to the cell. He was again noted as being “ok”. If Mr. McBrearty Junior had any serious complaints to make against Detective Sergeant Melody or Detective Garda Fitzpatrick he had two opportunities to make them to the member in charge, who was Garda Martin Leonard. Some ten minutes later at 13.45 hours a meal was provided to Mr. McBrearty Junior in the cell by Garda William Cannon, who supervised the taking of the meal. It is noteworthy that Mr. McBrearty Junior has no complaints whatsoever to make against Garda Cannon. He seems to have got on well with this Garda. If he had any complaints to make about any of his treatment in the Garda station during the morning, he could have made the complaint to Garda Cannon. This Garda stated in evidence that no complaint was made to him while he was supervising the lunch break or later in the afternoon when he supervised a telephone call by Mr. McBrearty Junior to his solicitor in relation to the giving of a blood sample.⁹³⁹

Extension of the Period of Detention

- 7.131. While Mr. McBrearty Junior was having his lunch break and rest period, Detective Sergeant Melody had a conversation with Superintendent Fitzgerald. He told him that he had only made limited progress insofar as Mr. McBrearty Junior had given permission to have his house searched and had also agreed to give blood and was willing to have his photograph taken. Other than that he was not co-operating with the investigation in that he was denying being in the car park, meeting Mark McConnell on the night in question, and having any conversation with Martin McCallion. Detective Sergeant Melody told the Superintendent that they did not believe Mr. McBrearty Junior at that time. In the circumstances, he requested that Superintendent Fitzgerald would consider extending the period of detention at the conclusion of the first six hour period.
- 7.132. Superintendent Fitzgerald stated that during the course of his consultation with Detective Sergeant Melody he was informed that Frank McBrearty Junior was holding back on vital information in respect of the crime for which he was

⁹³⁹ Transcript, Day 408, pages 63-66.

arrested. He was informed that Mr. McBrearty Junior's account of his movements and actions on the night was in conflict with other witnesses and that the Gardaí did not believe the account given by Frank McBrearty Junior. He said that having checked the situation with the member in charge, he came to the conclusion that the further detention of Mr. McBrearty Junior was necessary for the proper investigation of the crime for which he had been arrested. He authorised the detention of Frank McBrearty Junior for a further period of six hours. He gave the authorisation orally at 14.45 hours. He subsequently gave a written authorisation. This extension of the period of detention was notified to the prisoner by the member in charge at 15.10 hours.

7.133. Earlier in the afternoon, at 14.30 hours, Mr. McBrearty Junior had been fingerprinted by Garda Coady and photographed by Garda Murphy.

7.134. At 14.45 hours Mr. McBrearty Junior had a telephone call with his solicitor, Mr. James Sweeney. This was in relation to the giving of a blood sample. According to Mr. Sweeney, he had received a telephone call some short time prior to that from Garda William Cannon enquiring as to whether his client would be willing to give a blood sample and asking him to advise his client on the matter. Mr. Sweeney stated that, having taken some advice from a colleague, he came to the view that there was no point in refusing to give a blood sample, but that his client should ensure that the sample was split so that he could retain one half of the sample. He stated that having received the telephone call from Garda Cannon, he then had a telephone call from Frank McBrearty Junior, to whom he gave the advice in relation to giving the blood sample. He agreed that that telephone call was probably at the time stated in the custody record, being 14.45 hours. He did not recall anything else being said to him in the course of the telephone conversation. Mr. Sweeney made a memorandum of this telephone call which was in the following terms:

Having returned to the office I subsequently received a telephone call from Willie Cannon at 2.40 p.m. He said to me that he wished to arrange for the taking of a blood test from Frank McBrearty and would phone me back in a few minutes time when Frank would be available to speak to me. Having considered the matter and consulted further I subsequently spoke to Frank McBrearty. I said to him that there was little point in refusing to give the blood sample as it could be taken involuntarily in any event. I said however that it was important that he demand that the blood sample be split and that one part be given to him. Frank subsequently gave the sample voluntarily.⁹⁴⁰

7.135. The significance of this telephone call lies not so much in the fact that it

⁹⁴⁰ Tribunal Documents, page 814.

concerned a blood sample, as in the fact that it represented an opportunity for Mr. McBrearty Junior to make any complaint that he wished to his solicitor if he had been mistreated by any of the Gardaí during the morning interviews. It does not appear that he made any such complaint to his solicitor at that time. He does not allege that he made any such complaint to his solicitor, nor does his solicitor have any note of a complaint being made at that time. **The Tribunal is of the opinion that if Mr. McBrearty Junior had been abused verbally or physically in the manner alleged by him in the course of the morning interviews, he would have mentioned this to his solicitor in the course of the telephone call. He would also probably have asked his solicitor to come to the station for a further visit. He did neither of those things at that time. This fact reinforces the Tribunal in the conclusions that it has reached in relation to the morning interviews.**

The First Afternoon Interview

- 7.136. The first interview in the afternoon was conducted from 14.48 hours until 17.00 hours. It was conducted by Sergeants O’Grady and McGrath. There was a break at 16.05 hours for ten minutes while a blood sample was taken by Dr. McColgan.
- 7.137. Mr. McBrearty Junior alleged that during the afternoon interviews he was again verbally abused by the interviewing Gardaí. They were constantly calling him a murderer. They were constantly alleging that he was responsible for the death of the Late Richard Barron. He denied that the interview notes as recorded by Sergeant O’Grady were an accurate record of what was said in the course of that interview. In particular, he alleged that he would never have referred to the pub as “Frankie’s”. He said that he would only have said to the Gardaí that he was working in the pub all night. He said that the use of the name “Frankie’s” in the interview notes showed that these notes were made up afterwards as a means of propping up the confession. In addition, he said that the portion of the notes which stated that he had said that he had let in Mark McConnell free that night was a complete fabrication, because he had not met Mark McConnell at all that night. He stated that that was inserted solely to prop up the later confession. He alleged that the notes of interview were written up by the Gardaí afterwards.⁹⁴¹
- 7.138. Mr. McBrearty Junior also alleged that one of the four Dublin Gardaí said to him “Rambo went up the field and a big fat pussy cat followed him”. Mr. McBrearty Junior thought that the comment was attributable to one of the Dublin Gardaí, but that it might have been made by Inspector McGinley. He stated that Inspector McGinley came in to the interview room once during every interrogation. He described what happened on those occasions in the following way:

⁹⁴¹ Transcript, Day 514, pages 17-19.

*Aye. Because he came in, as I explained, every interrogation that I was involved in that day, he would have come in once on each one of the occasions I was being interrogated and asked me to admit to the death of Richie Barron and he would let me go home to my wife and children. And I would tell him either to fuck off out of the room ... and a couple of times they threatened me.*⁹⁴²

- 7.139. When it was put to Mr. McBrearty Junior that this allegation of the comment being made to him about Rambo and the big fat pussy cat appeared to be a new allegation first made in the course of his evidence to the Tribunal, he said that it was definitely said to him in the course of his interrogation that day. He denied that he had borrowed this allegation from an allegation made by Róisín McConnell that a comment to the same effect had been made to her by Inspector McGinley.
- 7.140. Mr. McBrearty Junior stated that the notes had been fabricated so as to stand up the confession that was later produced and also to stand up the case against his father to the effect that he had been bribing people to stop them giving evidence against the McBreartys in relation to the murder of the Late Richard Barron. He accepted that while some of the matters recorded in the notes were put to him, he denied that the answers were recorded accurately. He said that he was constantly telling the Gardaí that he had many witnesses who were patrons at the pub who saw him at work that night. However, he said that the Gardaí had written down his answers in such a way that it appeared that he was threatening the Gardaí that they should bring in any witness against him and that such persons would be intimidated into not giving evidence against him. He said that this was deliberately done so as to frame him for murder and make the case that he and his father were intimidating witnesses.⁹⁴³
- 7.141. Frank McBrearty Junior gave a blood sample between 16.05 hours and 16.45 hours. This was taken by Dr. Brian McColgan. Mr. McBrearty Junior alleged that he had complained to the doctor that he was getting an “awful touching in here” and told him that the Gardaí were abusing him. He said that the doctor was not interested in his complaint.⁹⁴⁴ Doctor McColgan gave evidence before the Tribunal sitting in Donegal Town. He stated that he had been called to Letterkenny Garda Station on the afternoon of the 4th of December 1996 in order to take a blood sample from Mr. McBrearty Junior. He said that Mr. McBrearty Junior did make a complaint to him, but that it was a complaint of urinary frequency. He offered to take a urine sample from Mr. McBrearty Junior, but the offer was declined. Mr. McBrearty Junior told him that he did not have any pain passing urine. The doctor made a note of this complaint. He said that

⁹⁴² Transcript, Day 414, pages 23-24.

⁹⁴³ Transcript, Day 514, pages 29-31.

⁹⁴⁴ Transcript, Day 514, page 14.

other than this, Mr. McBrearty Junior had no complaint to make to him about his treatment in the Garda station.

- 7.142. Dr. McColgan stated that if a complaint had been made to him and if he felt that the prisoner was either physically or mentally injured or unstable, he would have carried out the appropriate examination and, depending on the results of that examination, would have taken further steps in the matter. However, if a prisoner merely complained to him that he was having a tough time in the station, without any evidence of physical or mental injury, then he accepted that he might not have taken any further steps. He stated that he did not recall Mr. McBrearty Junior being in any way abnormally distressed other than what one might expect from a person under arrest in a Garda station.⁹⁴⁵
- 7.143. Detective Inspector O’Grady stated that the notes which were taken by him of that period of interview were accurate in all respects. He stated that the notes were read over to Mr. McBrearty Junior and that when he was finished reading the notes to him he was asked if they were correct, to which he said “yes”. He was asked whether he would sign them and he refused to do so. He stated that when Mr. McBrearty Junior refused to sign the notes he and Sergeant McGrath signed the notes.⁹⁴⁶

Conclusions on the Third Period of Interview

- 7.144. **The Tribunal is satisfied that the notes of interview recorded for the third period of interview are an accurate account of what took place between the interviewing Gardaí and Mr. McBrearty Junior during that interview. The Tribunal also accepts the evidence given by Dr. Brian McColgan. His notes record that the only complaint made by Mr. McBrearty Junior at the time when he saw Mr. McBrearty Junior at 14.05 hours was to the effect that he was suffering from urinary frequency. Dr. McColgan offered to take a urine sample, but this was refused by Mr. McBrearty Junior. The Tribunal accepts that Mr. McBrearty Junior did not make any complaint to Dr. McColgan of abuse at the hands of the Gardaí.**

The Fourth Period of Interview 17.01 Hours – 18.10 Hours

- 7.145. This interview is a critical interview in the context of the later statement allegedly made by Frank McBrearty Junior. Up to the time of this interview, Mr. McBrearty Junior had been steadfastly maintaining his innocence. He had denied any part in the death of Mr. Barron. It is alleged by the Gardaí that it was during this period of interview, which lasted for a little over one hour and occurred just before the break for a meal and a rest period, that Mr. McBrearty Junior for the first time showed a change of heart in relation to the matters that were being put to him.

⁹⁴⁵ Transcript, Day 517, pages 16-22.

⁹⁴⁶ Transcript, Day 555, pages 14-15.

The Gardaí allege that towards the end of this interview, which was being conducted by Detective Sergeant Melody and Detective Garda Fitzpatrick, when the tenor of the questioning changed from murder to a crime of a lesser degree, perhaps assault, for the purpose of teaching Mr. Barron a lesson, that Mr. McBrearty Junior for the first time made no reply to some of the questions put to him. It is alleged by the Gardaí that at the very end of the interview it was put to Mr. McBrearty Junior that he should consider telling the truth about what happened on the night of the death of Mr. Barron and that he should consider making a written statement about what happened that night, to which Mr. McBrearty Junior is alleged to have replied “I’ll think about it”. This portion of the interview notes is vehemently denied by Mr. McBrearty Junior.

- 7.146. When asked to explain what might have caused this change of mind on the part of Frank McBrearty Junior, Mr. Melody gave the opinion that perhaps when they changed tack in their interview with Mr. McBrearty Junior and put it to him that he and Mark McConnell only meant to teach the Late Mr. Barron a lesson, rather than intending to murder him, this might have been responsible for causing his change of mind, which ultimately resulted in his making a confession later in the evening. It was put to Mr. Melody that Mr. McBrearty Junior was stating that he had never said any such thing in the course of this interview. He was also saying that he never made a confession of any sort and that if he did sign a document it was tricked out of him. Mr. Melody was asked whether he could give a rational explanation as to why Mr. McBrearty Junior would have a change of heart and decide to make a false confession admitting to something that he hadn’t done. He gave the following opinion:

Q. What I am asking you to assist the Chairman on is, if that is not correct, if he is incorrect on that, what is the other explanation? Is there another explanation? A sensible explanation that the Chairman can be given in relation to that change of mind?

A. Well I don’t know. He is an unusual man, Chairman, and certainly in the light of what happened to him on the 4th of February and the surrounding circumstances to that event. I don’t have a direct explanation as to what made him change his mind. We asked him to tell us the truth. Certainly all the issues that had been put to him in our interviews ... and there was a scenario put to him in our last interview, maybe it was only to teach him a lesson.

Q. Yes?

A. *I don't know what was going on in the man's mind ... Yes.*

Q. *But you gave him a slap and he fell back, but you didn't intend to do anything about it?*

A. *Yes.*

Q. *Sorry. You didn't intend to kill him?*

A. *Yes.*

Q. *Do you think you might have enticed him or given him some understanding that it mightn't be all that serious if he could own up to it?*

A. *That could very well be, Chairman. Certainly that proposition was put to him, that that could be the case, that maybe they had no intention of killing the man [witness reviewed the notes of interview].⁹⁴⁷*

7.147. Mr. Melody was then asked whether they, as interviewers, had the intention that if they toned down the murder aspect of it and perhaps put it to the prisoner that he and Mr. McConnell never had an intention to murder the man, but merely an intention to teach him a lesson, he might be more forthcoming. Mr. Melody agreed that that might have been one of the considerations. It was put to him that in those circumstances he could be thought of as putting the 'soft option' to Frank McBrearty Junior so that he could go along with it. He agreed that they were in effect giving the prisoner the opportunity to take the soft option.⁹⁴⁸

7.148. The interview itself began in a somewhat robust fashion, when it was put to Frank McBrearty Junior that he had been involved in the killing of Richard Barron and that Mark McConnell had also been involved. He responded that he had murdered no one. He was asked what about Mark McConnell and he said that he could speak for himself. The Gardaí then put it to him that he had met Mark McConnell who had told him what had occurred in Quinn's pub earlier in the evening and that the two of them then decided to do something about that after Mr. Barron had been seen heading for his home, drunk. To this Mr. McBrearty Junior responded again that he had murdered no one. It was put to him that a number of people had seen him and Mark McConnell coming over the hill at the car park just after Richard Barron had been killed. Mr. McBrearty Junior stated that that could not have happened; that anyone who said that was a liar. He was told that the Gardaí had written statements that persons had seen the two of them. He said that he did not care what statements the Gardaí had; nobody would give evidence to that effect. He was then asked whether that was due to

⁹⁴⁷ Transcript, Day 555, pages 135-136.

⁹⁴⁸ Transcript, Day 555, page 140.

the fact that his father had intimidated witnesses. He said that no such thing had happened and that this was lies. It was put to him that his father would always help him when he was in trouble, to which he was alleged to have responded that his father could not leave things alone. He was asked whether his father would help Mark McConnell, to which he replied that he did not know.⁹⁴⁹

7.149. Given the importance of the latter portion of this interview, it is worthwhile setting out the notes of this part of the interview verbatim:

Q. Could it have been that the two of you only meant to give Richie Barron a hiding to teach him a lesson?

A. No reply.

Q. Richie Barron from what we know had severe head injuries. We know that he received a blow from some sort of blunt instrument at the top of his head near his forehead. Did you or Mark McConnell hit him on the top of his head?

A. I am saying nothing.

Q. Frank, we need to know the truth did you deliberately plan to murder Richie Barron?

A. I murdered nobody. I wouldn't do that.

Q. Tell us the truth then what happened that night with Richie Barron?

A. I'm saying nothing.

Q. We know that the McBreartys were having a lot of hassle from Richie Barron but he didn't deserve to be killed. Would you agree with that?

A. Of course I agree with that, but he wasn't causing a lot of hassle.

Q. Didn't he have a row in Quinns pub earlier that night with Mark McConnell and embarrassed him in front of his wife and friends. Wasn't Mark McConnell very angry over what had occurred and when he told you about it the two of you decided to do something about it when you saw Richie Barron drunk and making his way home?

A. That was Mark's business it had nothing to do with me.

Q. You went along with sorting Richie Barron out when Mark McConnell told you what the row was about isn't that true?

A. I am saying fucking nothing.

⁹⁴⁹ Tribunal Documents, pages 465-466.

Q. All we want is the truth about what occurred that night. Tell us the truth.

A. I didn't murder nobody I'm saying nothing more.

Q. You should think about telling us the truth about what happened that night. The facts are that Richie Barron died as a result of one or more blows to the head. Either you or Mark McConnell hit him on the top of the head with something, we don't know what it was only you or Mark can tell us that.

A. No reply.

Q. You should consider telling us the truth and make a written statement about what happened that night, do you understand?

A. I'll think about it.

Read over, asked if correct, agreed notes were correct.

Refused to sign. John Melody D/Sergeant

John Fitzpatrick D/Garda 6.10 p.m. 4.12.96⁹⁵⁰

7.150. Detective Garda Fitzpatrick was asked for his opinion as to what he thought may have caused the change of attitude on the part of Mr. McBrearty Junior. It was his opinion that it was a change in the tenor of the questioning that caused the change. In particular, once the interviewing Gardaí did not mention the word 'murder' Mr. McBrearty Junior seemed to become more reflective. He said that Mr. McBrearty Junior became quiet at this point in the interview. It was the first time that he did not answer any of the questions that were put to him. He said that once you put to Mr. McBrearty Junior that he murdered Richie Barron he would reply immediately that he did not murder anybody. However, when it was put to him that perhaps they only meant to give Mr. Barron a hiding, to teach him a lesson, this seemed to cause Mr. McBrearty Junior to become more reflective. Other than that he could not give any explanation for the change of heart:

I honestly don't know. As I said, he was an unusual man. It could be a question, but when he wasn't being challenged about murdering the man. But he was not a rational man. To me. And when he was asked or questions put to him in relation to the murder, you know, yourself and Mark McConnell murdered ... I murdered nobody. And he would, you know, get into a tirade over that. But in relation to the other questions like, he didn't. He was quiet. Do you understand me?⁹⁵¹

⁹⁵⁰ Tribunal Documents, pages 466-468.

⁹⁵¹ Transcript, Day 558, page 95.

- 7.151. Mr. McBrearty Junior vehemently denied this portion of the interview notes. He said that they were not an accurate record of any of the things that were put to him or any responses given or not given by him at that time. In short, he said that they were a total fabrication. He said that the notes had been fabricated by the Gardai in order to back up the confession that they had fabricated against him. In particular, he absolutely denied that he ever said at the conclusion of that interview that he would think about making a written statement about what happened that night.⁹⁵² When Mr. Melody's version was put to him, Mr. McBrearty Junior gave the following emphatic response:

*There is no point in reading this to me, Mr. McDermott, any longer because he's telling lies. He is a liar. I didn't confess or make any approach to confess or give anything to signal I was confessing to the death of Richie Barron. He is a liar. He tried to frame me for a murder that didn't even happen. It's as simple as that. That is the question mark. This is why the State did not fight my case in the High Court and the Garda Commissioner was excluded from negotiations in my High Court case. No but, I have to put this on the record. Because this is the facts. I am prepared to fight my case in the High Court and bring out every single thing I know about John Melody, John Fitzpatrick, Gerard McGrath and Eamon O'Grady ... under-cross-examination by my legal team that wanted to cross examine me in the High Court and they chose to settle with me in the biggest compensation claim ever given in the history of the State. And it's as simple as that. They tried to fabricate evidence against me to frame me for a murder that didn't happen.*⁹⁵³

- 7.152. There is a significant entry in the custody record for 17.40 hours. It records that the member in charge, Garda Martin Leonard, visited the prisoner and checked him at that time. The prisoner wanted paracetamol tablets for back pain. He was recorded as having no other complaints at that time. Mr. McBrearty Junior gave a different account of that incident. He said that during the course of that interview when Detective Sergeant Melody had been kicking him on the shins, on one such occasion Mr. McBrearty Junior kicked the table. He stated that Detective Sergeant Melody then pulled a chair from under him causing him to fall back, hitting his head against a filing cabinet and causing an injury to his neck. He stated that it was because of this incident that he requested the paracetamol tablets when the member in charge came into the room. He was asked whether he made any complaint to the member in charge in relation to the abuse that he was receiving. He stated that he had made a complaint earlier in the day to Garda

⁹⁵² Transcript, Day 514, pages 113-114.

⁹⁵³ Transcript, Day 514, pages 121-122.

Leonard, but that it had been disregarded by the member in charge. He described that encounter as follows:

Yes, I kicked the table on one occasion. He tumbled me from the chair. Pulled the chair from under me, because he was sitting beside me. I fell back and I hit where the recording equipment was, a filing cabinet, I banged my head against it. Yes, I hurt my neck and I was given a paracetamol by the custody Garda who was supposed to protect me. But he'll give a different version of that no doubt. I complained several times to Garda Leonard. On the first occasion I told him about McGrath slapping me. He turned around and he said to the two of them, McGrath and O'Grady, did this man slap you in the face (sic), and both of them said no and he turned around, verbally he said to me, what the fuck are you complaining about then. So at that stage I knew there was no point in making any complaints to him.⁹⁵⁴

- 7.153. Later in his evidence, Mr. McBrearty Junior gave another account of how Garda Martin Leonard had allegedly failed to respond to a complaint made by him:

Q. ... Do you recall towards the end of that interview, having any encounter with Garda Leonard in relation to any matter?

A. I had an encounter with Garda Leonard in every interrogation ... Martin Leonard would have come into the room and specifically on one of those occasions I complained about McGrath and O'Grady slapping me and kicking me in the shins ... Leonard came into the room and said, have you any complaints?, thinking he was being smart. I said, aye, O'Grady is slapping me in the face and McGrath is kicking me in the shins. And he turns around and he says to the two boys, he says to O'Grady, did you slap him in the face?, He said, no, ask my colleague, he will tell you I didn't. He did the same with McGrath, did you kick him in the shins? Oh no, I didn't. He said, what the fuck are you complaining about then I said, what's the point in making a complaint to you then ... that happened on numerous occasions when he would come in and say, have you any complaints? I said, what's the point in making a complaint to you, I have already complained to you and you have done nothing about it.⁹⁵⁵

⁹⁵⁴ Transcript, Day 505, pages 75-76.

⁹⁵⁵ Transcript, Day 513, page 130.

- 7.154. In evidence both Mr. Melody and Mr. Fitzpatrick denied that any such incident occurred whereby Frank McBrearty Junior was caused to fall off a chair and strike his head or neck against a filing cabinet. They stated that this allegation was a total untruth. It simply did not happen. They stated that this was another occasion where Frank McBrearty Junior had used the factual episode where he did in fact request paracetamol tablets from the member in charge as a means of making an unfounded allegation against the two Gardaí who were interviewing him at the relevant time.
- 7.155. Garda Martin Leonard stated that when he visited the interview room at 17.40 hours, Mr. McBrearty Junior did request paracetamol tablets. He told Garda Leonard that he wanted these for a sore back. According to Garda Leonard, there was no mention of being thrown off any chair or hitting his neck or back or head against any filing cabinet or any occurrence similar to that. Garda Leonard stated that if there was a complaint made by the prisoner to him of any abuse of that type, he would definitely have recorded it in the custody record. He stated that he did not have paracetamol tablets immediately available to him in the station, but managed within a short time to obtain Hedex tablets, which, according to the custody record, were given to the prisoner by Garda Cannon at 18.15 hours while Mr. McBrearty Junior was on his meal break and rest period.⁹⁵⁶
- 7.156. Mr. Leonard denied that any complaints had been made to him during the course of the day by Mr. McBrearty Junior. He denied that he had ignored the complaints in the manner alleged. He said that on the occasions that he visited the prisoner during the day, Mr. McBrearty Junior had no complaints to make, other than the request for paracetamol tablets which he made at the time of the visit at 17.40 hours.
- 7.157. It is noteworthy that at the conclusion of that period of interview at 18.10 hours, Frank McBrearty Junior was brought first to the toilet and then to the cell. He was given the Hedex tablets by Garda Cannon and a meal was provided some short time later at 18.25 hours. Mr. McBrearty Junior has stated in evidence that he got on well with Garda Cannon. He stated that at some stage in the day post-mortem photographs were shown to him. However, he placed this as happening after the evening meal break, due to the fact that he said that if he had seen the photographs prior to that time, he would have made a complaint to Garda Cannon at the time of the meal break. It is for that reason that he thinks that he was first shown the post-mortem photographs later in the evening. However, if that was true for the post-mortem photographs, one would have thought that if he had in fact been tumbled from the chair by one of the interviewing Gardaí and as a result suffered injury to his neck or back, he would have mentioned this to

⁹⁵⁶ Transcript, Day 540, pages 65-67.

Garda Cannon. He does not say that he made any complaint of that nature to Garda Cannon during the meal break.

Conclusions on the Fourth Period of Interview

- 7.158. The Tribunal accepts the evidence given by Mr. Melody and Mr. Fitzpatrick as to the content of this period of interview. The notes of that interview are a reasonably accurate account of what took place. The Tribunal is satisfied that when the detectives moved away from the assertion that Mr. McBrearty Junior had “murdered” Mr. Barron, there was a perceptible change in his attitude towards the questions that were put to him. Why this change occurred, the Tribunal cannot say. It may well be that, having had the traumatic experience of being arrested in front of his children and having been questioned for a number of hours up to that point, Mr. McBrearty Junior’s resolve began to crumble, particularly when the softer option was put him that he had not intended to kill the Late Mr. Barron, but that he had intended to go with Mark McConnell to teach Mr. Barron a lesson. However, this is entire speculation. The Tribunal has not been furnished with Mr. McBrearty Junior’s medical records. He has not been examined by any forensic psychologist on behalf of the Tribunal. In these circumstances, it would be wrong of the Tribunal to attempt to speculate as to why there was a perceptible change in attitude on the part of Mr. McBrearty Junior towards the end of that period of interview. However, the Tribunal accepts the evidence given by Mr. Melody and Mr. Fitzpatrick that there was indeed a change at that time.
- 7.159. The Tribunal is satisfied that, for whatever reason, Mr. McBrearty Junior did indicate to the interviewing officers at the very end of the interview that he would consider making a statement to them about what had happened to the Late Mr. Richard Barron. He may have said this merely as a means of bringing the interview to an end and getting his meal and rest period. He may have said it because he was in pain due to the longstanding back injury. The Tribunal cannot say why Mr. McBrearty Junior indicated to the interviewing officers that he would consider making a statement, but I am satisfied that he did give that indication to them at the conclusion of that period of interview.
- 7.160. The Tribunal rejects the allegation made by Frank McBrearty Junior that Detective Sergeant Melody caused him to fall from the chair and that as a result of that, he suffered an injury to his neck and back. The Tribunal notes that no such complaint in that regard was made by Mr. McBrearty Junior to Garda Cannon when he was taken for his meal break. This is a Garda, whom Mr. McBrearty Junior appeared to get on with and about

whom he had no complaints to make. In the circumstances, the fact that such a complaint was not made to Garda Cannon indicates to the Tribunal that this was indeed a false allegation made up by Frank McBrearty Junior due to the fact that he had requested paracetamol tablets. The Tribunal accepts that that request was made due to a longstanding back injury.

The 18.00 Hours Conference

- 7.161. A dispute has arisen among sections of the Gardaí as to whether a conference was held at 18.00 hours on the 4th of December 1996. In itself the holding of a conference at this time is not important. However, in the particular circumstances in which the dispute arises, the holding of this conference assumes a major significance. The case that is being made by the Gardaí who took the statement from Mr. McBrearty Junior, is that in the interview immediately before the conference that was held at 18.00 hours, Mr. McBrearty Junior was “mellowing” in his attitude and indicated that he would “think about” making a statement. These Gardaí say that they reported this fact to the conference held at 18.00 hours. If in fact there was such a conference, and if in fact they did so report to the conference, then it adds credibility to the account which they gave. On the other hand, if there was no conference at 18.00 hours and therefore they did not report this alleged “mellowing”, then it could be seen that this was an attempt by them to bolster the validity of the statement by inventing the conference and the report. On that basis the Tribunal set out to investigate the issue as to whether such a conference was in fact held.
- 7.162. This conference was made known to the Tribunal for the first time by the four Dublin based Gardaí when they were interviewed by the Tribunal investigators in January 2005. In the course of those interviews the four Gardaí maintained that a conference had been arranged for 18.00 hours to review progress in the various interviews that had taken place in the Garda station throughout the day. They alleged that Detective Sergeant Melody and Detective Garda Fitzpatrick arrived somewhat late for that conference. It was alleged that Detective Sergeant Melody outlined to the conference that there had been a possible change of heart on the part of Frank McBrearty Junior, in that he had indicated to them that he would consider making a statement in relation to what had happened on the night of the 13th/14th of October 1996. They took this to mean that he would consider making an inculpatory statement. The dispute arises due to the fact that when the officers who were in charge of the investigation and a number of Gardaí who were present in Letterkenny Garda Station that day were called to give evidence, they denied having any recollection of any such conference, or of Detective Sergeant Melody making any such pronouncement to the investigation team. Accordingly, it is necessary to examine this issue in some detail.

- 7.163. Detective Inspector O’Grady was adamant that at the conclusion of their afternoon interview with Frank McBrearty Junior at approximately 17.00 hours, he and Sergeant McGrath returned to the incident room to hand in their notes of interview. There they were told that there was going to be a review of the progress that had been made in the various interviews throughout the course of the day. This review was to take place in the incident room at 18.00 hours. He was not in a position to say who told him this. He thought that it might have been Sergeant Martin Moylan. He said that this was not intended to be a formal conference, with people being signed in and job sheets being given out. Instead, it was simply a meeting to review what progress might have been made by the various interview teams during the course of the day. He stated that at 18.00 hours they assembled in the incident room, where a meeting was held. He could not recall exactly which officers were present; however, he did have a recollection that Inspector McGinley was present. He stated that there were also representatives of the other interview teams present. Various people gave an account or résumé of how they had got on with their particular prisoner during the course of the day. He recalled that generally there was little or no progress reported to the meeting. He also had a recollection that there was an account given by one of the incident room staff as to what progress had been made in relation to the persons who had been detained at Lifford Garda Station. Again, there was nothing of assistance coming through from those interviews. He said that either he or Sergeant McGrath had given an account of how they had got on with Frank McBrearty Junior during the day. At some time after the meeting had commenced, Detective Sergeant Melody and Detective Garda Fitzpatrick came into the meeting. He said that during a discussion amongst those present at the meeting, who were sitting around a table, Detective Sergeant Melody stated that Frank McBrearty Junior was continuing to maintain his innocence, but had also indicated that he would consider making a statement.⁹⁵⁷ Detective Inspector O’Grady thought that there were probably ten or more people at the particular meeting.
- 7.164. When it was put to Detective Inspector O’Grady that none of the Gardaí in Letterkenny, with the exception of Garda Harkin, appeared to have any recollection of any such meeting whatsoever, nor of hearing any news to the effect that Frank McBrearty Junior, the main suspect in the case, might be thinking about making a statement, he said that he was greatly shocked and saddened by this state of affairs. He stated that there was definitely a meeting held at 18.00 hours that evening. He could not understand why many of those who were present at the meeting were now denying that any such meeting had taken place. While he was not able to identify which of the incident room staff, or which of the Gardaí based in Donegal, actually attended at the meeting, he

⁹⁵⁷ Transcript, Day 593, pages 148-157.

was adamant that such a meeting had taken place. He said that he had heard anecdotally within An Garda Síochána that there was a body of opinion that the blame for the false confession should be laid at their feet and that perhaps this was the reason why some were now denying that the meeting had ever taken place or that Detective Sergeant Melody had reported as he had described at that meeting.⁹⁵⁸

- 7.165. Detective Inspector O’Grady also pointed out that while the four Dublin Gardaí had mentioned the 18.00 hours conference in their interviews with the Tribunal investigators in January 2005, none of the Gardaí based in Donegal had taken issue with any of the matters raised in those interviews until they came to give their evidence before the Tribunal. He denied that there was any concerted action among the four Dublin based Gardaí to raise this conference as a new issue in 2005. He pointed out that in November 2003 he had given a detailed statement to his solicitor, wherein he had mentioned this conference.
- 7.166. Detective Sergeant McGrath in his evidence stated that it had been indicated to them that there would be an informal meeting to review progress at 18.00 hours. He said that this was not a formal conference, but an informal meeting to review how the various interview teams had got on during the day. His recollection was that Superintendent Fitzgerald, Inspector McGinley and Sergeant Martin Moylan all attended that meeting. He said that the people attending at the meeting sat around a table and that he took up a position on the far side of the table across from the door. He said that there were people to his right and also people sitting on the other side of the table. He said that various people from the interviewing teams gave a review of progress with their particular prisoner. He could not recall whether it was he or Sergeant O’Grady who had given the review in relation to Frank McBrearty Junior. He thought that the meeting lasted approximately thirty minutes. He said that he was surprised that officers and Gardaí who had been based in Donegal had no recollection of this meeting and were denying that it had taken place. He recalled Detective Sergeant Melody coming into the meeting and informing the meeting that Frank McBrearty Junior had said that he would think about making a statement. He regarded this as being some progress in an otherwise fruitless day. However, he said that he did not regard this as being an event of enormous significance, due to the fact that prisoners sometimes said they would make a statement and then did not follow through on it. He said that in the course of the meeting Detective Sergeant Melody indicated that they would go back in to Frank McBrearty Junior after the rest period to see if they could follow through on the progress that had been made prior to the meal break.⁹⁵⁹

⁹⁵⁸ Transcript, Day 593, pages 176-177.

⁹⁵⁹ Transcript, Day 594, page 28.

- 7.167. Detective Sergeant McGrath's recollection was that when Detective Sergeant Melody entered the meeting, there were a number of discussions going on around the table. He could not recall how it was that Detective Sergeant Melody came to indicate that Frank McBrearty Junior was thinking about making a statement. Detective Sergeant McGrath stated that he presumed that Frank McBrearty Junior was considering the possibility of making an inculpatory statement.⁹⁶⁰ However, he could not exclude the possibility that it would be an exculpatory statement. He said that there was no further discussion at the meeting about the nature of the statement which might be made by the prisoner. He said that he did not have a recollection of Garda Harkin or Detective Garda Tague talking to him about the possibility of swapping the interview teams among other prisoners. However, he said that it was quite likely that such a topic would have been discussed at the meeting. He was unable to recall what specific details were mentioned by the other Gardaí who were giving reviews of their interviews of the various prisoners. He said that there were no decisions taken at the meeting and it just ended. The Detective Sergeant rejected the suggestion that this meeting may have been an invention by the four Dublin Gardaí, designed to give credence to the taking of a statement of admission in the subsequent interview held at 19.05 hours. Detective Sergeant McGrath stated that that was completely untrue. He was adamant that the conference took place in the way described.⁹⁶¹
- 7.168. Mr. John Fitzpatrick gave a similar account. He stated that to the best of his recollection he was told before going into the 17.00 hours interview with Frank McBrearty Junior that there was going to be a review conference held at 18.00 hours. He thought that it was Sergeant Moylan who had told him that. He stated that due to the fact that they were making progress with Mr. McBrearty Junior, they were late for the meeting. Having brought the prisoner back to the member in charge, they then proceeded to the incident room where the conference was being held. He had a recollection that Superintendent Fitzgerald, Inspector McGinley and Sergeant Martin Moylan were present at the meeting. In addition, there were six or eight other Gardaí who were involved in interviewing prisoners in Letterkenny Garda Station. There were also the four Dublin based Gardaí at the meeting. That would give a total number of either thirteen or fifteen at the meeting. He said that there was certainly one member of each interview team and possibly two from some of the interview teams present at the meeting. He stated that he was sure that the two officers, being Superintendent Fitzgerald and Inspector McGinley, were present at the meeting. He said that they were not in uniform at that time. He said that there was no note taken of the conference. To the best of his recollection he was sitting beside Detective Sergeant Melody.

⁹⁶⁰ Transcript, Day 594, page 32.

⁹⁶¹ Transcript, Day 594, page 41.

He was unable to recollect which Gardaí were present from the various interview teams. He could not identify who gave the review report in respect of each prisoner. He said that this was due to the fact that he was new in the area and did not know the Gardaí personally. He did know Detective Sergeant John White from his time in Blanchardstown Garda Station. However, he did not recall seeing him at the meeting that evening.

- 7.169. Mr. Fitzpatrick indicated that when they entered the meeting, there were a number of discussions going on around the table. Detective Sergeant Melody indicated that Frank McBrearty Junior was thinking about making a statement. He said that he addressed this to the people sitting around the table. He said that it was not made as part of a presentation to the meeting, but was a statement made by Detective Sergeant Melody in the course of a discussion at the meeting.⁹⁶² According to Mr. Fitzpatrick, there was no reaction at the meeting to this information. Mr. Fitzpatrick stated that there was no provision put in place at the meeting as to what exactly was to happen in the event that Mr. McBrearty Junior did make a statement of admission. It was put to him that this was somewhat odd, given that if such a statement were made, it was likely to implicate Mark McConnell, if the Garda theory was correct. If that was so, then time was of the essence as Mark McConnell's detention period was due to expire earlier than that of Frank McBrearty Junior. Mr. Fitzpatrick stated that there was no discussion as to what steps should be taken if a statement of admission were forthcoming. He stated that the usual thing would be for the interviewing Gardaí to take the statement immediately to the Superintendent and for him to direct what should be done with it. He said that there was no particular arrangement made as to where they could find the Superintendent quickly, if the need arose. He said that he knew that he would be around the station somewhere. He said that there was no reaction from the other interviewing Gardaí present at the meeting, even though it could be anticipated that a statement of admission, if made by Frank McBrearty Junior, may well have had an impact on the story being given by other persons then in detention.

- 7.170. Mr. Fitzpatrick was adamant that there was a conference at Letterkenny Garda Station at 18.00 hours. He said that he was shocked by the fact that other Gardaí from Letterkenny were now denying that any such conference had taken place. He said that he could not understand why they would persist with such a denial when the conference had in fact taken place:

A. *I don't know. As I say I'm shocked, I can't believe it and I don't know why, like they could have nothing against me and I have no qualms with any of them. I'd go up, just do my*

⁹⁶² Transcript, Day 594, page 79.

job, and like I wasn't offending nobody. But I can't understand it.

Q. It was put to Sergeant McGrath in the course of cross-examination that perhaps there was a suggestion that they were, the Letterkenny guards were distancing themselves from the false confession and there was a concerted effort to distance themselves and Detective Inspector O'Grady said that he heard anecdotally, but had no proof, but anecdotally had heard that there was a decision taken by some members from Letterkenny that they would distance themselves from the statement and disavow any knowledge?

A. I don't know anything about that.

Q. Do you think that's what they are doing?

A. I don't know to be honest with you. I don't know. Like I mean to say I have heard that alright, but I couldn't say any man said that.⁹⁶³

7.171. Mr. John Melody gave evidence on this aspect. He also stated that the conference had been flagged to them by the incident room staff prior to their interview, which commenced at 17.01 hours. He said that the conference was scheduled for 18.00 hours and that most of the interviewing teams or, at least a representative from each of the interviewing teams, had been requested to be present to give a review of progress with their prisoner. He said that this was a perfectly normal occurrence to happen in the course of an investigation. He said that when they concluded the interview that they had with Frank McBrearty Junior at 18.10 hours, they proceeded to the conference. He gave the following account of what took place at that meeting:

When we went into the meeting there was some sort of discussion going on and the two of us sat down, I think it was at some stage during that discussion that a suggestion came up that a change of interviewing members may be appropriate. It wasn't specifically, as far as I can remember, that the change should take place with Mark McConnell's team. It was a general comment that perhaps the interview teams should change. I think it was at that stage that I interjected and I said, I told them what the present position was with Frank McBrearty and that it was essential that at least myself and my colleague, Detective Garda Fitzpatrick go back into the interview room with Frank McBrearty to see what was ... could we

⁹⁶³ Transcript, Day 594, pages 101-102.

make progress, because he had agreed that at least he would think about whether he would make a statement or not.

So whatever about the direction of my other two colleagues may change, it was essential that certainly we would find out what the degree of ... if he was going to come forward and make a statement, which he did ... well at least we had to go back in and find out because of that change in attitude that we had. He wasn't as aggressive towards us.⁹⁶⁴

- 7.172. Mr. Melody stated that it was the general suggestion that perhaps there should be a change in the interviewing teams that prompted him to interject and state that that would not be appropriate due to the fact that they had made some progress with Frank McBrearty Junior, who was at that time considering whether he would make a statement to them. This description of how he came to make this statement to the meeting was slightly different to the account which he had given to the Tribunal investigators in January 2005:

We went out from the conference room and, which was the incident room and there was a meeting taking place there to discuss all of the interviews and we listened to what was being said, then I addressed that meeting and told them that he had given us an indication that he would think about making a statement. But I also told them that you know what he is going to say is we don't know ... Detective Inspector McGinley was there and John Fitzgerald was there and there were at least two members from each interview team present.⁹⁶⁵

- 7.173. Mr. Melody was asked as to whether it was Garda Harkin's evidence which had refreshed his memory and enabled him to remember the context in which he came into the discussion and indicated to the meeting that there should not be a change of interview teams due to the fact that Frank McBrearty Junior had indicated to them that he was thinking of making a statement. However, Mr. Melody denied that his memory had been refreshed in that way. He had always recalled that that was the manner in which he came to address the meeting on that topic. When asked why he had not mentioned that in his previous evidence, or in his interview with the Tribunal investigators, he said that that was due to the fact that he did not think that it was significant. He said that the conference or meeting only became significant in more recent times.⁹⁶⁶
- 7.174. Mr. Melody stated that to the best of his recollection there were ten or twelve people present at the meeting. He could not remember what reports were given by any of the other members. His recollection was that there was nothing of any

⁹⁶⁴ Transcript, Day 594, pages 145-146.

⁹⁶⁵ Tribunal Documents, page 560.

⁹⁶⁶ Transcript, Day 594, page 149-152.

significance coming through from any of the interview teams. He had a recollection that there was some mention of the prisoners in Lifford Garda Station, but again there was nothing of relevance coming out of their interviews that would be of assistance to them in their interviews with Frank McBrearty Junior. He could not recall how he became aware of the lack of progress from the Lifford end. All he could recollect was that there was some general discussion about changing the interview teams, to which he had responded negatively, stating that it was important for him and Detective Garda Fitzpatrick to resume their interview with Frank McBrearty Junior. Mr. Melody could not recall any specific response from those present at the meeting to his information. The meeting ended once each of the teams had given their report in respect of progress with their prisoner. He could not remember any specific matter being discussed in relation to any of the other prisoners. To the best of his recollection the meeting ended at about 18.30 hours. Mr. Melody described the lack of recollection that the Letterkenny members had in relation to such a meeting as “bizarre”. However, he was adamant that there was a meeting to review progress in relation to the prisoners at that particular time in the evening.

- 7.175. We will see that subject to the evidence given by Garda John Harkin, none of the Garda witnesses who were present in Letterkenny Garda Station on the 4th of December 1996 had any recollection of any conference being held at 18.00 hours. Nor did any of the members who gave evidence have any recollection of hearing that Frank McBrearty Junior was thinking about making a statement. They said that the first that they ever became aware of a possibility of a statement emerging was after a statement had actually been produced at the conclusion of the 19.05/20.30 hours interview.
- 7.176. Mr. John Fitzgerald was the District Officer in Letterkenny Garda Station on the 4th of December 1996. He stated that he had no recollection whatsoever of any conference being held at 18.00 hours that evening. He stated that he did not hear that there was any possibility that Frank McBrearty Junior was considering making a statement. He stated that if he had heard that, that would likely have triggered in his mind a recollection that he had been at a conference because that would have been significant information and he would be likely to remember where he first heard it. He stated that there may well have been a conference held at that time, but that he was not at it.⁹⁶⁷ Mr. Joseph Shelly was the Detective Superintendent in Letterkenny Garda Station that day. He stated that he was not at any conference at 18.00 hours. He stated that he had attended a meeting at Finner Army Camp that day. He returned to Letterkenny Garda Station at approximately 16.30 hours. He then had a meeting in Letterkenny Garda Station in relation to a bank fraud case. His recollection was that that meeting did not

⁹⁶⁷ Transcript, Day 561, pages 3-8.

conclude until some time after 18.00 hours. He stated that he then went to the canteen where he had some tea. There was no mention in the canteen of a possibility of Frank McBrearty Junior making a statement. He said that there were no developments at that stage in the day. He had met Inspector McGinley in the canteen. He denied that there was any air of expectation in or around the station that evening to the effect that Frank McBrearty Junior might make a statement. He said that the first he heard of any conference being held at 18.00 hours was when the matter was raised at the Tribunal.⁹⁶⁸

7.177. Mr. John McGinley was an Inspector at the relevant time. He stated that he left the station some short time after the conclusion of the interview that he had with Róisín McConnell at 18.00 hours. He said that he was away from the station attending to family business and having a meal until approximately 19.30 hours. He said that there may have been a conference held while he was away from the station, but if there was, he was definitely not at it. He agreed that it would not have been unusual to hold such a review meeting at that stage in the day. He had no recollection of being told of any developments in relation to the possibility of Frank McBrearty Junior making a statement on his return to the station. He said that he was not told of any change in stance or attitude adopted by Frank McBrearty Junior.⁹⁶⁹

7.178. Mr. John McGinley returned to the Tribunal to give further evidence on this topic. He stated that the incident room was the hub of activity in Letterkenny Garda Station on the day of the arrest. He definitely went into the incident room when he left the interview with Róisín McConnell at 18.00 hours. He said that he would have been anxious to find out if there had been any developments in any of the other interviews prior to going to his meal break. He stated that while he did not recall any conference being actually scheduled for 18.00 hours, he accepted that it would have been logical to hold a conference to review progress in the interviews at that time of the day. He said that there would have been a number of small meetings, or get-togethers, going on throughout the day at which interviewing teams would meet and discuss what progress had been made.⁹⁷⁰ However, he had no recollection of any formal conference taking place in the incident room at 18.00 hours. When it was put to Mr. McGinley that the evidence from the four Dublin based Gardaí was to the effect that this was a mini-conference or a review meeting rather than a formal conference as such, Mr. McGinley stated that he did have a recollection of a group of people being in the room when he looked into it at 18.00 hours. He described that group in the following way:

⁹⁶⁸ Transcript, Day 561, pages 160-164; Day 562, pages 3-11.

⁹⁶⁹ Transcript, Day 562, pages 157-162.

⁹⁷⁰ Transcript, Day 599, page 128.

Well as I say, I do recall being there, I don't recall Sergeant Melody making any statement. I don't recall ... in fact, Chairman, I have no recall of anything of any significance taking place while I was there. There was a group of people there and, as has been pointed out, there would have been groups of people there during ... at all times during the day. But at 6 o'clock in the evening, which would be tea time and that you will type of thing, the chances are there would have been a much bigger group than normal there anyway because it was that type of time of the day, and changing of units or maybe changing of interviewers and so on as well, you know. But clearly I definitely was there, I have no doubt about that. I don't remember any formal setting as such and I don't remember any particular, I have no real recollection of it other than going in there and that there was a group of people there and leaving again, and meeting Georgina [Lohan] there or getting Georgina to attend to Mrs. Quinn on my way out.⁹⁷¹

- 7.179. Mr. McGinley stated that he did have a recollection of asking Garda Georgina Lohan to escort Mrs. Quinn for the purpose of having a visit with her daughter, Mrs. Róisín McConnell. This was recorded in the custody record as taking place at 18.16 hours. Based on that entry, it would appear that Mr. McGinley was still in the station up to shortly before that time. It was put to him in cross-examination that it was possible that Detective Sergeant Melody gave his information to the effect that Frank McBrearty Junior was thinking about making a statement after Mr. McGinley had actually left the incident room. Mr. McGinley stated that that was possible, but all he could say was that he did not hear the Detective Sergeant giving such information to any meeting.
- 7.180. A number of serving and former Gardaí who had worked in the incident room on the 4th of December 1996 gave evidence before the Tribunal on this topic. Mr. Martin Moylan stated that while it would not have been unusual to have a conference to review progress in the course of the day, in particular towards the end of the interview sessions, he was not aware of one having been arranged for 18.00 hours that evening. His recollection was that he had gone for his tea at that time. He stated that if there had been a formal conference arranged for that time, he would not have taken his tea break at the same time. He stated that when he came back from his tea break he was not aware that any such conference had taken place in his absence.⁹⁷² It was put to Mr. Moylan that some of the previous witnesses had placed him as being present at the conference. He said that he had no memory of being at any such conference at that time and that to the best of his recollection he had been on his tea break between 18.00

⁹⁷¹ Transcript, Day 600, pages 133-134.

⁹⁷² Transcript, Day 593, page 32.

hours and 19.00 hours. He said that following the tea break, he was due to carry out an interview with Garda John O'Dowd of Mr. Mark Quinn. Mr. Moylan stated that it was possible that the conference may have been convened by Sergeant Brendan Roche, who was the man in charge of the incident room. However, if this was done, it was done without his knowledge and may have been done while he was on his tea break.

- 7.181. Mr. Moylan also had a recollection of a comment being made by one of the four Dublin based Gardaí to the effect that Frank McBrearty Junior had “mellowed” somewhat. He said that this was just a brief comment made by one of the interviewing detectives before they went to carry out an interview with Mr. McBrearty Junior. He did not think that there was a formal conference going on at the time that this statement was made. He had a recollection of the detectives being at the end of the table and about to go in to commence an interview. He thought that he had come back from his tea at that stage. He could not recall who it was who made the statement. He had a recollection of some people sitting at the table to his right hand side. Again, he was unable to recollect who these people were. Mr. Moylan stated that he had only recently recalled this comment as having been made that evening, due to a conversation that he had had with Mr. McGinley, wherein Mr. McGinley had told him that they were due to give evidence in relation to some conference where the Dublin Gardaí were supposed to have indicated that Frank McBrearty Junior had mellowed a bit. It was then that he recalled the comment.
- 7.182. Sergeant Brendan Roche had an interview with the Tribunal investigators on the 7th of February 2007. He had no recollection of a conference at 18.00 hours that evening. He thought that he had probably gone for his tea at that time. He had no recollection of any conference being arranged to take place at that time. He stated that he had no knowledge that Frank McBrearty Junior was thinking about making any statement. He said that the first he learned of the statement was after it had been made and he was surprised that Frank McBrearty Junior had made a statement of admission. He said that he had no recollection of being told that there had been any change of attitude on the part of Frank McBrearty Junior in the course of the afternoon interviews.⁹⁷³ The then Garda John O'Toole was also part of the incident room staff. He stated that he had no recollection of any formal arrangement to hold a conference at 18.00 hours. He said that he had no actual recollection of where he was at that time. He stated that he may have been on his tea break or he may have been working in the incident room. He said that the meal breaks were staggered so that there would always be a member of the incident room staff available throughout the day. He had no particular recollection of that day except for the last conference that was held at

⁹⁷³ Tribunal Documents, pages 1038-1040.

approximately 22.00 hours. He had no recollection of a conference being held earlier in the evening at approximately 18.00 hours. He was asked whether he had any recollection of hearing that there was a possibility that Frank McBrearty Junior might make a statement. He said that he had no recollection of being told anything like that. He said that if he had been told such information, that would have been significant and he would recall it. He said that he had no inkling prior to the conference held at 22.00 hours that there was a possibility of a statement coming from Frank McBrearty Junior.⁹⁷⁴ Sergeant O'Toole had no recollection of any comment being made or any question being raised about a dog barking or any statements concerning the barking of a dog. This was something that had been raised by Garda Harkin as a question that had been posed by Sergeant McGrath as to whether there were any statements on the file from witnesses concerning a dog barking as Frank McBrearty Junior and Mark McConnell crossed over the waste ground at the rear of the nightclub premises.

- 7.183. The final member of the incident room staff that evening was Garda Tina Fowley. However, she was away from the Garda station on other business between 16.50 hours and 19.30 hours. In an interview with the Tribunal investigators on the 7th of February 2007, she stated that when she returned to the Garda station there was no indication of a change of attitude or approach on the part of Frank McBrearty Junior.⁹⁷⁵
- 7.184. One member from Letterkenny Garda Station who did have a memory of a meeting at some stage in the day was Garda John Harkin. He gave the following description of that meeting:

I have a recollection, Chairman, of being in the incident room and I can recall two members contributing ... it wasn't a very large gathering, but I was seated at the table, on the opposite side of the table, I have a recollection of two members. One of them was Detective Garda Pat Tague, who was attached to Lifford Garda Station and the other one was one of the NBCI personnel. None of whom I knew by name on that date or even knew to meet, but I had a picture in my mind and I am satisfied that that was Detective Sergeant McGrath, having met him and spoken to him here this morning. This is the first time I am able to name him.

The only topics that I can recall discussing was a contribution that I am attributing to Detective Sergeant McGrath. It was a question that he posed asking had anybody ... or had mentioned ... the sound of a dog barking. Now my recollection of it is that this was ... this event, the dog barking, was an event that took place on the

⁹⁷⁴ Transcript, Day 593, page 14.

⁹⁷⁵ Tribunal Documents, page 1046.

*night that the deceased met his death up at Irish Row. And from my recollection of it, I think it was ... I interpreted it at the time and still do as something that Frank McBrearty Junior was saying to them in the course of interview. He posed the question, there is mention of a dog barking, has this come up in any other interviews? That was met with a negative response as far as I can recall. Now that's my recollection of it.*⁹⁷⁶

- 7.185. Garda Harkin went on to state that he also had a recollection of Detective Garda Tague making a comment that as they had not made very much progress with Mark McConnell, perhaps it would be a good idea to switch interviewing teams and perhaps some of the Dublin members might wish to interview Mark McConnell. Garda Harkin said that this suggestion was rejected by Sergeant McGrath. Garda Harkin was not able to name any members other than Detective Garda Tague and Detective Sergeant McGrath as being present at the meeting: they were seated at the table. He could not recall for how long this meeting lasted. Nor could he recall whether there was any mention with regard to progress being made with Frank McBrearty Junior. Garda Harkin also had a recollection of a second conference or meeting held at some time during the day which was chaired by Superintendent John Fitzgerald at which a decision was made to arrest Katrina Brolly. He also had a recollection of the decision being made to revisit Mr. Eunan Brolly so as to obtain a more detailed statement from him. Garda Harkin was directed to accompany Detective Garda O'Malley in the taking of this statement. This direction was received at some time prior to 19.45 hours. Garda Harkin stated that he had no knowledge or inkling that any statement might be forthcoming from Frank McBrearty Junior. He said that the first time that he learnt this was when Detective Garda O'Malley made contact with Letterkenny Garda Station after they had obtained a statement from Mr. Eunan Brolly.⁹⁷⁷
- 7.186. Detective Garda Pat Tague stated that he had been in an interview with Mr. Mark McConnell until 18.00 hours. At the conclusion of that interview he left the station on his own to go for something to eat. He could not recall any mention of there being a review meeting or conference scheduled for 18.00 hours. Nobody mentioned anything about such a meeting to him. He said that he was not back in the Garda station until some time after 19.00 hours. He said that he was not told of any developments or likely developments in relation to Frank McBrearty Junior on his return to the station. He was given an opportunity to comment on the evidence given by Garda Harkin. He had no recollection of any talk during the day of a dog barking or any statements in connection with such an issue. He denied that he was at any conference sitting beside or opposite the

⁹⁷⁶ Transcript, Day 568, pages 95-96.

⁹⁷⁷ Transcript, Day 568, page 103.

four Dublin Gardaí. He said that he believed that John Harkin was mistaken in his evidence. He stated that Garda Harkin was also mistaken when he ascribed to him a suggestion that the interviewing teams might be changed due to the fact that they were making very little progress with Mark McConnell. He said that he was never at such a conference and never made any such suggestion.⁹⁷⁸ He denied that he heard at any stage during the evening that Frank McBrearty Junior had mellowed or changed his attitude in relation to making a statement.

- 7.187. Detective Garda Michael O'Malley gave evidence before the Tribunal at a time before this conference at 18.00 hours had become an issue. He had no recollection of speaking to any of the four Dublin based Gardaí at any time that day. He stated that there was no meeting to review progress in the interviews. The only information that he had during the day was that there was no progress being made in the interviews. He was not aware of any developments as the day progressed.⁹⁷⁹ Sergeant Michael Carroll had been involved in the interviewing of Charlotte Peoples. He stated that he was not aware of any conference or meeting scheduled to commence at 18.00 hours. He could not recall what he did generally between 18.00 hours and 19.30 hours. He did not have any interaction with any of the other members of the interviewing teams at that time. He denied that he was aware of any progress that had been made in the other interviews. He did not hear anything about Frank McBrearty Junior making a statement until the evening conference which was held at approximately 22.00 hours. He had absolutely no recollection of a conference being held at tea time or one being called for that time. He did not recall going up to the incident room at tea time. However, he did have a recollection of being there later in the night after Charlotte Peoples had been released. It was at the later evening conference that he first learned that a statement had been obtained from Frank McBrearty Junior.⁹⁸⁰ In cross-examination Sergeant Carroll accepted that it would make more sense to have organised a get together or meeting for some time prior to the conclusion of the interviews to exchange what information might have been gleaned from the other prisoners. The witness stated that generally, if there had been any developments, word would filter down through the investigation teams as to what developments had occurred. He did accept that this was somewhat of a hit and miss scenario. Mr. Michael Jennings had been interviewing Charlotte Peoples with Sergeant Michael Carroll. He stated that he had no knowledge of any conference or meeting planned for 18.00 hours. To the best of his recollection, he went for his tea at the conclusion of their interview with Ms. Peoples at 18.00 hours. He stated that he possibly left the Garda station as his home was nearby. He thought that he had returned to the station at approximately 19.00 hours. He stated that he did not become aware of any conference having been held when he returned back to the station.

⁹⁷⁸ Transcript, Day 593, pages 128-130.

⁹⁷⁹ Transcript, Day 510, pages 43-46.

⁹⁸⁰ Transcript, Day 593, pages 97-102.

- 7.188. Mr. Patrick Hennigan was a Detective Sergeant who had accompanied Detective Garda Tague in the interview with Mark McConnell that concluded at 18.00 hours. He stated that at the conclusion of the interview he possibly had some refreshment and then spent the remainder of the time waiting around the Detective Branch Office which was across the hall from the interview room where Mark McConnell was being detained. Later on in the evening he had a further interview with Mr. McConnell. As far as he could recollect he was not in the conference room at all that day until the conference that was held after the release of the main suspects at around 22.00 hours. The conversations that he had that day were with other Gardaí who were concerned with the interviewing of Mark McConnell. He stated that he did not know of the progress being made with the other prisoners during the day. He had no recollection of any meeting held to review progress in relation to the Mark McConnell interviews. He had no recollection of being present at any meeting with Garda Harkin. Nor was it ever discussed with Detective Garda Tague that there should be a change in the interview personnel.
- 7.189. Mr. P.J. Keating was involved in interviewing Mark Quinn between 17.40 hours and 19.50 hours. He stated that he did not leave the interview room during this period. He could not say whether there was any conference held at 18.00 hours. He stated that when he came out of his interview with Mr. Quinn, he did not remember hearing anything about a conference having been held earlier in the evening. However, he did say that when the Tribunal investigators mentioned something about a question being raised concerning a dog barking, it did strike a chord with him. However, when he heard it or who told him or who raised the issue, he could not say. He said that it could have been mentioned to him by somebody during the course of the day. He could not recall being at any meeting where the question of a dog barking was raised. He thought that it might have been a flippant or casual remark made by somebody, rather than a comment made in the context of a more formal setting. He said that when he came out of this interview with Mark Quinn, there was no air of expectation around the station that there was likely to be any progress made in relation to Frank McBrearty Junior. Nor was there any suggestion that he had mellowed in any way.⁹⁸¹ Sergeant Joseph Hannigan was at the same interview with Mr. Mark Quinn. He stated that he was not aware of any arrangement to hold a conference at 18.00 hours to review progress in relation to the other detainees. He said that when he came out of his interview with Mr. Quinn, he was not made aware that any such review meeting or conference had taken place. He said that the first time that he heard about such a conference was when it was raised at the Tribunal. He also said that when he came out of his interview with Mr. Quinn at 19.50 hours, he was not made aware of any developments in relation to the

⁹⁸¹ Transcript, Day 593, pages 82-83.

likelihood of Frank McBrearty Junior making a statement. He said that he first became aware of the statement from Frank McBrearty Junior when it was raised at the evening conference at 22.00 hours.

- 7.190. Sergeant John White had been involved in the interviewing of Mrs. Róisín McConnell. He had also been involved in preparing the paper work in relation to the Barron investigation as part of the subsequent Lennon investigation and the submission of the file to the Director of Public Prosecutions. He stated that the first he heard of a conference being held at 18.00 hours was at the Tribunal in 2007. He stated that having gone through all the paperwork concerned with the investigation, he was very surprised to hear that there was a conference or meeting held at that time. There is no minute or record of any such conference having taken place. He stated that he would have been particularly interested in ascertaining what information was available at all times when he was not actually interviewing suspects. He stated that he would have been “hungry for information”. He said that he was not made aware of any such conference or review meeting. He was not aware of any “white smoke” in the form of an indication that Frank McBrearty Junior was thinking about making a statement. He said that if any such information had been available it would have been a great boost to the investigation teams generally. Instead there was an air of doom and gloom in Letterkenny Garda Station that evening.⁹⁸²
- 7.191. Mr. John Dooley had accompanied Sergeant John White in the interview with Róisín McConnell, which concluded at 16.20 hours. He said that to the best of his recollection he had his tea between 17.00 hours and 18.00 hours. However, he denied that he knew of any conference to be held at 18.00 hours. He stated that there was no conference held at that time. He stated that Sergeant White would have been very anxious to know if there was a conference, as he was a man who was always very interested in finding out what was going on in the course of an investigation. Sergeant White would have been very annoyed if he had learned that there was a conference and he had not been told about it. He said that he was not made aware at any time that a review meeting had been held. Nor did he have any knowledge of any indication having been given by Frank McBrearty Junior that he would think about making a statement. He said that he was in the incident room prior to going into an interview with Róisín McConnell at 19.25 hours and no such information was brought to his attention at that time.⁹⁸³
- 7.192. Detective Sergeant Henry was the senior Garda involved in the interviewing of Ms. Charlotte Peoples. He had conducted an interview with her between 15.45 hours and 17.00 hours. He stated that in the course of the afternoon interview

⁹⁸² Transcript, Day 564, pages 106-107.

⁹⁸³ Transcript, Day 595, page 12.

with Charlotte Peoples, which was conducted by Sergeant Carroll and Detective Garda Jennings, a significant development occurred. In the course of that interview Mrs. Peoples admitted that she had earlier told a lie in relation to a telephone call which had been made from her house to Letterkenny General Hospital in the early hours of the 14th of October 1996. In the interview she admitted that that telephone call had in fact been made by her mother. This information was furnished at the conclusion of the interview at 18.00 hours by Sergeant Carroll to Detective Sergeant Henry. The Detective Sergeant said that he proceeded to make that information known to the incident room staff. However, he could not recall how he informed them of this development. He presumed that he may have arranged for the notes of interview to be handed in and he may have given the information verbally to a member of the incident room staff as well. He was sure that he had brought it to their attention, but could not recall exactly how he had done that.⁹⁸⁴

- 7.193. Detective Sergeant Henry was asked whether there was any meeting taking place in the incident room when he went there at approximately 18.00 hours. He said that it was quite possible that he went to the conference room at around 18.00 hours, but he denied having any knowledge of any meeting taking place at that time. He said that he was not part of any such meeting. He also denied that he had heard any information to the effect that Frank McBrearty Junior was thinking of making a statement. He said that the first he knew anything about a statement of admission was when it was read out at the conference held later that night. He said that he heard nothing about any developments concerning Frank McBrearty Junior during the day. However, he said that his sole focus of attention was on the prisoner Mrs. Charlotte Peoples, in respect of whom he was the lead interviewer and he was also concerned for her welfare, due to the fact that she was suffering from pleurisy at the time. He was asked how he informed people generally of the development that had been made in respect of the interview with Charlotte Peoples during the afternoon. He stated that more than likely he ensured that the interview notes taken by Sergeant Carroll and Detective Garda Jennings were brought to the incident room and he would also have announced to those that were in the room that there had been a development in that particular interview.⁹⁸⁵

Conclusions on the 18.00 Hours Conference Issue

- 7.194. **It is clear from the various custody records that the interviews of the four prisoners who had been arrested that morning and who were detained at Letterkenny Garda Station all ended in or about 18.00 hours: the interviews with Charlotte Peoples and Mark McConnell ended at 18.00**

⁹⁸⁴ Transcript, Day 597, pages 4-5.

⁹⁸⁵ Transcript, Day 597, pages 8-9.

hours, Inspector McGinley left the interview with Róisín McConnell at 18.00 hours and Garda Harkin finished that interview at 18.15 hours; the interview with Frank McBrearty Junior concluded at 18.10 hours. The interviews with the two prisoners detained at Lifford Garda Station concluded at 17.30 hours and 18.00 hours. The only person who was being interviewed at or after 18.00 hours was Mr. Mark Quinn, who had been arrested at 17.05 hours.

- 7.195. It was put to Mr. McGinley in the course of cross-examination that the conclusion of the majority of the interviews at or about 18.00 hours was not coincidental, but that it was part of a plan designed to enable a review meeting to take place at 18.00 hours, which would still leave time for further interviews with these prisoners. However, it was also necessary to note that the normal lunch break period was from 13.00 hours to 14.00 hours. The Custody Regulations only permit a continuous period of interviewing of four hours at any one time. This would mean that if the afternoon interviews started at or about 14.00 hours, they would have to conclude at around the same time, circa 18.00 hours.
- 7.196. The Tribunal is satisfied that 18.00 hours represented an appropriate time for a review meeting or get-together to be held. The officers have stated that it was entirely logical to have such meetings throughout the day and, in particular, coming towards the end of the detention period, so as to review progress that had been made in the various interviews that had been carried on up to that time. In addition, it would appear that as the interviews were all finishing at around the same time and as the interviewing members would then be allowed to go on their tea break prior to commencing the evening interviews, this represented the most logical and sensible time to have a get-together in the incident room. The evidence given by Detective Inspector O’Grady, Detective Sergeant McGrath, Mr. Melody and Mr. Fitzpatrick to the effect that such a meeting was held at that time is supported to some extent by the evidence of Garda Harkin. There is also some small support from the evidence of Sergeant Moylan to the effect that he recalled getting some indication at about 19.00 hours that Frank McBrearty Junior had “mellowed”. He recalled that he received that indication from two of the Dublin-based Gardaí who were just about to commence a further interview with Mr. McBrearty Junior.
- 7.197. Having considered all the evidence, the Tribunal is satisfied that while the use of the term “conference” was perhaps an inaccurate term to have used in the course of their interviews with the Tribunal investigators in

January 2005, there was some form of meeting, perhaps of an informal nature, whereby interviewing Gardaí were told to report on progress in their respective interviews at the time that they were handing in their interview notes at the tea time break. The Tribunal accepts that such a review meeting did take place in Letterkenny Garda Station at 18.00 hours that day.

- 7.198. The Tribunal recognises that in a number of accounts, Mr. Melody, Mr. Fitzpatrick, Detective Inspector O’Grady and Detective Sergeant McGrath have described a “conference” which was a formal meeting chaired by one of the officers from the Letterkenny Garda Station. It recognises that this differs significantly from the type of conference which the Tribunal is accepting occurred. The Tribunal considers that with the passage of time, over ten years, the recollection of the four members involved is playing them false. It recognises that this is a human error and was not intended to mislead the Tribunal.
- 7.199. The Tribunal notes that the accounts given by Mr. Melody as to how he came to inform the gathering that Frank McBrearty Junior was thinking of making a statement have developed considerably over time. In particular, Mr. Melody had a recollection that he made that statement in response to a suggestion by one of the Gardaí at the table that there should be a change in the interviewing personnel. The Tribunal is, nevertheless, satisfied that Detective Sergeant Melody did in fact inform the people that were present that Frank McBrearty Junior had indicated that he would think about making a statement to them.

The Evening Interviews

- 7.200. We now come to the area that has caused the Tribunal the most difficulty. This is due to the fact that Frank McBrearty Junior maintained in evidence that the sequence of interviews as recorded in the custody record from 19.00 hours onwards simply did not happen. He maintains that what is recorded in the custody record is a complete fabrication designed to establish that a confession was obtained from him in the interview between 19.05 hours and 20.30 hours, when in fact no such interview took place and no such statement of admission was ever furnished by him. The Tribunal has had difficulty reconciling the various accounts that have been given by Mr. McBrearty Junior at various times in relation to what he says took place in the Garda station that evening.
- 7.201. Mr. McBrearty Junior alleged in his evidence before the Tribunal that immediately after the tea break and rest period which lasted from 18.10 hours to 19.05 hours,

he was taken to an interview room where he had two aggressive interviews, first with Sergeants McGrath and O’Grady and then with Detective Sergeant Melody and Detective Garda Fitzpatrick. He said that it was during these interviews that the post-mortem photographs of the Late Mr. Richard Barron were introduced. He said that they were in a yellow lever file. He could recall one photograph of the Late Mr. Barron lying on a white pillow covered in red blood. He said that the Gardaí were saying to him “look what you did, look what you did. You hit him over the head with an iron bar”. He said that throughout the day he had been told that he had hit Mr. Barron over the head with an iron bar. He stated that he was also shown photographs of Mr. Barron’s hands with his index finger broken. He was told that the finger had been broken in an effort to defend himself from the blows. He described seeing a photograph of a naked man lying on a morgue slab with a large laceration to his head. He said that the Gardaí continued to say to him “look what you did you murdering bastard”.⁹⁸⁶

- 7.202. Mr. McBrearty Junior alleged that he was shown the photographs by both sets of Gardaí. He alleged that Detective Garda Fitzpatrick kept pushing his head into the photographs and that at one stage he, Mr. McBrearty Junior, got so incensed that he threw the photographs from the table and stood up. He stated that it was at this stage that Detective Garda Fitzpatrick pinned him against a filing cabinet and threatened to throw him out a window, to which he allegedly responded that if that happened Detective Garda Fitzpatrick would be coming with him as well.
- 7.203. Mr. McBrearty Junior maintained that the photographs were introduced some time after the doctor had taken the blood sample from him.⁹⁸⁷ However, later in his evidence he stated that the photographs were introduced after he had been taken down to the cell for his evening meal break by Garda Cannon.⁹⁸⁸ He was able to put the time as occurring after the meal break, due to the fact that he said he would have made a complaint to Garda Cannon if the photographs had been shown to him prior to the meal break and rest period.
- 7.204. Mr. McBrearty Junior was adamant that the photographs were shown to him by both sets of interviewing Gardaí. He stated that while Sergeants McGrath and O’Grady were showing him the photographs, Sergeant McGrath was demonstrating how he had struck the Late Richard Barron over the head with an implement. He stated that while Detective Sergeant Melody and Detective Garda Fitzpatrick were showing him the photographs, Detective Garda Fitzpatrick was pushing his head forcefully into the photographs. He said that at the same time Detective Sergeant Melody was saying, “Look what you did to the poor man”. Mr. McBrearty Junior stated that no notes were taken during either of these two intensive interviews.

⁹⁸⁶ Transcript, Day 505, page 65.

⁹⁸⁷ Transcript, Day 514, page 37.

⁹⁸⁸ Transcript, Day 514, page 57.

- 7.205. Mr. McBrearty Junior stated that when the two intensive and aggressive interviews had concluded, he was left alone for some time in the interview room. He stated that it was at this time that Sergeants McGrath and O'Grady re-entered the room and asked him to make a statement on his movements. He described this in the following way:

What I am saying to you is, shortly before I was released I was left on my own for five to ten minutes on my own. McGrath and O'Grady came into me, this is my recollection, asked me would I make a statement on my movements. I said I didn't have a problem with that. They started taking a statement off me about my movements, what time I went to work, what time I arrived at work, etc., etc., right. During the period of taking that statement off me, Melody kept opening the door and shouting in through the door, Frank, five minutes to go, you are going to be charged in five minutes. This is how I remember it, because shortly after that I was released.

But obviously the time that I was left in the room on my own was the time when they were out discussing what are we going to fucking do here, this is probably what they were saying, what are we going to do, we can't get him to admit. That's what they were discussing, because wait till I tell you Mr. McDermott, I don't mean this as a criticism or to the Chairman, nobody would make me admit to something that I didn't do.

If them two want to take me into a room now, or the four of them, and batter me until I am black and blue to kingdom come, I will willingly go into a room now and let them batter me. I am prepared to go into a room now and you can give them sticks so you can give them guns or what ever you want, I will go into a room and they can do whatever they like, but they won't get me to admit to something I didn't do.

After I gave the statement to McGrath and O'Grady which was read over to me, which is signed, right, and my recollection is that at the end of the statement that I made to McGrath and O'Grady they made a comment, isn't it right Frank that your father hasn't bribed anybody. That's my recollection of it to this day.

Yes, that was at the end of the statement that I made to them. Then Melody and Fitzpatrick, this is how I remembered, because I would never have made a statement to Melody and Fitzpatrick

because they were worst out of the four, came in and asked me would I make a second statement and I says I am making no more statements and I won't be making any fucking statements to you two bastards. He said they wrote down more or less what I said and asked me to sign it and I says I'm signing nothing to you two bastards, and they said to me then well you must have something to hide then. I said I have nothing to hide, give it to me and I'll sign it ... the context of what I said to them about I'm making no more statements ... I just said I wasn't making any more statements.⁹⁸⁹

- 7.206. Mr. McBrearty Junior stated that the statement which he made to Sergeants McGrath and O'Grady in relation to his movements was two pages in length. He stated that he signed both pages of the statement. He said that the statement was made on ruled paper, which was normally used for taking statements from witnesses. He stated that he did not initial the caution, but he did initial a number of mistakes which occurred in the body of the statement. He said that the statement was read over to him and he signed it.⁹⁹⁰ Mr. McBrearty Junior also stated that at the end of the statement concerning his movements, Sergeants McGrath and O'Grady said "isn't it right that your father didn't intimidate anybody" to which he responded that yes his father had never intimidated anyone. This was included at the end of the statement.⁹⁹¹
- 7.207. Mr. McBrearty Junior states that having made these two statements to Sergeants McGrath and O'Grady, followed by Detective Sergeant Melody and Detective Garda Fitzpatrick, he was then brought down the corridor, where he had a brief encounter with Superintendent Fitzgerald. He was then released. This aspect will be looked at in detail later in this chapter.
- 7.208. Mr. McBrearty Junior's assertion is that a statement as to his movements having been obtained by Sergeants McGrath and O'Grady, they subsequently destroyed that statement and substituted the alleged statement of admission in its place. The second statement, which was to the effect that he had already made a statement to the other two Gardaí and told them the truth as to what had happened, which he alleged had been made to Detective Sergeant Melody and Detective Garda Fitzpatrick, was also destroyed and substituted by a similar statement but allegedly made to Sergeants McGrath and O'Grady. The purpose of this was to copper-fasten the making of the confession. It was put to Mr. McBrearty Junior in cross-examination by counsel representing Detective Sergeant Melody that he had denied making the second statement to Sergeants McGrath and O'Grady due to the fact that he could not admit to having made the second statement to them because that would involve an implied admission

⁹⁸⁹ Transcript, Day 514, pages 60-61.

⁹⁹⁰ Transcript, Day 514, pages 141-146.

⁹⁹¹ Transcript, Day 514, page 152.

that he had made a previous statement to Detective Sergeant Melody and Detective Garda Fitzpatrick. Mr. McBrearty Junior denied that this was so. He was adamant that he had always stated from the very earliest time that he had made a statement as to his movements while in custody.

7.209. It was also put to Mr. McBrearty Junior that the portion of the statement which he described as having been made in relation to his movements to Sergeants McGrath and O’Grady, which dealt with his father not intimidating anybody, bore a remarkable resemblance to the second side of the alleged statement of admission. He stated that it was his recollection that the statement in relation to his movements did contain a portion at the end of it to the effect that his father had never intimidated anybody. He could not put the matter any further. However, in a video-taped interview with Mr. William Flynn in 1997, he was asked to look at the second side of the alleged statement of admission. Having done so, he stated that he had never said those words to any Garda ever.⁹⁹²

7.210. Mr. McBrearty Junior also described how at some stage during the latter period of his detention he was shown a document which the Gardaí maintained was a statement of admission made by Mark McConnell. Mr. McBrearty Junior was not sure which of the four Dublin detectives had shown him the statement. He stated that it was approximately five to six pages in length. He said that the statement painted a scenario in which Mark McConnell had phoned him and told him about the Late Richard Barron and the row that they had had earlier in the evening. It related how Mark McConnell came up to meet Mr. McBrearty Junior and the two of them headed up the road and up the field to the site where Mr. Barron was later found. There they waited for him behind a hedge and jumped out and hit him with an iron bar. The Gardaí said that “poor old Richie” was only defending himself and that Mr. McBrearty Junior broke the Late Mr. Barron’s index finger when hitting him and that at this time the Gardaí were also showing him the photographs. Mr. McBrearty Junior said that he knew that the statement was a fabrication because the name “McConnell” in the signature was incorrectly spelt. He could not recall the exact way in which the misspelling occurred. He said that the Gardaí wanted him to make a confession admitting to the fact that he had killed the Late Richard Barron. He said that there was no way that he was going to admit to anything that he did not do.⁹⁹³ Mr. McBrearty Junior said that he responded to the statement by saying that Mark McConnell was a bigger lying bastard than the Gardaí, if Mark McConnell had said that about him. He said that the Gardaí told him that Mark McConnell had put him in the picture for hitting Richard Barron over the head with an iron bar. They said to him “sure you’ve used an iron bar before, haven’t you Frank?”. That was the kind of thing they were saying to him about this statement.

⁹⁹² Tribunal Documents, page 411.

⁹⁹³ Transcript, Day 505, pages 78-80.

The Release of Frank McBrearty Junior from Detention

- 7.211. To continue the narrative according to Mr. McBrearty Junior, he states that shortly after he had made his brief statement to Detective Sergeant Melody and Detective Garda Fitzpatrick, he was released from custody. He said that as he was being brought down a corridor to the member in charge for the purpose of completing the formalities and being released from custody, he came across Detective Superintendent Shelly and Superintendent Fitzgerald. He said that they wanted to speak to him in a room on his own and he told them that he would not go with them. He said that he got down on his hands and knees in the corridor which was lined with detectives and proclaimed that “if it’s the last thing I do I swear to God I’m going to expose what was done here today”. He remained there for about thirty seconds. There was no question of anybody pushing him onto the floor. He said that he continued on to the area where he was processed by Garda Martin Leonard. He said that Garda Leonard became abusive to him and he was abusive back to Garda Leonard. He said that Garda Leonard threatened to re-arrest him. He said that he was then released and he signed the custody record. However, he disputed the time of his release as recorded in the custody record - 21.18 hours. He said that in fact he was not released until approximately 21.40 hours. He said that he was protesting his innocence all the time that he was being dealt with by the member in charge. He said that there was a confrontation down at the front desk area where Garda Philip Collins told him that he would be seeing him every weekend in the nightclub. Shortly after that he was released and left the building.
- 7.212. Mr. McBrearty Junior then recounted a significant encounter that he had with Mark McConnell. He described how just outside the front door of the station Mark McConnell was standing with his brother-in-law, Mr. Paul Quinn. He said that Mark McConnell was looking very shocked and was white in the face. Mr. McBrearty Junior made the following comment to Mark McConnell:

I says to Mark don't you believe anything they have said about me in there Mark and I walked, I just walked past him and his brother-in-law, Paul Quinn ... I came out of the Garda station and I says to Mark don't believe them, anything they have said to you Mark or anything they were saying to you today about me being a murderer, that's what I meant. Because I was innocent. And I walked about two miles from the Garda station and my solicitor picked me up. It was around 10.00 o'clock. And it would roughly take you twenty minutes to walk from the Garda station to where I was picked up. That's how I know I wasn't released until 20 minutes to 10. It's a fabrication on the custody record on that as

*well. Because the confrontation only lasted two minutes. They couldn't get me out of the station.*⁹⁹⁴

7.213. Mark McConnell gave a similar account of the comment that was made by Mr. Frank McBrearty Junior on leaving the Garda station. He said that Mr. McBrearty Junior was in a terrible state when he came out of the station and the only thing that he said to him was “don't believe anything them lying bastards said to you in there” and then he proceeded on out of the station compound. He did not stop, he just made the comment and continued on walking.⁹⁹⁵

7.214. Shortly after that, Mr. McConnell and his wife went to the offices of their solicitor. They told him that Frank McBrearty Junior had been released from custody and was in a bad state. Mr. Sweeney said that knowing the condition that Mr. McBrearty Junior was in earlier in the day, he was very concerned for his safety. For that reason, he got into his car and went in search of Mr. McBrearty Junior. He found him shortly afterwards walking home. He said that Mr. McBrearty Junior was extremely distressed at that time. Mr. Sweeney gave the following account of meeting Frank McBrearty Junior that night:

*I had to persuade him to get into the car for starters, I think he was reluctant to get in. He was walking very quickly. He was marching along the road. I persuaded him to get into the car. He was very upset at the manner in which he was treated in the station, that he was being accused of what he was accused of and the manner of the interrogation. I can't remember the detail of the wording, or what precisely he said. But I was anxious to make sure that he got home safely because I was just concerned for himself. The state of mind he was in ... I left him to the door of his house, yeah. I left him to, I can't remember, I remember dropping him off. He wasn't crying, he was very vocal, but he wasn't crying, I don't think so ... He was very concerned that he was ... probably using his own ... I'm not quoting from him that night, but he was being stitched up for something he vehemently denied he ever did. He was very understandably upset at the impact this was going to have on his life. I suppose I was trying to spend my time, it's a relatively short journey from Ballyraine Road to Elmwood Downs, it's only a mile, mile and a half, so I was trying to calm him down really. I think more what you are getting at is had he anything to say about any specific allegations against individuals. I can't honestly remember.*⁹⁹⁶

7.215. That concludes the account given by Frank McBrearty Junior in evidence as to

⁹⁹⁴ Transcript, Day 505, pages 197-198.

⁹⁹⁵ Transcript, Day 501, pages 106-107.

⁹⁹⁶ Transcript, Day 507, pages 87-89.

what he says occurred in Letterkenny Garda Station from the end of his meal break at 19.05 hours to the time that he was released from custody. It is appropriate at this juncture to set out some of the evidence that was given by Mr. McBrearty Junior when he was cross-examined by counsel representing Detective Inspector O’Grady, Detective Sergeant McGrath and Mr. Melody, and the solicitor acting on behalf of Mr. Fitzpatrick.

Evidence Given in Cross-Examination

- 7.216. Counsel on behalf of Detective Inspector O’Grady, Detective Sergeant McGrath and Mr. Melody put it to Mr. McBrearty Junior that on three occasions subsequent to December 1996, he had stated that he had given a short statement to “Eamon and Gerry” after he had made an earlier statement and that the shorter statement was to the effect that he was going to make no further statement in the matter. It was put to Mr. McBrearty Junior that he said the following to the private investigator, Mr. William Flynn, in an interview that was held in 1997:

F. McBrearty: The third thing I signed was ... Gerry and Eamon – signed this Frank, saying you co-operated with the Gardaí, I said no problem, signed it, made them read it.

Int: Having them read it, did you look at what you were signing?

F. McBrearty: Sure I am trying to tell you, I read it twice before I fucking signed it, I read everything twice, that’s why I can remember it.⁹⁹⁷

- 7.217. It was put to Mr. McBrearty Junior that in February 1998 he made a statement to Chief Superintendent John Carey who was the investigating officer investigating the complaint on behalf of the Garda Complaints Board. In the course of that statement he was recorded as saying the following:

Melody kept writing the whole day, he just kept writing and writing. About fifteen minutes before I was released I made a statement. In the statement I told them that I had been at work and what I was doing at work. There was nothing in the statement. I read the statement I made twice. The statement of two pages as far as I can remember. I also did a questionnaire. There was a full page of questions. In the statement I made I signed both pages. I initialled all the mistakes. There were four or five mistakes. I made the statement to John Melody and John Fitzpatrick. I put my full signature on each page. Every statement I ever made to the Gardaí I signed each page. After these two left the other two came in. These were Gerry and Eamon. They wanted me to make a statement as well. I said I

⁹⁹⁷ Tribunal Documents, page 407.

have already made a statement, I am making no other statement. They wrote this wee bit of a thing on a paper and asked me to sign it. I signed it. It was half a page. Gerry wrote the statement. Melody wrote the other statement.⁹⁹⁸

- 7.218. Counsel further put it to Mr. McBrearty Junior that on Monday the 13th of December 1999 at a meeting held at the Mount Errigal Hotel between Mr. McBrearty Junior, Inspector Hugh Coll and Detective Sergeant Jim Fox, Mr. McBrearty Junior had told these two officers, who were part of the Carty investigation team, the following, which was contained in a memorandum drawn up by Inspector Coll after the meeting:

He stated that while in custody he signed the custody record, a short statement giving permission to go to his house and get a change of clothes. He said that Melody and Fitzpatrick started late in the day talking about his father intimidating witnesses, etc. and they read some notes to him and he signed that. He then said McGrath and O'Grady came into him and stated that they started to talk to him about telling the truth and he signed a quarter page of notes. The notes that Melody and Fitzpatrick had made were on a page and were three quarters way down the page. That's all he signed and he definitely made no statement of confession.⁹⁹⁹

- 7.219. Mr. McBrearty Junior did not accept that the memorandum which had been drawn up by Inspector Coll was an accurate representation of what he had said at that meeting. He said that Inspector Coll had not taken any notes during the meeting and that the memorandum must have been made up afterwards. He did not accept the contents of that memorandum. Counsel put it to Mr. McBrearty Junior that for a considerable period after December 1996 he was accepting that he had made a statement to Mr. Melody and Mr. Fitzpatrick and that he had made a subsequent statement to Sergeants McGrath and O'Grady indicating that he had already told the truth in the matter and would make no further statement. It was put to Mr. McBrearty Junior that, having given that clear version of events, he subsequently changed his version to that which he had given as his evidence in chief, due to the fact that he could not bring himself to admit that he had made any statement at all to Detective Sergeant Melody and Detective Garda Fitzpatrick. It was put to him that it was for this reason that he had inverted the sequence of statements, the content of those statements and the persons to whom they had been given:

Q. Having given that clear version of events I suggest to you that when you came to give evidence to the Tribunal you changed and you then suggested that you had made a

⁹⁹⁸ Tribunal Documents, pages 327-328.

⁹⁹⁹ Tribunal Documents, page 434.

statement to this effect, but not to McGrath and O’Grady, but instead to Melody and Fitzpatrick. You gave clear evidence to that effect to the Tribunal?

A. I don’t know. Sitting here today I would be telling lies. I honestly don’t know who I did sign that statement to.

Q. You did it and I will just give you the transcript references, it was on day 505 ...?

A. Transcript all you like. I am trying to tell you that I don’t know who ... all I know that someone of the four, someone of the two groups, I made a statement to someone of the two groups that I wasn’t making any more statements and I told the truth about my movements.¹⁰⁰⁰

7.220. It was further put to Mr. McBrearty Junior that the content of the second statement was also significant in that he indicated that he had indeed made a statement to Detective Sergeant Melody and Detective Garda Fitzpatrick in which he had “told them the truth about what happened”. It was put to Mr. McBrearty Junior that that was a clear recognition that he had made a statement to them about the matter under investigation, rather than in relation to his movements on the night in question. While Mr. McBrearty Junior did not accept that that was the natural interpretation of the second statement, the Tribunal is of the view that what was being put to Mr. McBrearty Junior was in fact a reasonable interpretation of the content of the second statement.

7.221. Under cross-examination on the following day, the solicitor acting on behalf of Mr. Fitzpatrick put it to Mr. McBrearty Junior that he had effectively conceded that if he had made the second statement to Sergeants McGrath and O’Grady, he was effectively admitting that he had made a previous statement to Detective Sergeant Melody and Detective Garda Fitzpatrick. Mr. McBrearty Junior stated that when making the second statement he was effectively saying that he had already made a statement outlining his movements to the other two. When pressed as to whether he was then accepting that he did make some statement to Detective Sergeant Melody and Detective Garda Fitzpatrick, Mr. McBrearty Junior stated “I honestly to tell you the truth I don’t know what I made to who now at this stage”.¹⁰⁰¹ He stated that he made the two statements directly one after the other. He said that they were made approximately fifteen minutes before he was released. He conceded that he may have been wrong in relation to his assertion as to whom he gave the statements:

¹⁰⁰⁰ Transcript, Day 546, pages 63-64.

¹⁰⁰¹ Transcript, Day 547, page 105.

Q. *Sorry, he established and you accepted that if you were talking to O’Grady and McGrath about the other two, you were talking about Melody and Fitzpatrick?*

A. *No, I said what my belief was and it still is my belief to this day, that I believe that I made a statement to McGrath and O’Grady about my movements and about being in work, and that because out of the four Melody and Fitzpatrick was the worst out of the four, that I believe that they asked me would I make another statement and I told them that I already made a statement.*

Q. *Okay?*

A. *I am possibly wrong in that because of the fact that the situation was so hostile.*

Q. *Well let me ask you this then so ...*

A. *I don’t honestly know at this stage, after ten years. But I know this much, I didn’t make a confession.¹⁰⁰²*

7.222. Later in the course of the same cross-examination, Mr. Murphy acting on behalf of Mr. Fitzpatrick, put it to Mr. McBrearty Junior that he had told Detective Sergeant Melody and Detective Garda Fitzpatrick that his father did not intimidate or bribe any witness. Mr. McBrearty Junior did have a recollection of saying words to that effect during his detention, but he could not recall to whom he had made that assertion:

A. *No. I have already told you, Chairman, that ... sitting here today I have already told the Tribunal over the last six days of my evidence that I made a statement to someone of the four that my father wasn’t intimidating witnesses.*

Q. *Chairman: Alright so the answer is ...*

A. *So he’s asked me now twenty times the same question, did you say this to Melody and Fitzpatrick. I don’t know.*

Q. *Chairman: Bear with me, Mr. McBrearty. Is the answer this: I made such a statement to one of the pairs, but I don’t know which, is that the answer?*

¹⁰⁰² Transcript, Day 547, page 110.

A. *I don't know what the answer is, that's the truth.*

Q. *Chairman: You don't know what the answer is?*

A. *I honestly ... all I know is that I defended my father when they were accusing him of intimidating witnesses and from my recollection I signed a statement with that on it.*

Mr. T. Murphy: *Alright, okay.*

Q. *Chairman: But the answer is you don't know which you signed it to; is that correct?*

A. *I don't know at this stage.*¹⁰⁰³

7.223. In the course of a different cross-examination, it was put to Mr. McBrearty Junior that the fact that he had made a confession was put to Mr. Frank McBrearty Senior by Detective Sergeant Melody and Detective Garda Fitzpatrick when they questioned Mr. Frank McBrearty Senior on the morning of the 13th of December 1996. Mr. McBrearty Junior denied that his father had ever mentioned to him anything about an assertion that he had made a confession to these two Gardaí. He said that his father never told him about any confession because his father simply did not believe that his son had anything to do with the death of the Late Mr. Barron and he therefore knew that he could not have made a confession to any involvement in such a crime. He stated that the matter was not discussed between them. He maintained that the first time that he knew anything about any alleged confession was when it was exhibited in the affidavit sworn by Chief Superintendent Denis Fitzpatrick on the 21st of April 1997.

7.224. In a later portion of this chapter we will look at the subsequent accounts given by Frank McBrearty Junior in relation to his period of detention. One of the documents that will be examined will be a Statement of Claim issued by him in September 1997. It was put to Mr. McBrearty Junior that he did not mention in that document the threat that he would be thrown out of the window, the allegation that he was pinned up against a wall, or the allegation that he was kicked on the shins. Mr. McBrearty Junior responded by saying that every single allegation in a claim does not have to be contained in a Statement of Claim at the beginning of proceedings because it is necessary to keep certain things within one's armoury for cross-examination.¹⁰⁰⁴

7.225. In attempting to achieve a comprehensive understanding and account of Mr. McBrearty Junior's treatment while in custody and the circumstances in which his false statement of admission came into existence, the Tribunal found it necessary

¹⁰⁰³ Transcript, Day 547, pages 112-113.

¹⁰⁰⁴ Transcript, Day 547, page 54.

to consider the way in which Mr. McBrearty Junior described his experiences while recounting them on a number of other occasions. The Tribunal now summarises the accounts which he gave on those occasions.

Frank McBrearty Junior's Account Given to his Solicitor

7.226. Mr. James Sweeney stated that at approximately 17.00 hours on the 5th of December 1996, Frank McBrearty Junior called to see him at his offices. It appeared that Mr. McBrearty Junior had already spoken to another member of the firm, Mr. Peter Murphy, earlier in the day. Mr. McBrearty Junior had been to see a Dr. Gilligan who was working in Dr. McFeely's surgery. He had told her that he had severe pain in his back. However, he had not told her the cause of this pain. She apparently gave him a pain killing injection and some tablets. Having spoken to Mr. Peter Murphy, Mr. McBrearty Junior went back to Dr. McFeely's surgery. Dr. McFeely stated in evidence that when he saw Frank McBrearty Junior he was in a very anxious and distressed state. He was suffering from acute anxiety following his arrest and detention in the Garda station. While Mr. McBrearty Junior did discuss the general situation and in particular his concern about being arrested in front of his children and the accusation that he had murdered the Late Mr. Richard Barron, he did not discuss any specifics relating to his time in the Garda station. Dr. McFeely said that he did not recall him discussing any ill treatment or any assault which had occurred during his time in the Garda station. Dr. McFeely prescribed a mid-range tranquilliser for Mr. McBrearty Junior. Mr. McBrearty Junior took these tablets over the following weeks until he saw the doctor again in January 1997, when Dr. McFeely gave him a further prescription for the drugs. Under cross-examination, Dr. McFeely accepted that there had been no complaint made to him of any ill treatment and he had no note of such a complaint being made by Mr. McBrearty Junior when he called to his surgery that day.¹⁰⁰⁵

7.227. Mr. Sweeney recalled that when Mr. McBrearty Junior came to see him that afternoon, he was very distressed at the manner in which the interviews had been conducted in Letterkenny Garda Station on the previous day. Mr. McBrearty Junior told Mr. Sweeney that photographs showing the mutilated body of the Late Mr. Richard Barron had been shoved into his face. He told his solicitor that the Gardaí said to him "look what you've done you fucking murdering bastard". He also complained that they slapped him in the face, poked him in the ribs and at one stage pushed him off the chair. As a result of this latter assault he hurt his back. He told his solicitor that he was given three pain killing tablets. Mr. McBrearty Junior spoke of the two Johns, who he understood were from the Serious Crime Squad in Dublin. He said that these two Gardaí were extremely aggressive in their interrogation techniques. He said that they told him that they

¹⁰⁰⁵ Transcript, Day 517, pages 85-86.

were going to hold him in a cell and, on one occasion, when he was going down to the cell, said to him “go on down to the cell and hang yourself you useless murdering bastard and do us all a favour before they shag you up in Mountjoy”. Mr. McBrearty Junior complained that these Gardaí gave him severe verbal abuse. They called him an “alcoholic wife-beating bastard”. They told him that he was an alcoholic like his father and that his father had beaten him when he was young. They also insulted his father by saying that he was a “mafioso” around Raphoe and that he was intimidating witnesses. They also told him that he was being unfaithful to his wife. They said that his father was not going to save him this time. When he asked about his children, he alleged that the interviewing Gardaí said “what the fuck would you be interested in your children for, you wife-beating bastard, you don’t care about them”.

7.228. Mr. McBrearty Junior also told his solicitor that the Gardaí questioned him in detail about his whereabouts on the night in question and in particular as to whether he had met up with Mark McConnell. He told his solicitor that the Gardaí did not make any notes at all during the day until approximately the last hour of the interview. He stated that between 20.30 hours and 21.00 hours he made a statement concerning his movements. In the statement he simply stated that he was not involved in any crime or murder on the night in question. He stated the time that he went to work and also stated that he did not see Mark McConnell during the night, apart from his entry and departure from the disco. He stated that he had gone home himself at around 03.30 hours. He said that he signed this statement. Mr. McBrearty Junior also told his solicitor that he had been shown a purported statement made by Mark McConnell. He said that the Gardaí had read it out to him and that in it Mr. McConnell was pointing the finger at Frank McBrearty Junior. The Gardaí alleged that Mr. McConnell had said in his statement that he went up the field to meet the Late Richard Barron and that witnesses in the car park said that they saw Mark McConnell and Frank McBrearty Junior coming down from the field. The statement apparently indicated that Frank McBrearty Junior took Mark McConnell into the bar where they changed their clothes. He was told that a girl across the road had seen them going in and coming out of the bar. Frank McBrearty Junior stated that he knew that this was a fictitious statement.

7.229. The interviewing officers had also referred to complaints which had been made by his legal representative, apparently to the Garda Complaints Board, and one of the Gardaí named “Gerry” had said to him “be a man and withdraw your complaint, there will be nothing more about it, unlike the scabs in Dublin”. Mr. McBrearty Junior stated that in response to this he had said “get to fuck”. He also recounted extensive questioning about a phone call which had allegedly been

made by Mark McConnell to him at 23.03 hours on the night in question. He stated that coming towards the end of the period of detention one of the officers kept popping his head around the door and telling him that it would not be long before he would be charged. Mr. Sweeney also recalled that Frank McBrearty Junior stated that Inspector John McGinley came into the room where he was being questioned at various stages during the day.¹⁰⁰⁶

- 7.230. Mr. James Sweeney took a detailed note of his consultation with Mr. McBrearty Junior on the 5th of December 1996. That note was made available to the Tribunal.¹⁰⁰⁷ Following that consultation, Mr. Sweeney sent a detailed letter of complaint to the Superintendent at Letterkenny Garda Station on the 11th of December 1996. The letter sent by Mr. Sweeney to the Gardaí was in the following terms:

Superintendent,
Garda Station,
Letterkenny,
Co. Donegal

11th December 1996

Ref: JS/ec

Re: Frank McBrearty Junior

Dear Superintendent,

As you are aware we act for Frank McBrearty Junior, who was arrested at 9.20 a.m. on the 4th December 1996 at Letterkenny and taken to Letterkenny Garda Station.

We are informed that Mr. McBrearty was detained under section 4 of the Criminal Justice Act and was to be questioned on suspicion of his involvement in the common law felony of the murder of Richard Barrons.

We now write to express our deep concerns at the appalling manner in which Mr. McBrearty was treated while in Letterkenny Garda Station. James Sweeney, solicitor of this office called to the Garda station at approximately 10.00 a.m. on the morning of 4th December 1996. Having spoken to our client it was obvious that he was in some distress and informed our Mr. Sweeney that he was slapped and repeatedly nudged/poked in the ribs while being brought to the station and while undergoing the first session of interrogation in the Garda Station. Our Mr. Sweeney made a complaint at the time and asked that this matter be noted in the custody record. We should be obliged if you would please

¹⁰⁰⁶ Transcript, Day 507, pages 90-97.

¹⁰⁰⁷ Tribunal Documents, pages 814-815.

now furnish us with a copy of the said custody record for our attention.

Having been advised of his rights by Mr. Sweeney, we understand that questioning contained (sic) for a total period of twelve hours which questioning/interrogation was carried out by two separate teams of officers. Please let us have the names of the officers who carried out these sessions of interrogations.

(Page 1)

During the ongoing interrogation, Mr. McBrearty instructs us that he was knocked off his chair with the result that he hurt his back and was given three pain killing tablets by the interrogating officers. Please let us know the type of tablet given to Mr. McBrearty and also the name of the officer who handed to him.

We further understand that Mr. McBrearty was subjected to the most demeaning type of insults in that he was accused inter alia of being a “wife beater”, an “alcoholic” and a “murdering bastard”.

We also note with some concern that the interrogating officers tried to persuade Mr. McBrearty to withdraw previous complaints which he had made to the Gardaí and we treat this matter with great concern.

Mr. McBrearty was also informed that a Mr. Mark McConnell made a statement implicating Mr. McBrearty in the murder of Mr. Richard Barron and in fact a bogus statement was presented to Mr. McBrearty and read aloud to him. Members of the Garda Force continually insulted both Mr. McBrearty and his family.

Subsequent to Mr. McBrearty's release he had to attend his doctor to obtain a pain killing injection to damage done to his back and a sedative for the purpose of calming him down.

Finally, we understand that Mr. McBrearty made a statement while in the Garda station and we must insist that a copy of this be given to us forthwith.

Please revert immediately with an explanation as to why our client was subjected to the above treatment.

Yours faithfully,

V.P. McMullin & Son

JS/EC

(Page 2)¹⁰⁰⁸

¹⁰⁰⁸ Tribunal Documents, pages 820-821.

7.231. Mr. Sweeney stated that to the best of his knowledge, his firm never received any response from the Gardaí to that letter. He stated that in all his dealings with the Gardaí subsequent to the 4th of December 1996, nobody had ever indicated to him that his client had made a statement of confession during his period of detention. Mr. Sweeney stated that some short time later, in the early part of 1997, it was decided that his firm would cease to act for the McBrearty, McConnell and Quinn families in relation to their arrests and detentions in Letterkenny and Lifford in December 1996. He stated that this was an amicable decision reached between the parties, due to the fact that it was felt that his firm would be too close to the local Gardaí and that it would be better if the group were represented by a solicitor from outside the county. It was for this reason that the files were transferred to Mr. Ken Smyth, then of Binchy's Solicitors, Dublin, in the early part of 1997. It will be seen that Mr. Sweeney's firm also had dealings with Mr. McBrearty Junior in relation to his subsequent arrest on the 4th of February 1997. However, for all practical purposes the sending of the letter on the 11th of December 1996 constituted the last dealing that Mr. Sweeney had in relation to the detention of Mr. Frank McBrearty Junior at Letterkenny Garda Station in December 1996.

The Second Page of the Letter

7.232. A curious thing happened to the letter from Mr. Sweeney. The second page of that letter, which contained a number of serious allegations against the Gardaí, got lost. It appears that the letter was filed initially in Letterkenny. It was not forwarded to the Garda Complaints Board. When it was eventually forwarded to that body, the second page had been replaced by a completely innocuous second page which in fact referred to a different letter concerning a different detainee. That second page merely stated "we await not only a reply to this letter but also to our letter of the 11th December in respect of Mr. McBrearty Senior". That form of the letter remained on the file in Letterkenny Garda Station. It was subsequently sent to the Garda Complaints Board. It was also furnished to the Tribunal. It was not until Mr. Sweeney came to give evidence before the Tribunal that it was first learned that this was not in fact the correct second page to the letter that he had sent. Mr. Sweeney was able to provide a full copy of the original letter that he had sent to the Superintendent in An Garda Síochána at Letterkenny Garda Station on the 11th of December 1996.

7.233. The Gardaí were unable to explain how a different second page had become attached to the letter that had been sent to the Garda Complaints Board and also to the Tribunal. They maintained that it was due to an error at the administration end. They denied that there was any attempt to hide the allegations that were

contained in the second page of Mr. Sweeney's letter. From documentation submitted by the Garda Complaints Board, it appears that on Friday, the 17th of October 1997, Superintendent Kevin Lennon had a telephone conversation with a Mr. O'Flaherty, one of the staff of the Garda Complaints Board. He told him that they had received the letters which he had forwarded to the Garda Complaints Board from Superintendent Tom Gallagher in Ballymoate, who in turn had received the letters from Mr. William Flynn. The Superintendent did not know where the originals of the letters were, as he had been unable to locate them in his office in Letterkenny Garda Station. This would explain why the Tribunal only has a first copy of the letter available to it rather than the original, which would have borne the letter heading for the office of Messrs. V.P. McMullen & Son, Solicitors. The letter is set out in full above. It will be seen that the second page does indeed contain serious allegations against the Gardaí.

- 7.234. The Tribunal is concerned that an incorrect version of this letter was furnished to the Garda Complaints Board and also to the Tribunal. However, having listened to the explanations given by the various parties and noting that the document that was furnished to the Tribunal by the Garda authorities was not either an original of the letter from Messrs. V.P. McMullin & Son, or a first copy thereof, but a file copy, the Tribunal is prepared to accept the explanation that it was due to an administrative error that the incorrect second page was appended to the first page of the letter that was furnished to the Tribunal. Were it not for the fact that Mr. Sweeney gave evidence in the period between when Mr. McBrearty Junior first gave his evidence and then continued his evidence before the Tribunal, the case may well have been put to Mr. McBrearty Junior that he did not make extensive complaint to his solicitor immediately upon his release from custody. Fortunately, Mr. Sweeney was prudent both in making a detailed memorandum of his attendance with Mr. McBrearty Junior on the 5th of December 1996 and also in retaining a full copy of the letter that he sent to the Gardaí on the 11th of December 1996. The Tribunal accepts that the incorrect second page of the letter was not inserted by the Gardaí as part of a deliberate attempt to water down Mr. McBrearty Junior's case.

Other Accounts Given by Frank McBrearty Junior

- 7.235. Martin McCallion was employed as a doorman at the McBrearty nightclub premises. He was also a friend of Frank McBrearty Junior. He was arrested on Sunday, the 8th of December 1996. During his period of detention, he told Detective Garda Michael Carroll and Garda John O'Toole how he had met Frank

McBrearty Junior on the night of the 7th/8th of December 1996. He stated that Frank McBrearty Junior appeared to be in a bad way when he met him. He told the Gardaí that he had heard the pictures were bad. When he was asked how he knew that, he stated that when he had met Frank McBrearty Junior the previous evening, he had remarked to Mr. McBrearty Junior that he was a bad colour. Mr. McBrearty Junior had responded to him by saying that, if Mr. McCallion had seen what he had seen, Mr. McCallion would be a bad colour too. Mr. McCallion stated that Mr. McBrearty Junior had said that he had seen photographs and that they were horrific.¹⁰⁰⁹

7.236. In a later interview with Detective Garda Carroll and Detective Garda Tague, Mr. McCallion indicated how he had seen Mr. McBrearty Junior on the night of Saturday, the 7th/8th of December 1996. He stated that Mr. McBrearty Junior only stayed in the disco for a short while. He stated that that was unusual. He stated that Mr. McBrearty Junior had told Mr. McCallion that he had got a hard time during his detention in Letterkenny Garda Station. He said that Mr. McBrearty Junior was pale looking and said that he had been shown photographs and that they had had a bad effect on him. He also said that he had got slapped about the place. He said that Mr. McBrearty Junior only stayed five minutes at the disco, which was very unusual, and he then left.¹⁰¹⁰ In his evidence, Mr. McCallion stated that these events had occurred and that the answers recorded were an accurate representation of what he had said to the Gardaí. The significance of this evidence is that, if accepted, it would establish that Mr. McBrearty Junior was showing a consistency in relation to his complaints. There is evidence that he had made extensive complaints to his solicitor on the day after his release from custody. The evidence of Mr. McCallion establishes that he was also complaining of having seen post-mortem photographs when he saw Mr. McCallion on the night of the 7th/8th of December 1996.

7.237. The next significant development was the arrest of Mr. Frank McBrearty Junior on the 4th of February 1997. This arrest caused Mr. McBrearty Junior extreme distress. He was so distressed that he resorted to inflicting injury on himself as a means of avoiding further questioning. This arrest is dealt with in detail later in this chapter. However, there is one aspect that should be commented upon at this juncture. In the course of his evidence before the Tribunal, Mr. James Sweeney described how he found Frank McBrearty Junior at the time of that second arrest. He had two consultations with Mr. McBrearty Junior in quick succession. He stated that when he first saw Mr. McBrearty Junior that day, he was literally terrified of being interrogated in the same manner as he had been at the time of his previous arrest on the 4th of December 1996. Mr. Sweeney gave the following description of how he found Mr. McBrearty Junior at that time:

¹⁰⁰⁹ Tribunal Documents (Martin McCallion Book of Evidence), page 51.

¹⁰¹⁰ Tribunal Documents (Martin McCallion Book of Evidence), pages 72-73.

*He was more concerned of the interrogation than any physical threat. He was terrified of the interrogation. It was the mental distress rather than the physical distress he was worried about.*¹⁰¹¹

- 7.238. It was after that consultation and while the solicitor was making his concerns known to the member in charge that Frank McBrearty Junior proceeded to inflict injury upon himself. The significance of the evidence given by Mr. Sweeney lies in the fact that Frank McBrearty Junior's state of terror appeared to him to emanate not from any physical threat to his well being, but from his concern that whatever had happened to him during his previous period of interrogation at Letterkenny Garda Station might happen to him again during that detention. This lends credence to the assertion that something had in fact happened to Frank McBrearty Junior during the prior detention.
- 7.239. Two months after that arrest, an affidavit was filed by Chief Superintendent Denis Fitzpatrick. This affidavit was filed in the course of civil proceedings which were instituted by Frank McBrearty Senior seeking, *inter alia*, interlocutory relief to prevent the Gardaí from carrying out what Mr. McBrearty Senior alleged were excessive raids and vehicle checkpoints on and in the vicinity of his licensed premises. The Chief Superintendent in an extensive affidavit purported to set out the entire background to the matter and denied that there was any undue harassment on the part of the Gardaí. In that affidavit he also exhibited a copy of the alleged statement of admission made by Frank McBrearty Junior on the 4th of December 1996. The significance of this is that, according to Frank McBrearty Junior, this was the first time that he had ever seen or learned of this statement, which he had allegedly made on the evening of the 4th of December 1996. A further replying affidavit was filed on behalf of Frank McBrearty Senior in the course of the civil proceedings, but it did not deal with the confession that had been exhibited in the earlier affidavit.

Interview with Mr. William Flynn

- 7.240. Towards the middle of 1997, Frank McBrearty Junior gave an extensive interview to the private investigator, Mr. William Flynn. This interview was recorded on video and a transcript was also made of the proceedings. Both the video and the transcript were made available to the Tribunal. This was a wide ranging interview, dealing with Mr. McBrearty Junior's background, a detailed account of his movements on the night of the 13th/14th October 1996, and a detailed account of his arrest and subsequent detention at Letterkenny Garda Station on the 4th of December 1996. Mr. McBrearty Junior gave an account of the arrest at Thorn Road. He stated that the Gardaí were roaring and shouting at him and calling him a "murdering bastard" and other such names. He stated that Detective Garda

¹⁰¹¹ Transcript, Day 507, page 111.

Keating was punching him in the ribs and Detective Garda Cafferkey was also punching him in the back. At the same time both Gardaí were giving him severe verbal abuse. He went on to describe how the punching and abuse continued during the car journey back to Letterkenny Garda Station. He said that there were constant references to his wife and children and that he was told that he did not care about his children. He stated that Detective Garda Keating was also punching him in the back as he was going down the corridor to where he was to be processed by the member in charge. He said that, on one occasion, Detective Gardaí Keating and Cafferkey punched him so hard that they winded him, at which point Mr. McBrearty Junior turned around and threatened them that if they did it again he would knock them out where they were standing. He said that Garda Martin Leonard was telling him to calm down at that time.

7.241. Frank McBrearty Junior told the private investigator that the first set of interviewers were “nice as pie” at the start, but that as soon as he was provided with a cup of tea they changed to calling him a “murdering bastard”. He said that he gave them as good as he got. He was then taken down to his solicitor where he made a complaint and told him that the interviewers were abusing him seriously up there. He said that he told his solicitor that the interviewers were punching him in the ribs and kicking him in the shins. He said that his solicitor made an official complaint about the matter. However, Mr. Sweeney had no note of such a complaint. Nor did he have a recollection of Mr. McBrearty Junior making that complaint to him.¹⁰¹² After that Mr. McBrearty Junior was taken back up to the interview room where the interviewers, “Eamon and Gerry”, continued to call him names and asked him to admit to the crime. He said that Sergeant Eamon O’Grady slapped him three or four times in the face.

7.242. Frank McBrearty Junior also told the private investigator that when he was interviewed by the “two Johns”, he was poked by Detective Sergeant John Melody and that Detective Garda John Fitzpatrick was pulling at his hair and also pulling him on the ear and trying to get him to admit that he was a murderer. He said that they also gave him severe verbal abuse. He told the investigator that his solicitor had told him to sign nothing, to which he said “James I have nothing to hide and if they want me to make a statement about me working I’ll make a statement”. However, he denied absolutely making any statement of admission. He said that he was shown post-mortem photographs and that the interviewer, “Gerry”, demonstrated how he had struck the Late Richard Barron over the head. He said that they were telling him to look at the photographs and told him that he had caused those injuries with an iron bar. He said that the two Johns were poking and punching him in the ribs all day and also kicking him on the legs. At one stage he got up and Detective Garda John Fitzpatrick grabbed him, at which

¹⁰¹² Transcript, Day 507, page 71.

point he stated that he grabbed Detective Garda Fitzpatrick and put him over a table. He said that later in the day, just before dinner time, Detective Sergeant John Melody was telling him that he would go to Mountjoy and telling him what would happen to him once he got there. He said that the other interviewer, Detective Garda John Fitzpatrick, said that he would throw him through a window, to which Mr. McBrearty Junior said go ahead, but you will be coming with me. He detailed how he made complaints to the member in charge, but these were ignored. It was put to him that he did not care about his family and had been unfaithful to his wife. He told the private investigator that he had seen the post-mortem photographs, but that they did not bother him because he had lived beside a farm and had seen many unpleasant things, such as animals being born. He gave a detailed description of what he had seen in the photographs to the private investigator. He also said that at one stage he got so fed up that he threw the photographs all over the floor.

- 7.243. Frank McBrearty Junior stated that he did co-operate with the Gardaí by giving blood and hair samples and also by giving permission to the Gardaí to get his clothes from his house. He stated that this permission was given to Garda Coady.
- 7.244. He told the investigator that at approximately 15.30 hours while the “two Johns” were interrogating him, “Eamon and Gerry” came in with a statement which had allegedly been made by Mark McConnell. He stated that they read the statement out to him, but that they would not let him hold it. They showed him the signature ‘Mark McConnell’, but he knew that it was not a genuine signature due to the fact that the name was spelt incorrectly.
- 7.245. Frank McBrearty Junior outlined to the private investigator what documents he had actually signed during his period in custody. He stated that he had signed a statement about being at his work and what his activities were at work. He also signed a “questionnaire”, which was almost exactly the same as the statement, in relation to his movements and work duties. He said that he also signed a short statement for “Gerry and Eamon” saying that he had co-operated with the Gardaí. He said that he read that document twice before he signed it.
- 7.246. When the private investigator asked him to deal with the alleged confession, he stated that it was not his signature on the second page of that document. He said that either his signature was forged, or he had been tricked. In relation to the final portion of the confession, to the effect that his father never intimidated anybody not to give evidence against him, he stated that he did sign something like that, but he did not sign that particular portion. He denied absolutely that it was his signature. When the interviewer asked him “you are saying you didn’t sign it?” he replied “I’m saying I didn’t sign that. No fucking way, and if I did sign

it I was tricked into signing it". In relation to the portion of the alleged statement of admission which was on the second page dealing with his father, he said that it was possible that he did say at some stage that his father never intimidated anybody to his knowledge, but he denied ever seeing the bit that was at the bottom of the statement. When he read the actual words on that portion of the statement "my father never intimidated anyone he never offered to my knowledge money to anyone not to give evidence against me" he said, "them words there, I never said to any guard ever". Mr. McBrearty Junior stated that it was his belief that the Letterkenny Gardaí concocted the statement of admission.

- 7.247. He went on to tell the investigator about his meeting with Mark McConnell directly outside the Garda station on the night of the 4th of December 1996. He said that he said to Mark McConnell "whatever them lying bastards told you about me don't believe it because I didn't say anything about you", and with that he walked up the road. He ended the interview by indicating that he had signed five documents in total during his period in detention: the custody record, which he signed twice, a statement in relation to his movements, a short statement saying that he had already co-operated with the Gardaí and the permission to go to the house to get his clothes. He ended by dealing with his release from the station and stated that the member in charge, Garda Leonard, was nice to him during the day apart from at one stage when he ignored a complaint that Frank McBrearty had attempted to make about the interviewing Gardaí. That is a brief summary of what Mr. McBrearty Junior told the private investigator in the course of a very long interview.¹⁰¹³

The Civil Action

- 7.248. Frank McBrearty Junior instituted civil proceedings against the Commissioner of An Garda Síochána, the Minister for Justice and the Attorney General in relation to his arrest and detention at Letterkenny Garda Station. The proceedings were commenced by Plenary Summons issued on the 11th of March 1997. On the 24th of September 1997 he served a Statement of Claim on the defendants. In the course of that document he described his areas of complaint in relation to the arrest on the 4th of December 1996 in the following way:

5. The said arrest and the manner and fashion of its effect was wrongful and engaged the use of unnecessary and excessive force causing the plaintiff upset and distress to his wife and family. In particular, the plaintiff had his two children in the car and he did not know what had happened to them after he was taken from the car.
6. Whilst in the custody of the defendants, its servants or agents, the plaintiff was assaulted, threatened and intimidated by the

¹⁰¹³ Tribunal Documents, pages 334-432.

defendants, their servants or agents and in particular Gardaí John Melody, Patrick Cafferkey, P.J. Keating, Detective John Fitzpatrick and John McGinley, among others, for the purported purposes of obtaining confessions for actions for which the plaintiff had no involvement, liability or knowledge. The said assaults and intimidation caused the plaintiff severe upset, distress and fear and furthermore caused the plaintiff severe shock and grief. The plaintiff was, inter alia, repeatedly nudged and poked in his ribs. He was pushed off his chair onto the floor. He was slapped in the face, he was given three pain killing tablets as a result of consequent pain to his back. He was continuously insulted and told that he was a wife beater, adulterer and murderer.

7. On the 4th day of February, 1997 the plaintiff was again arrested and taken to Letterkenny Garda Station and he was told that he was arrested under section 4 of the Criminal Justice Act on suspicion of an offence under section 18 of the Offences Against the Person Act. However, he was instead questioned in relation to the death of Richard Barron. The said detention was unlawful as the assault complaint by one Edward Moss had by the time of his arrest been withdrawn. On the day of his arrest he had filed a complaint at Letterkenny Garda Station against Stephen Barron for intimidation. He was questioned, inter alia, by Sergeant John White and Garda John O'Dowd.
8. At all material times, the defendants, their servants or agents, acted wrongfully and in excess of jurisdiction and in abuse of jurisdiction and in particular in relation to the treatment of the plaintiff whilst in custody. Furthermore, the said conduct and action of the defendants, their servants or agents has caused the plaintiff personal injuries, loss and damage.
9. Any statement taken from the plaintiff during the said detention was involuntary and made under duress.

PARTICULARS OF PERSONAL INJURY

The plaintiff as a consequence of the conduct and action of the defendants, their servants or agents suffered from bruising to his upper body and back pain and furthermore has suffered severe psychological trauma and upset and has suffered a character change and has become withdrawn, introvert and insecure. The plaintiff is extremely nervous and

frightened consequent on his treatment at the hands of the Gardaí. Full particulars will be furnished and further and other adverse sequelae cannot be ruled out and the plaintiff reserves the right to adduce of same if and when arising ...¹⁰¹⁴

- 7.249. In Replies to Particulars which were served by the plaintiff on the 22nd of April 1998, Mr. McBrearty Junior claimed that he had come under the care of Dr. Charles Smith, consultant psychiatrist and Dr. Sharkey, a psychiatrist at Letterkenny Hospital. He also came under the care of Dr. Armstrong and Dr. McFeely. It was pleaded that he had spent two weeks in a psychiatric unit in Letterkenny General Hospital in January 1998 and subsequently spent a week in the same unit in March 1998. It was alleged that he was suffering from severe depression. He had recently ceased taking Mellaril medication. He was diagnosed as suffering from continuing Post-Traumatic Stress Disorder. It was alleged that he took an overdose of tablets early in 1998. It was alleged that he continued to require ongoing treatment for depression and anxiety states as referred to earlier in the pleadings. A Defence was filed on behalf of the defendants on the 22nd of January 1998. This was a general traverse of all matters alleged by the plaintiff in his Statement of Claim.¹⁰¹⁵

The Garda Complaints Board

- 7.250. The letter of complaint which had been sent by Mr. Sweeney to the Superintendent at Letterkenny Garda Station on the 11th of December 1996 was not immediately treated as a formal complaint to be forwarded to the Garda Complaints Board. It was not until October 1997 that the letter was forwarded to the Garda Complaints Board. Once received, the necessary steps were taken to have an Investigating Officer appointed. The Investigating Officer, Chief Superintendent John Carey, took a statement from Frank McBrearty Junior on the 9th of February 1998. In the course of that statement, Mr. McBrearty Junior repeated his complaints in relation to verbal abuse at the time of his arrest at Thorn Road, Letterkenny. He also made the allegation about Detective Garda Anderson grabbing his son and preventing him from running after the patrol car. He also made the allegation that Detective Garda Cafferkey had put his knee on his chest while pinning him to the chair in the day room in Letterkenny Garda Station. He alleged that he was punched in the back frequently by Detective Garda Keating while he was going down the corridor. He alleged that Sergeant Eamon O'Grady slapped him on the face and that Sergeant McGrath kicked him on the shins. He stated that he was not slapped or kicked until after his solicitor had left the station.

¹⁰¹⁴ Tribunal Documents, page 477.

¹⁰¹⁵ These proceedings were ultimately settled by the payment of damages and costs to Mr. Frank McBrearty Junior in 2006 in respect of his entire claim.

- 7.251. He also alleged that Detective Sergeant Melody kept kicking him on the shins and that Detective Garda Fitzpatrick threatened to throw him through a window. He alleged that Garda Martin Leonard failed to take any steps in relation to complaints that he made to him as the member in charge. He alleged that Inspector McGinley came into the interview room every hour on the hour. He also alleged that he had been shown post-mortem photographs and a false statement allegedly made by Mark McConnell. He stated that Detective Sergeant Melody kept writing for the whole day. About fifteen minutes before he was released, he made a statement about the duties that he carried out at work. He said that that statement was two pages in length. He signed both pages and initialled mistakes in the statement, of which there were about four or five. He said that he made that statement to Detective Sergeant Melody and Detective Garda Fitzpatrick. He stated that after this he made a very small statement to "Gerry and Eamon" and that it was only about half a page in length. He stated that it was "Gerry" who wrote the second statement. He said that the previous statement about his work practices was written by Detective Sergeant Melody. He finished that portion of the statement by recounting an encounter with Superintendent Fitzgerald as he has leaving the station. He stated that he signed the custody record at the time of his release. He reiterated that he was not physically abused or assaulted until after his solicitor had left the station.
- 7.252. Frank McBrearty Junior went on in the course of that statement to make a number of allegations concerning his arrest and detention on the 4th of February 1997. These allegations were to the effect that he had been assaulted by Garda John O'Dowd, who had allegedly punched him in the face on two or three occasions. It will be seen that these were false complaints, as Frank McBrearty Junior has subsequently admitted that it was in fact he who punched himself in the face during the course of that detention.¹⁰¹⁶

Meeting with Inspector Hugh Coll

- 7.253. In the Tribunal documents there is a memorandum drawn up by Inspector Hugh Coll of a meeting which he had with Frank McBrearty Junior and Mrs. McBrearty at the Mount Errigal Hotel on Monday, the 13th of December 1999. Also present at that meeting was Detective Sergeant Jim Fox. Inspector Coll and Detective Sergeant Fox were part of the Carty investigation team. In his memorandum, Inspector Coll recorded that Frank McBrearty Junior's main complaint was about the manner of his arrest in front of his children. Mr. McBrearty Junior complained that during his period in custody he was verbally and physically abused. He stated that he did not make any statement of confession. He alleged that the four Dublin Gardaí kept on at him during the entire day about hitting the Late Richard

¹⁰¹⁶ Tribunal Documents, pages 324-332: see Part II of this Chapter.

Barron with an iron bar, but then put in the alleged statement that he had struck Mr. Barron with a wooden stick. Mr. McBrearty Junior stated that while he was in custody he signed the custody record and a short statement giving permission to go to his house and get a change of clothes. He said that Detective Sergeant Melody and Detective Garda Fitzpatrick late in the day started talking about his father intimidating witnesses. He stated that that they read some notes to him and that he signed them. He said that Sergeants McGrath and O’Grady then came into him and started to talk to him about telling the truth, and he signed a quarter page of notes. He said that the notes that Detective Sergeant Melody and Detective Garda Fitzpatrick had made were on a page and were three quarters of the way down the page. Mr. McBrearty Junior said that that was all that he signed and that he definitely made no statement of confession.¹⁰¹⁷

- 7.254. According to Inspector Coll’s memorandum, Frank McBrearty Junior stated that one of the Gardaí who had been questioning him came in with a statement which the Gardaí said had been made by Mark McConnell, in which he confessed to killing the Late Richard Barron. The statement implicated Frank McBrearty Junior. Frank McBrearty Junior stated that he went “wild” at this and stated that he would never confess to anything that he did not do. The memorandum also recorded a number of other matters which were allegedly discussed between Frank McBrearty Junior and these officers that evening. Neither Superintendent Coll nor Detective Sergeant Fox was called to give evidence on this matter before the Tribunal. Mr. McBrearty Junior denied in cross-examination that that memorandum was an accurate representation of what he had said to the two officers. In the circumstances where the officers who took the disputed memorandum were not called before the Tribunal to give evidence, the Tribunal is not inclined to give any weight to the content of this particular memorandum. In any event it was not shown to Mr. McBrearty Junior and was never adopted by him as an accurate account at the time when it was made.

Interview with Mr. Brian Garvie

- 7.255. On the 11th of June 2003 Frank McBrearty Junior had an interview with Mr. Brian Garvie, one of the Tribunal’s investigators. He described the 4th of December 1996 as being the worst day of his life. He said it was a complete nightmare. He described his arrest and repeated the allegations that the Gardaí had abused him and that Sergeant Hannigan had shouted into the car to his children, asking them “do you know your Daddy’s a murderer?”. He said that the Gardaí were doing this to try and provoke him. He said that at the Garda station he was abused by being punched and shoved in the back. He again said that as he was walking down the corridor, Detective Garda P.J. Keating kept punching him in the back.

¹⁰¹⁷ Tribunal Documents, page 434.

He said that he turned around and said to him that he was a brave man in the Garda station with all his buddies surrounding him. He accused him of being a brave man while hitting a defenceless man in front of all the Gardaí. He also stated that when he was being put into the patrol car either Detective Garda Keating or Detective Garda Cafferkey had punched him in the back. He also reiterated how Detective Garda Cafferkey had come over and put his knee in his chest and told him to be quiet while he was sitting in the day room area of the Garda station. He said that he signed the custody record because he was being punched in the back by Detective Garda Keating. He said that he was abused for twelve hours solid during the period of detention. He said that he was kicked in the shins and poked in the neck with pens and slapped on the ears and on the face. He said that his hair was pulled and that he was pushed off the seat and that his head was pushed into photographs of the Late Richard Barron's dead body. He went on in the course of that interview to give a detailed description of what he saw in the photographs. He said that Sergeant O'Grady was slapping him in the face telling him that he killed the Late Richard Barron. He said that he was being poked and slapped and verbally abused throughout the whole day. He said that Detective Sergeant Melody and Detective Garda Fitzpatrick had shown him the post-mortem photographs.

7.256. In the course of that interview Mr. McBrearty Junior again stated that to the best of his recollection he had signed three documents. He said that he had signed a permission to Garda Niall Coady to go to his house to get his clothes. The second statement that he believed that he signed was to Sergeants O'Grady and McGrath to the effect that he was at his work. He said that that statement was a full page long. He was asked whether he signed any notes of interview. He said that there was no writing whatsoever that day in the interview room and he denied that he was asked to sign anything. He said the only thing he was asked to sign was the statement that he made to Sergeants McGrath and O'Grady. He said that there were no question and answer sessions written down in the interview room, due to the fact that he was being constantly abused by each of the interviewing Gardaí.

7.257. In the course of the interview Mr. McBrearty Junior was asked whether he was ever presented with the statement of admission for signature. He said that no such statement was presented to him. He said that approximately forty-five minutes before he was released, Sergeants McGrath and O'Grady came into the interview room and asked him if he would make a statement about his work. He said that he did make a statement for them dealing with his duties at work. He said that Detective Sergeant Melody kept putting his head around the door and telling him "five minutes to go Frank. We are going to charge you in five

minutes”. Mr. McBrearty Junior vehemently denied that he made any statement admitting to the death of Richard Barron. He said “I did not make a statement admitting to the death of Richie Barron. At no time did I ever admit to the death of Richie Barron and I believe that is not my signature. That’s my belief”. When he was shown the second shorter statement, which was allegedly made to Sergeants McGrath and O’Grady, he denied that he had made that statement to them. He reiterated that he had made a full statement to them dealing with his duties at work and what time he went to work and what time he finished work. He said that he signed the statement that he gave to Sergeants McGrath and O’Grady about his work duties and the time that he went home.

- 7.258. He denied that he signed any permission for Detective Sergeant Melody at any stage. He said that he did make a statement of two lines in length to Garda Niall Coady giving him consent to go up to his house and to get his clothes. He said that he gave this after he had given a blood sample to the doctor. Mr. McBrearty Junior went on in the course of that interview to deal with the events that occurred in the Garda station on the 4th of February 1997. He began by denying that he had injured himself during that detention. However, after the conclusion of the interview, he returned and told the Tribunal investigator that during that detention he had punched himself four times in the face and that he had blamed Garda O’Dowd for assaulting him on that occasion.¹⁰¹⁸

Interview with Mr. Patrick Cummins

- 7.259. Finally, Mr. McBrearty Junior had a detailed recorded interview with the Tribunal investigator, Mr. Patrick Cummins on the 12th of August 2004. In the course of that interview he essentially made the same allegations as were made subsequently in the course of his evidence before the Tribunal. However, his version had changed in a number of respects from that given previously to Mr. William Flynn and in his statement to the Garda Complaints Board. He again gave an account of a considerable amount of verbal abuse at the time of his arrest. He repeated the allegation that Detective Garda Cafferkey put his knee into his chest while he was sitting on a chair in the day room. However, he changed the allegation that he had earlier made that he had been punched while going down the corridor by Detective Garda Keating. He said “I was punched in the back, not actually punched, but pushed with a closed fist by Keating ...” . He stated that when this was done by the Detective Garda, he turned around and told him that he was a brave man inside the station, while Mr. McBrearty Junior was defenceless and innocent. Mr. McBrearty Junior told the Tribunal investigator that he had been slapped in the face by Sergeant Eamon O’Grady during the first interview. He said that this happened prior to the arrival of his solicitor and that he complained about being slapped in the face to his solicitor. This was a

¹⁰¹⁸ Tribunal Documents, (Moss Book of Evidence) pages 256-1/256-41.

significant change from the stance earlier adopted by him and from the stance adopted by him in evidence.¹⁰¹⁹

- 7.260. Frank McBrearty Junior repeated his complaints about verbal abuse from the interviewing Gardaí. He also stated that a complaint that he made to the member in charge that he had been slapped in the face by one of the interviewing Gardaí, was ignored at the time. He repeated the complaints about physical abuse from the interviewing Gardaí and the threat to throw him through the window. He stated that the only permission he gave in the course of the day was given to Garda Niall Coady. It was a permission to go up to his house to retrieve the clothes that he had been wearing on the night of the incident. He said that there was no writing done in the interview room during the day. It was purely screaming and shouting abuse at him. He described being shown post-mortem photographs and also a bogus statement allegedly made by Mark McConnell. He recounted the incident where he was allegedly thrown off the chair as a result of which he suffered injury and was given tablets.
- 7.261. In the course of this interview with the Tribunal's investigator Mr. McBrearty Junior also stated that he made a statement concerning his movements to Sergeants McGrath and O'Grady. He said that during this time Detective Sergeant Melody kept opening the door and shouting in "five minutes to go Frank, five minutes to go". He said that he could not remember if the statement that he made to Sergeants McGrath and O'Grady was a page or a page and a half or two pages. He said that they read the statement over to him and he signed it. He stated that Detective Sergeant Melody and Detective Garda Fitzpatrick then came back into the room, during which there was more abuse and a throwing of papers onto the floor. He refused to make a statement and then when they said to him that he must have something to hide, he made a small statement to them to the effect that he had already made a statement to the other two detectives. He said it was a four or five line statement which he signed at that time.¹⁰²⁰
- 7.262. Frank McBrearty Junior went on in the course of the interview to recount how he had met Superintendent Fitzgerald and Detective Superintendent Shelly on the way down the corridor. He also repeated the comment that he had made to Mark McConnell outside the station. He disputed the sequence of events as recorded in the custody record from the time of the tea break onwards. He also disputed the time of his release as given in the custody record.

An Assertion Made to the Tribunal

- 7.263. It is necessary to note an assertion that was made by Frank McBrearty Junior during the hearing of the Barron Investigation module in October 2004. At that

¹⁰¹⁹ Tribunal Documents, page 492.

¹⁰²⁰ Tribunal Documents, pages 502-503.

time, Mr. McBrearty Junior was attending at the Tribunal to represent himself. In the course of examining a number of witnesses and in making interjections from the floor of the Tribunal, he made an assertion in relation to the forgery of his signature on the statement of admission. It was alleged that he had made a statement on the 18th of October 1996 to Detective Garda Michael Carroll. That statement dealt with the ejection from the nightclub premises of Mr. Paul “Gazza” Gallagher on the night of the 13th/14th of October 1996. It also detailed how Mr. Gallagher returned to the nightclub on the following Wednesday and appeared to buy drinks and to have bought clothes and a car using fifty pence pieces. The original of that statement appeared to be signed by Mr. McBrearty Junior and was witnessed by Detective Gardaí Michael Carroll and Martin Anderson.

7.264. In October 2004, in the course of the questioning of witnesses and in submissions from the floor of the Tribunal, Mr. McBrearty Junior maintained that the signature on that statement was not his. He put forward the hypothesis that he had made a statement to Detective Garda Carroll in relation to Paul “Gazza” Gallagher, but that Detective Garda Carroll had subsequently torn up that statement and written another statement in largely similar terms, but had forged the signature “Frank McBrearty Junior” thereon. Mr. McBrearty Junior maintained that this was done so that when the subsequent statement of confession was produced, Detective Garda Carroll could again forge his signature on that confession. This would have the result that when the confession was ultimately produced to a handwriting expert along with the alleged statement of the 18th of October 1996, and the two signatures were compared, the handwriting expert would find that the signatures had indeed been written by the same person. In this way, Mr. McBrearty Junior maintained that the handwriting expert could be fooled into giving evidence that the signature on the statement of admission was the authentic signature of Frank McBrearty Junior. This would be based on the incorrect assumption that the signature appearing on the earlier statement was that of Frank McBrearty Junior, when in fact it had been the forged signature placed there by Detective Garda Carroll.

7.265. This assertion was strongly denied by all the Gardaí to whom it was put in the course of the Barron Investigation Module. The Tribunal has no hesitation in rejecting this hypothesis put forward by Mr. McBrearty Junior. Indeed, the main significance of this theory, which was put forward by Mr. McBrearty Junior in October 2004, lies in the fact that it was not pursued by him when he came to give evidence before the Tribunal in October 2007. It is significant to note that Mr. McBrearty Junior at different times has alleged that his signature was forged on the statement of admission by different people. Indeed, he also made the

allegation that the Carty investigation team itself had participated in this deception, due to the content of the memorandum made by Inspector Coll at his meeting with Mr. McBrearty Junior in December 1999. In that memorandum it was recorded that Mr. McBrearty Junior had accepted that the content of the statement made to Detective Garda Carroll was correct, but disputed that he had made the statement on the 18th of October 1996. Mr. McBrearty Junior thought that it had been made in November 1996. In November 2004, Mr. McBrearty Junior alleged that the Carty investigation team had deliberately and falsely recorded that in a memorandum so as to wrongfully establish that it was in fact his signature which appeared on the statement of the 18th of October 1996. He did not pursue this allegation when he came to give evidence before the Tribunal.¹⁰²¹ It should also be noted that the Tribunal has already rejected the allegations made by Frank McBrearty Junior against Detective Garda Carroll in respect of the concoction of the statement of the 18th of October 1996 and the forgery of Mr. McBrearty Junior's signature thereon. This finding was made in the second report of the Tribunal.¹⁰²²

- 7.266. This concludes the summary of the various versions of events as given by Frank McBrearty Junior, that culminated in the version given by him in evidence before the Tribunal. It is appropriate now to look at the response given by the Gardaí to the allegations made by Mr. McBrearty Junior, followed by a summary of their version of events.

The Garda Response to the Allegations of Frank McBrearty Junior

- 7.267. The four Gardaí who were involved in interviewing Frank McBrearty Junior on the 4th of December 1996 vehemently denied that they had assaulted him or given him verbal abuse during the course of their interviews with him throughout that day. Detective Inspector O'Grady denied in the strongest terms that he had ever slapped Frank McBrearty Junior about the face or head. He stated that he simply would not do such a thing. Both he and Detective Sergeant McGrath denied poking, punching or kicking Frank McBrearty Junior at any time during their interviews with him. They stated that while he was a most difficult person to interview, he was reasonably co-operative in relation to many of the questions put to him.
- 7.268. Mr. Melody and Mr. Fitzpatrick also denied that they assaulted Mr. McBrearty Junior in the manner alleged, or at all, at any time during that day. As already noted, Mr. Fitzpatrick denied that he had pinned Mr. McBrearty Junior against the wall or a filing cabinet and also denied that he had been thrown over a table. He stated that had this happened, he would have suffered severe injury to his back, which had been previously injured as a result of an earlier accident. He stated that

¹⁰²¹ Transcript, Day 228, pages 162 and 171; Day 230, page 151; Day 231, page 190; Day 235, page 144.

¹⁰²² Tribunal Second Interim Report, page 287.

quite simply at no time did he assault Mr. McBrearty Junior, nor did Mr. McBrearty Junior assault him. He accepted that at certain points during the interview Mr. McBrearty Junior did stand up, at which time the interviewing Gardaí also stood up, but that after a short period, the interview resumed in a normal manner with the parties sitting around the table.

- 7.269. Mr. Melody and Mr. Fitzpatrick denied that they had shown any post-mortem photographs of Richard Barron to the prisoner at any time that day. Detective Sergeant Melody denied that he had caused Mr. McBrearty Junior to fall from a chair at any time during their interviews. He also denied the allegation that he had kicked Mr. McBrearty Junior on the shins.
- 7.270. Each of the four interviewing Gardaí denied that they had shown Mr. McBrearty Junior any statement, bogus or otherwise, from Mark McConnell. The Gardaí also denied that they had abused Mr. McBrearty Junior, or made any insulting reference to his father, during the course of the interviews. They also denied that they had made any comments about what would happen to him if he was sent to Mountjoy, or alleged that he had been unfaithful to his wife, or alleged that he did not care about his children. In short, each and every one of the allegations made by Frank McBrearty Junior against the interviewing Gardaí was denied by them.
- 7.271. As already noted, Mr. Martin Leonard also vehemently denied that any complaints had been made to him about ill treatment, other than the complaint that had been made on behalf of Mr. McBrearty Junior by his solicitor, which had been noted in the custody record. He denied that any other complaints had been made directly to him by Frank McBrearty Junior in the course of the day. He denied that he had deliberately ignored those complaints, or failed to note any such complaints in the custody records.
- 7.272. Mr. Leonard also stated that he was positioned on the ground floor of Letterkenny Garda Station on the 4th of December 1996. Accordingly, his information as to who had come and gone from the interview room at various stages during the day was based solely on what he was told by the Gardaí who had left the interview room after the change over. He was also able to rely on the periodic visits that he made to the interview room during the course of the day. He stated that he was quite satisfied that the account of the times of the interviews that took place after the evening meal break were correct in the form that they were stated in the custody record. He did not accept the sequence of events as given in evidence by Frank McBrearty Junior in this regard. He stated that the time of release was correctly stated in the custody record as being 21.18 hours. From the foregoing it can be seen that there was direct conflict between

the evidence given by Mr. McBrearty Junior of alleged mistreatment at the hands of the Gardaí during the day, and the evidence of the Gardaí who had interviewed him during the day, who denied that there was any such mistreatment.

The Garda Version of the Confession Interview

7.273. Before coming to the Garda account of the interview which commenced at 19.05 hours in which it is alleged that Frank McBrearty Junior made a statement admitting to his part in an assault on the Late Richard Barron on the night of the 13th/14th of October 1996, it is necessary to set out by way of background a scenario which was being put to Róisín McConnell during an interview that she had at Letterkenny Garda Station on the afternoon of the 4th of December 1996. She was under arrest at the time Inspector McGinley entered the interview room and put a scenario to her and asked her to comment as to whether this represented the truth of the situation. She responded that it was all lies. The significance of this encounter will be seen when one comes to consider the content of that scenario, which represented the Garda theory as to what had happened on the night in question and the later confession allegedly made by Frank McBrearty Junior. The scenario put to Róisín McConnell by Inspector McGinley was in the following terms:

Your husband Mark McConnell had a row with Richie Barron in the pub. There were no blows struck, but he insulted the McBreartys and he insulted your husband. He did not like it. He left the pub with you and you ordered your food after walking over and meeting the McCulloughs. You went into Frankies on your own. Mark met Frankie McBrearty and told him what happened. They decided to teach Richie Barron a lesson. They walked up through the car park and met Richie Barron staggering home as he always did. He got one wallop and that was it. As far as they were concerned Richie was down, he got a wallop as he often did before, it was no big deal. They were not to know that the man would die. They left him and went back down, walked down in fact and went into the Parting Glass.¹⁰²³

7.274. The careful reader will also be aware that during the second of the afternoon interviews, which took place from 17.01 hours to 18.10 hours and which was conducted by Detective Sergeant Melody and Detective Garda Fitzpatrick, at almost the same time as the scenario was being put to Róisín McConnell in her interview, a similar scenario was being put in the form of questions to Frank McBrearty Junior. In the course of that interview it was put to Frank McBrearty Junior that he had met with Mark McConnell, who had told him what had

¹⁰²³ Tribunal Documents (Róisín McConnell Book of Evidence), page 193: see also Chapter 3.

occurred earlier in Quinn's pub, and that the two of them had decided to do something about it, after Mr. Barron had been seen heading for his home in a drunken state. It was put to Mr. McBrearty that the Gardaí had written statements from a number of people who had seen him and Mark McConnell coming over the hill at the car park of the club just after Mr. Barron had been killed. Mr. McBrearty Junior was told that the Gardaí knew that his father had been intimidating witnesses and had offered a bribe to a witness not to give evidence against him. It was put to him that his father would always help him when he was in trouble and he was asked whether his father would also help Mark McConnell if he was in trouble. These are significant questions, because we will see that this issue was returned to and is included in the very final sentence that appears on page one of the alleged statement of admission.

7.275. Further on in that interview, the interviewing Gardaí put it to Frank McBrearty Junior that perhaps he and Mark McConnell only ever intended to give the Late Richard Barron a hiding, so as to teach him a lesson. He was told that the deceased had died from severe head injuries which had been caused by a blow from some sort of blunt instrument to the top of the head near the forehead. It was put to him a second time that Mark McConnell had had a row with the Late Richard Barron in Quinn's pub earlier in the night and that Mark McConnell had been embarrassed in front of his wife and friends. It was put to him that Mark McConnell was very angry about what had occurred in the pub and that when he told Frank McBrearty Junior about it, the two of them decided to do something about it when they saw the Late Richard Barron drunk and making his way home. It was put to Mr. McBrearty Junior that he had gone along with Mark McConnell to sort the Late Richard Barron out when he had been told about the row earlier in the evening. It was put to him strongly that the facts indicated that the Late Richard Barron died as a result of one or more blows to the head which had been inflicted by either him or Mark McConnell. It was at this point in the interview that the Gardaí alleged that they put it to him that he should think about making a statement concerning what happened that night, to which Mr. McBrearty Junior is alleged to have replied that he would think about it.¹⁰²⁴

7.276. The significance of the content of this interview lies in the fact that this was effectively the Garda scenario which was being put to Mr. McBrearty Junior. It is the Garda case that he, having been allowed to go to the cell to have his meal and rest period, thought about matters and ultimately came into the first of the evening interviews and decided to tell the Gardaí a false story, which mirrored the Garda theory that had been put to him strongly in the course of the afternoon interview. The Gardaí had no explanation as to why Mr. McBrearty Junior should adopt that particular course. They maintained that he was a difficult volatile

¹⁰²⁴ Tribunal Documents, pages 465-468.

individual, who was completely unpredictable in the things that he might do and say at any given point in the day. They simply could not explain why he would make a false confession. They maintained strongly that it was not brought about by any mistreatment or abuse on their part.

- 7.277. In the course of his evidence Mr. Melody stated that he knew nothing about the putting of any scenario by Inspector McGinley to Róisín McConnell on the afternoon of the 4th of December 1996. He said that he was not even aware that Inspector McGinley had gone into the interview room with Mrs. McConnell. He denied that there was any conspiracy between him and Inspector McGinley in relation to the putting of the scenario to any of the prisoners, or in relation to the creation of the statement of admission. He did accept, however, that there were certain similarities between the matters which had been put to Mr. McBrearty Junior prior to the break at 18.10 hours and the content of the statement which he allegedly made in the course of their interview which commenced at 19.05 hours.¹⁰²⁵
- 7.278. Detective Sergeant Melody and Detective Garda Fitzpatrick had carried out the last of the afternoon interviews from 17.01 hours to 18.10 hours. They stated that because they had only carried out approximately one hour of their interview and due to the fact that Frank McBrearty Junior had indicated at least a willingness to think about making a statement, it was decided that it would be appropriate for them to resume interviewing the prisoner after his meal break and rest period. It was for this reason that they took up the first of the evening interviews at 19.05 hours. It had been agreed between the interviewing Gardaí that Sergeants O’Grady and McGrath would come up to the corridor and wait outside the interviewing room so as to take over from approximately 20.00 hours onwards.
- 7.279. In the course of his evidence Mr. Melody gave the following account of how the statement came to be made during the first of the evening interviews:

At 7.01, when we went in, I cautioned him of his rights, I told him what we were investigating and I asked him would he tell us about what happened. He said he would, so I asked him then would he make a statement telling us the truth about what happened, and he agreed. I then wrote down the heading to his statement, including the wording of the caution. I read this over to him. I asked him to sign it. While this was going on he had gone off on a tangent, talking to my colleague, Detective Garda Fitzpatrick. He refused to sign the caution and went off talking about something else at that particular time again. There was a number of issues he

¹⁰²⁵ Transcript, Day 556, page 87.

was talking about all day, but I can't remember which one of them he went off on a tangent about at that particular time.

Yes, he said I'm not signing the caution. He refused. I didn't take any particular notice of it. Well it gave me a kind of a hint, what's the position here, is he going to sign this statement ... he went off on a tangent. I brought him back and I said well, are you going to make a statement or not. So then he was talking and I said it to him again and he then said listen, I'll tell you what happened. And I said, is that what happened on the 14/10 and he said 14/10 and that's how the first line of the statement comes into being.¹⁰²⁶

7.280. Mr. Melody stated that it was very difficult to obtain the statement from Frank McBrearty Junior. This was due to the fact that he would ramble off onto a number of different topics that were of concern to him. He said that he spoke about three issues in particular throughout that interview: problems with his relationship with his father, problems that he had with the local Gardaí, in particular Detective Gardaí Cafferkey and Keating, and difficulties that he had with some of the local people. Mr. Melody stated that he would constantly go off on a tangent talking about these issues which appeared to be of concern to him. He stated that Mr. McBrearty Junior was agitated but not aggressive during the interview and was quite talkative. He said that he was loud, but not shouting at the time. When Mr. McBrearty Junior would digress onto a tangent, he and Detective Garda Fitzpatrick would have to try and bring him back down to the narrative that he was giving in the statement. Mr. Melody stated that on each occasion he asked Frank McBrearty Junior whether he wanted to include whatever he was talking about at the particular time in his statement, and that on all occasions except one, he stated that he did not wish for the particular matter about which he was talking to be included in his statement. The one exception to this was when he made a comment about his father. Mr. Melody stated that Frank McBrearty Junior indicated that he did want to say something in his statement to the effect that his father had never intimidated any witness. He told Mr. McBrearty Junior that they would return to that topic at the end of the statement. He said that this accounts for the portion of the statement which appears on the second side of the page in the statement of admission.

7.281. Mr. Melody stated that he did ask one or two questions by way of clarification in the course of taking the statement. He stated that on one occasion he asked Frank McBrearty Junior who the "Mark" was to whom he was referring, to which Mr. McBrearty Junior stated that it was Mark McConnell, his first cousin. This is reflected in the body of the statement. Mr. Melody stated that the taking of the

¹⁰²⁶ Transcript, Day 555, pages 146-148.

statement was done in a stop/start fashion with long breaks in the course of the narrative when Frank McBrearty Junior would go off on a tangent. He said that when Mr. McBrearty Junior had finished talking about a particular topic, he would ask him whether he wished to have that included in the statement and, if not, he would then read over the last line of the narrative and Mr. McBrearty Junior would continue dictating to them what he wanted to say. Mr. Melody was adamant that the statement as written was dictated directly to him by Frank McBrearty Junior, albeit with long periods of interruption from one sentence to another while Mr. McBrearty Junior would digress onto other topics that he did not want included in the statement. This is how he described the taking of the statement:

It was done stop/start. The interruptions that occurred is not reflected, as such, in the statement. But clarifications are reflected, but the interruptions are not reflected. Because I would bring him back. Each time he said something he would be away talking about some other theme that he had and I would have to bring him back and read over the last line that he had said in order to bring him back to where he was when he was making the statement. It's not reflected in the statement, the pauses and the fact that he went off on tangents. I had asked him during the course of the making of the statement, if anything became relevant I asked him did he want to include that in his statement. And when he mentioned his father intimidating people I asked him did he want to include that in his statement. He said that his father never intimidated anybody and I said to him do you want to include that in your statement and he said I do. So I said finish what you are saying and I will remind you towards the end.

So when he came towards the end, "my father found out about what happened and he said he would look after it for us". I then reminded him that he wanted to say something about his father and the intimidation. So that's how he then started to talk about his father never intimidating anybody, anyone. When I wrote down that sentence I reached the point "he never offered", he stopped me at that particular point in time, on the original you will see a comma there, and he said "to my knowledge".

Yes. He insisted that that be put in. So what he had said to me originally was he never offered money to anyone to give evidence against me and when I went to write the sentence "he never offered" and he stopped me "to my knowledge" he put in,

*“money to anyone to give evidence against me” and when I read it back to him then he corrected the sentence to “to not give evidence against me”.*¹⁰²⁷

- 7.282. Mr. John Fitzpatrick in his evidence gave an identical account to that of Mr. Melody in relation to the taking of the statement from Frank McBrearty Junior. This is his account as to how the statement was taken from Mr. McBrearty Junior that evening:

We came into the room at 7.05 with the prisoner. Detective Sergeant Melody asked him ... first of all he told him why he was arrested, he gave the legal caution. Then he asked him are you going to make a statement and tell us the truth. And Frankie ... yeah, Frankie McBrearty said yes, he would. Sergeant Melody said that's grand. So he then took down the heading.

Now while he was doing that I was talking to Frankie. Frankie was going on about different matters, in particular his father. Then when that was done Sergeant Melody asked him then do you want to sign the caution and he said no, so he didn't sign the caution. So then he was going on and Sergeant Melody said listen, are you going to make a statement or not. Was he going to make a statement or not. So he broke into our conversation, that was the conversation I was having with Frankie McBrearty. So Frank says yes, and then Frankie says listen. So he stopped Sergeant Melody, he stopped Sergeant Melody there and he said listen. So then he started to make a statement.

Sergeant Melody asked him is this about 14/10/96 and he said yes. So then he started to make the statement. During the course of making that statement ... it took a long time. Initially that statement should only have taken about fifteen, twenty minutes maximum. But in order to keep him focussed I was talking to him. He was talking about different things. In particular he spoke about his father, he spoke about, you know, himself growing up as a person, that he didn't get the opportunity to grow as himself, that's what I can recall. He wasn't his own man as he was growing up and he was always subjected to his father.

Then Sergeant Melody would ask him do you want to say that, do you want to add that into your statement, at different times. He asked him did you want to mention this, or do you want to mention that. And he didn't.

¹⁰²⁷ Transcript, Day 555, pages 152-154.

Sergeant Melody would bring him back to the statement, bring him back to what he had said. He would then give another ... say something else in relation to the statement, he would go off again. It was very hard to keep that man ... like an ordinary person would come and they would make a statement, that's it. But that man, you had to bring him back to his statement, to what he said last. What else do you want to say, and then he would say something else and he might go off again. Then Sergeant would say what else is he going to say. That's the way the statement went. Then when it was finished ... prior to being finished, then again you had the subject of his father and so forth and he spoke about that his father was a lot like himself, strong-willed and that's where he got his strong will from. He loved his father and so on, and that his father may appear to be, you know, sort of an intimidating man or something, but he's not, it's just his sort of manner. All that was discussed and Sergeant Melody said well, do you want to say something about that. He said yes. So Sergeant Melody said, when you are finishing your statement, he says, you can say something if you want to. And that he did. It took from the time he went into the interview room until 8.25.

Although there was numerous gaps, it was ... like, it was unbelievable. He would start off talking about something and then he would go into something else, I would listen to him, I would agree with him, there was no way I was going to, you know, question him, whatever he would say was grand. He said family things. He spoke a lot about himself. That's the way it was.¹⁰²⁸

The Confession

- 7.283. At this point in the narrative it is appropriate to set out the confession, which is now known to be a false confession, which the Gardaí allege was made by Frank McBrearty Junior in the course of that interview:

Statement Of Frank McBrearty, born 22/5/69, 67 Elmwood Downs, Letterkenny, Co. Donegal made to detective Sergeant John Melody after been cautioned as follows "You are not obliged to say anything unless you wish to do so but anything you do say will be taken down in writing and may be given in evidence."

Listen I'll tell you what happened on 14/10/96. I heard that Richie Barron was up to his old tricks again, mouthing about the McBrearty's. Mark

¹⁰²⁸ Transcript, Day 558, pages 96-99.

McConnell, he's my first cousin, told me that he had a row with him in Quinn's Pub that evening. His wife Roisin was also there. Mark was very annoyed over the row and what Richie Barron said to him. When he came over to the club, that is Mark McConnell, he told me that he had seen Richie Barron heading towards home and that he was drunk. We decided that we would head him off at the top of the road. We went up the back way across the car park and got onto the main road. We waited for Richie Barron there. We intended having a word with him. We saw Richie coming. He was on his own. I picked up a bit of timber. When we stopped him he lashed out at us but he missed. I hit him a slap on the head and he fell back. We then ran. I dropped the timber I had on the way back. We got into the pub and it wasn't until later that I heard that Richie had been knocked down by a hit and run. Michele Scott told me. My father found out about what happened and he said he would look after it for us.

My father never intimidated anyone. He never offered, to my knowledge, money to any one to not give evidence against me. This statement has been read over to me and it is correct.

Frank McBrearty Junior

John Melody, Detective Sergeant. 8.25 P.M.

John Fitzpatrick D/Garda 4/12/1996¹⁰²⁹

- 7.284. It was put to Mr. Fitzpatrick that his account of Mr. McBrearty Junior rambling off on different topics during the course of making the statement did not seem to fit in with the very coherent and concise nature of the narrative contained in the statement itself. Mr. Fitzpatrick could only say that Mr. McBrearty Junior was a very unusual man. He stated that on each occasion that he rambled off onto one of the three themes that seemed to occupy his mind, he was asked whether he wanted to include that in the statement. And with the exception of the reference to his father not intimidating witnesses, on each occasion he elected not to include in his statement anything in relation to the themes that were of concern to him.¹⁰³⁰
- 7.285. It was put to Mr. Fitzpatrick that in this way Mr. McBrearty Junior, who was allegedly in the course of making a false confession, not only made a confession that was virtually identical to the Garda scenario which had been put to Róisín McConnell and had been put to him earlier in the afternoon, but also seemed to adopt a strict editing process, whereby none of the topics on which he was allegedly rambling off found their way into the statement. To this, Mr. Fitzpatrick

¹⁰²⁹ Tribunal Documents, pages 757-758, a copy of the original handwritten version of this statement appears at Appendix B1 to this Report.

¹⁰³⁰ Transcript, Day 558, page 116.

could only say that that was the type of man that Frank McBrearty Junior was, he was a most unusual man.

- 7.286. Neither Mr. Melody nor Mr. Fitzpatrick were able to point to any particular parts of the statement that they could identify as being the places where Frank McBrearty Junior went rambling off for long periods of time on topics of his own. They accepted that if the statement had been dictated to them as one continuous narrative it would only have taken approximately fifteen to twenty minutes to write down. They stated that due to the fact that Frank McBrearty Junior would go off on other topics, it in fact took the entire of the interview period from 19.05 hours until 20.25 hours to write down the entirety of the statement. The statement itself occupies one complete side of a ruled A4 sheet, having thirty three lines, together with four and a half lines written on the reverse side of the same sheet. Allowing for the fact that it would take approximately twenty minutes to write out the entirety of the statement, this would leave approximately sixty minutes of the interview period which, according to the Gardaí involved, was accounted for by Frank McBrearty Junior rambling off onto other topics which were of concern to him, but which he did not wish to have included in his statement.
- 7.287. Mr. Melody was the person who had written down the statement as dictated to him by the prisoner. He accounted for the fact that the narrative part of the statement was in a very concise and coherent form by virtue of the fact that on each occasion when Frank McBrearty Junior had finished talking about other aspects that concerned him, he would be brought back to the statement and the narrative would continue by reading over the very last portion that had been dictated by him. Mr. Melody stated that it was in this way that the narrative appeared both coherent and consistent, one sentence following on from the next without there being any apparent breaks in the giving of the narrative itself.
- 7.288. It should be noted that while the ending of the statement is timed at 20.25 hours, there is no timing given for the commencement of the statement. Mr. Melody stated that it simply was not his practice to time the commencement of statements which he was taking from persons being interviewed.¹⁰³¹ He accepted that it was his practice to time the commencement of interview notes, but he could never remember timing the commencement of a statement given by a prisoner. He said there was no reason why he would not time the beginning of the statement, it just was not something that he did. He accepted that in relation to the interview notes he had put in most precise times such as 12.04 hours and 17.01 hours in relation to the commencement of various interviews.
- 7.289. Mr. Melody accepted that the final sentence at the end of the first page was in

¹⁰³¹ Transcript, Day 557, page 28.

fact a false accusation made by Mr. McBrearty Junior against his father, when he said “my father found out about what happened and he said he would look after it for us”. Indeed, there was nothing to find out about or to look after. Mr. McBrearty Junior had nothing to do with the Late Mr. Barron’s death. In addition, he accepted that this assertion appeared to contradict the content of the following side of the page, which stated that his father never intimidated anyone and never offered money to his knowledge to anyone not to give evidence against him. While Mr. Melody accepted that there was a contradiction in this portion of the statement, nevertheless he was adamant that this was what was dictated by Frank McBrearty Junior and he simply had to take down whatever was said to him.

- 7.290. Mr. Melody stated that when Mr. McBrearty Junior came to the part of the narrative detailing how his father had allegedly said to him that he would look after the matter for him, he then reminded Mr. McBrearty Junior that he wished to say something about his father. He said that was how the further portion of the statement which is contained on the reverse side of the first page and contains an assertion that Mr. McBrearty Senior never intimidated anyone, came to be included in the statement. Mr. Melody stated that while he was taking down the portion which appears on the second side of the sheet, Mr. McBrearty Junior insisted on the inclusion of the words “to my knowledge” into that sentence. He also said that it was necessary to insert the word “not” so that the sentence would read that Frank McBrearty Senior had never offered money to people so that they would not give evidence against his son. He said that this was the reason why the spacings between the words in the line which includes the word “not” is smaller than in the other lines. This was due to the fact that the word “not” was inserted into that line. Mr. Melody was a careful and astute witness. He pointed out that Mr. McBrearty Junior had made the same mistake when giving an answer to the Chairman in the course of his evidence before the Tribunal on Day 505. In the course of that answer he said the identical sentence, but left out the word “not”:

Q. Chairman: Can you tell me what sort of thing you might have said?

A. It just said that my father didn’t bribe anybody. They were saying to me did your father bribe anybody. I says no, my father didn’t bribe anybody.

Q. Chairman: Right. Alright.

A. To give evidence against me.

Q. Chairman: You've read that or you have had it read to you?

*A. I have seen that for the last ten years.*¹⁰³²

- 7.291. The interviewing Gardaí stated that before Mr. McBrearty Junior had made the statement he was asked whether he would sign the caution. He refused. Detective Sergeant Melody did not note the refusal on the statement, but merely continued on to take the statement from Mr. McBrearty Junior. When the statement had been completed, the Gardaí state that the statement was read over to Mr. McBrearty Junior. It was at this stage that he put in the word “not”, which appears in the last portion of the statement. They say that the statement was then passed across the table to Mr. McBrearty Junior, at which time he signed his name to the end of the statement and said “that’s it”. He then handed the statement back across the table to the Gardaí. Detective Sergeant Melody signed his name first and this was immediately followed by Detective Garda Fitzpatrick. Mr. Fitzpatrick thought that even though the statement had been read over to Frank McBrearty Junior, he probably browsed through the statement again when it had been handed across the table to him for his signature.¹⁰³³
- 7.292. Another curious feature of the Garda account is that according to them not only did Frank McBrearty Junior make a false confession, but while doing so he also engaged in a piece of acting. Mr. Fitzpatrick described how, when Mr. McBrearty Junior came to the critical part of the narrative, describing how he had struck the Late Mr. Barron and how he had fallen backwards, Mr. McBrearty Junior became much quieter and bowed his head.¹⁰³⁴ So, according to the Garda version, not only did Frank McBrearty Junior decide to make a false confession, which coincidentally, happened to be on all fours with the Garda theory as to what had happened, but he even went further and entered into the spirit of the occasion by acting suitably contrite when describing the assault on the Late Mr. Barron.
- 7.293. Mr. Melody and Mr. Fitzpatrick claimed that when they had gone into the interview room at the beginning of the interview, they asked Mr. McBrearty Junior whether he had thought about the matter and whether he was now willing to make a statement. He replied to the effect that he would make a statement. This exchange between the Gardaí and Mr. McBrearty Junior was not recorded in any written memorandum or notes of interview. Mr. Melody stated that this was not done due to the fact that Mr. McBrearty Junior had indicated straight away that he was going to make a statement. Accordingly, he was of the view that they would then proceed to take the statement which is what he says actually took place. He said that if Mr. McBrearty Junior had indicated an unwillingness to make any statement, then they would have commenced the

¹⁰³² Transcript, Day 505, page 101.

¹⁰³³ Transcript, Day 558, page 131.

¹⁰³⁴ Transcript, Day 558, page 124.

usual notes of interview and proceeded by way of a question and answer session. They accepted that had the initial comments of Frank McBrearty Junior been recorded in writing, to the effect that he was willing to make a statement, such notes would have been of benefit in establishing that a statement had in fact been made by Frank McBrearty Junior during that interview. He could only say that no such notes were taken due to the fact that Mr. McBrearty Junior had immediately indicated that he was willing to make a statement.

- 7.294. The detail in the statement was somewhat sparse. There was no exact description of the route which had been taken up to the area where the assailants allegedly met the Late Mr. Barron, nor the exact route taken to get back to the nightclub premises. There was no description of the piece of timber, nor an exact location for where it had been discarded. Mr. Fitzpatrick stated that it did not occur to him to ask Mr. Frank McBrearty Junior to mark on an aerial photograph or on a sketch map the route that he had taken to and from the scene and to point out the exact location where he had discarded the piece of timber on his way back to the nightclub premises. He said that these things did not occur to him at all.¹⁰³⁵ Mr. Melody stated that he did not think of putting the sketch map or aerial photograph to Mr. McBrearty Junior at the conclusion of the statement. He said that that was something which could be considered afterwards. He said that once they had finished taking the statement, his function was to bring it to senior management who were running the investigation so that they could decide how best to progress the matter from there.¹⁰³⁶ If an aerial photograph or sketch had been marked by Frank McBrearty Junior, showing either the route that he had taken to or from the locus of the assault, or the point where he allegedly discarded the piece of timber, and if such photograph or map had been signed by Mr. McBrearty Junior, this would have provided strong corroboration that the statement of admission had in fact been made by him. However, neither of these documents were produced to Mr. McBrearty Junior at that time. The only document which exists which purports to corroborate the making of the confession is the short statement taken by Sergeants McGrath and O'Grady in the next interview, which will be looked at presently.

A Visit from the Member in charge

- 7.295. As already noted, Garda Martin Leonard was the member in charge on duty in Letterkenny Garda Station on the 4th of December 1996. There are two areas of controversy between him and the interviewing Gardaí, Detective Sergeant Melody and Detective Garda Fitzpatrick. The first area of conflict arises in relation to a visit which he made to the interview room at 20.00 hours. In the custody record he noted that at that time he had checked the prisoner and the prisoner

¹⁰³⁵ Transcript, Day 558, page 137.

¹⁰³⁶ Transcript, Day 557, pages 18-19.

was “okay”. Subsequently, when a controversy arose as to whether any confession had been made by Frank McBrearty Junior during that period of interview, Garda Leonard was asked to make a statement, which he did on the 27th of July 2000. In that statement he dealt with the visit that he made at 20.00 hours as follows:

I have now been asked to elaborate in relation to a visit I made to the interview room where Frank McBrearty (Jnr.) was being interviewed. This entry I have recorded at 8 p.m. on the 4th of December 1996. I now wish to state that Frank McBrearty (Jnr) was being interviewed in Room No. 225 on the first floor of Letterkenny Station. D/Sergt. Melody and D/Garda Fitzpatrick were present in the interview room at this time. My recollection of where they were seated is that the prisoner, Frank McBrearty (Jnr) was between both members. All three were seated. I have no recollection of the members doing anything. I have no recollection of seeing documents, statements or files. I have no recollection of seeing any member writing. I did not notice anything unusual. My concern as member in charge was solely for the welfare of the prisoner. The prisoner Frank McBrearty (Jnr,) made no complaint to me on his release from custody. He signed the Custody Record to that effect.¹⁰³⁷

- 7.296. In his evidence before the Tribunal, Mr. Leonard stated that at this remove he could not recall the seating arrangements. However, if he had described the seating arrangements in a particular way in his statement in 2000, he presumed that that was the way the persons were seated at the time that he carried out his visit. He did say that he had a recollection that there was nothing happening in the interview room when he made that visit at 20.00 hours. He stated that Detective Sergeant Melody and Detective Garda Fitzpatrick were certainly present in the room, because if they had not been present and if somebody else had been in the room, as alleged by Frank McBrearty Junior, he would have asked for an explanation as to when the changeover in personnel had occurred. He was certainly satisfied that they were in the room carrying out their interview at the time when he made that visit. However, he was adamant that he had no recollection of anything particular happening at the time he put his head around the door.¹⁰³⁸
- 7.297. Under cross-examination by counsel on behalf of Mr. Melody, Mr. Leonard stated that when doing a check of an interview room he would simply knock on the door and then a moment later put his head into the room to check if the prisoner was alright; and having ascertained from the prisoner that he had no complaints, he would then leave the room. He agreed that this would be a visit of extremely

¹⁰³⁷ Tribunal Documents, page 44.

¹⁰³⁸ Transcript, Day 540, page 100.

short duration. He also agreed that in all probability, if the Gardaí were carrying out an interview or taking a statement at that time, they would stop for the few moments that the member in charge was carrying out his check. He accepted that there was nothing untoward happening in the interview room at the time when he carried out this visit, because if there had been he would have taken steps to deal with the matter and would also have recorded it in the custody record. Later in the course of that cross-examination Mr. Leonard accepted that he had also carried out a check of the interview room at 20.58 hours at which the prisoner was noted to be “okay with no complaints”. He stated that he could not be certain as to which check or visit he was referring when he had stated in his statement of July 2000 that there was “nothing happening” when he had checked on the prisoner that evening.¹⁰³⁹

Conclusion of the Interview

- 7.298. Mr. Melody stated that when the statement of admission had been obtained from Frank McBrearty Junior and after the statement had been signed by him, that effectively brought the interview to an end. There was no further discussion between the Gardaí and the prisoner. Mr. Melody stated that he immediately got up and went out of the interview room into the corridor. There he met Sergeants McGrath and O’Grady. He stated that he informed them that he had just obtained a statement from Frank McBrearty Junior. He read the statement to them. Sergeants McGrath and O’Grady corroborated this version, stating that they had been outside the interview room since approximately 20.00 hours. They confirmed that the statement was read over to them immediately upon Detective Sergeant Melody opening the door and leaving the interview room. They stated that Detective Garda Fitzpatrick remained standing in the doorway of the interview room keeping an eye on Mr. McBrearty Junior. According to Detective Inspector O’Grady, it was agreed that he and Sergeant McGrath would go into the interview room and see if they could progress the matter any further with Mr. McBrearty Junior. It was agreed that Detective Sergeant Melody would arrange for a copy of the statement to be brought up to them in the interview room. In the events which transpired, this never happened. Detective Sergeant Melody stated that he merely overlooked sending up a copy to the two interviewing officers who had gone into the room with Frank McBrearty Junior. We will return to an account of this last period of interview presently.
- 7.299. Mr. Melody stated that having spoken to Sergeants McGrath and O’Grady, he then proceeded down to the ground floor level, where he spoke to the member in charge, Garda Martin Leonard. He informed him that there had been a change in the interviewing personnel. He stated that he also informed Garda Leonard

¹⁰³⁹ Transcript, Day 542, page 56.

that a statement had been obtained from Frank McBrearty Junior. He asked Garda Leonard if he knew where any of the senior officers were located within the station, so that he might bring the statement to them. He said that Garda Leonard did not know where the officers were at that time. He just said that they were somewhere around the station.¹⁰⁴⁰ Mr. Leonard strongly denied that any such approach had been made to him by Detective Sergeant Melody. He denied that he had been told that any statement had been obtained from Frank McBrearty Junior. He stated that as far as he could recollect he was told that there was a change in the interviewing personnel by his assistant, Garda William Cannon. He said that the account given by Detective Sergeant Melody of their alleged conversation at that time was “utter nonsense”. He did not know of any such statement when he made his subsequent check on the interview room at 20.58 hours. He said that he only learnt of the statement due to “murmurings” which were going about the station to that effect after the prisoner had been released.¹⁰⁴¹ In cross-examination it was put to Mr. Leonard that this was merely a fleeting enquiry and was not one which he would necessarily recall many years later. Mr. Leonard was adamant that he was not informed that a statement had been obtained. He stated that the officers in question had been around the station all day and were probably closer to the interviewing Gardaí on the first floor than they were down on the ground floor.¹⁰⁴²

7.300. Superintendent John Fitzgerald was the District Officer in Letterkenny that day. He said that shortly before the time that Frank McBrearty Junior was due for release, he received word that there was a call for him on the internal phone. He took the call in the communications room. It was from Detective Sergeant John Melody, who informed him that he had obtained a statement of admission from Frank McBrearty Junior. Mr. Fitzgerald stated that he was surprised and felt that Frank McBrearty Junior must have exploded and blurted out what had happened in the form of a statement. He said that Detective Sergeant Melody told him where he was at the time, which was just down the corridor, across from the interview room in the Detective Superintendent’s office. Superintendent Fitzgerald went there directly. He was met at the same time by Detective Superintendent Shelly and Inspector McGinley, who also arrived in the Detective Superintendent’s office. Detective Sergeant Melody presented the statement to them. They read the statement to themselves.¹⁰⁴³

7.301. Mr. Fitzgerald stated that he was happy with the content of the statement. He did not have any suspicions or doubts in relation to it. He said that he felt that the Garda theory in the matter must have been correct due to the fact that it was incorporated into the statement made by Frank McBrearty Junior. He said that

¹⁰⁴⁰ Transcript, Day 556, page 88.

¹⁰⁴¹ Transcript, Day 540, pages 78-85.

¹⁰⁴² Transcript, Day 542, pages 42-46, 51-52.

¹⁰⁴³ Transcript, Day 561, pages 8-10.

having discussed the matter among the senior officers, he decided that he would direct the release of Frank McBrearty Junior without charge. He felt that the investigation still had a long way to go and that a file would be prepared and forwarded to the Director of Public Prosecutions in due course. He did make a number of attempts to contact officials working in the office of the Director of Public Prosecutions that evening. He phoned three different landline numbers. However, he said that he was unable to make contact with any of the officials. He said that he did this merely out of good etiquette, to keep the Director informed of developments in the case. He denied that he was going to ask the Director for the authority to prefer a charge at that stage.

7.302. Mr. Fitzgerald stated that he took possession of the original of the statement of admission when it was handed to him by Detective Sergeant Melody in the Detective Superintendent's office. Some short time later, he received the second statement which had been made by Frank McBrearty Junior to Sergeants McGrath and O'Grady. He said that he made two copies of each of these statements. He gave one set of copies to the incident room staff. He thought that it was to Sergeant Moylan that he gave this set of copies. He retained one copy of the originals for his own file. He said that at a conference that commenced at approximately 22.00 hours he read out each of the statements which had been made that evening by Frank McBrearty Junior. After the conference, he placed the originals of each of the statements into envelopes which he sealed and placed in his safe in his office in Letterkenny Garda Station.¹⁰⁴⁴

7.303. It appears that the original of the statements remained in the Superintendent's safe at Letterkenny Garda Station until the 5th of February 1997. On that date there was a ceremony taking place in Letterkenny Garda Station to mark the opening of the museum in the building. There were a number of high ranking officers and dignitaries invited to that ceremony. Superintendent Kevin Lennon had also come up to Letterkenny Garda Station from Templemore, where he had been attending a course. He was due to take over as the District Officer in Letterkenny on the departure of Superintendent Fitzgerald for Manorhamilton. There was a controversy between these two officers as to whether Superintendent Fitzgerald offered to hand over custody of the originals of the two statements to Superintendent Lennon that day. The Tribunal does not feel that it is necessary to determine which version of events is correct in relation to this particular aspect. This is due to the fact that it is common case that Superintendent Fitzgerald brought the originals of the two statements with him to Manorhamilton Garda Station. He secured them in the safe at that station and only handed them over against receipt to Chief Superintendent Austin McNally on the 4th of April 1999. Mr. Fitzgerald denied that he had taken this step

¹⁰⁴⁴ Transcript, Day 561, pages 40-44.

because he had any concerns about the confession signed by Frank McBrearty Junior, or what might be done to it if he left it behind it in Letterkenny Garda Station. He stated that he retained the originals merely because Superintendent Lennon had refused to take them and he did not wish to leave them behind him as they were important exhibits which were part of a serious criminal investigation file. In these circumstances he felt that the best thing to do was to take them with him so that the chain of continuity of possession could be maintained.

- 7.304. As and from the 4th of April 1999 the original of the statement of admission came into the custody of the Carty investigation team. It was subsequently handed over to the Tribunal and has remained in the Tribunal's safekeeping to the present time.

The Final Interview

- 7.305. Mr. McBrearty Junior was interviewed by Sergeants O'Grady and McGrath from 20.30 hours until his release at 21.16 hours. Detective Inspector O'Grady described his state of mind on going into this last period of interview. He said that there had been a significant development in that Frank McBrearty Junior had made a statement. However, he recognised that there was still a lot of detail that had not been contained in that statement. His hope was twofold. Firstly, that they would be able to corroborate the making of the statement of admission, and secondly that they would be able to develop points that had been raised in the first statement. His hope was that Mr. McBrearty Junior would go further than merely repeating the earlier confession; that he would develop some of the points that he had raised and give the police more information. He said that his primary aim was to develop the matters that had been dealt with in the first statement and as a secondary, but lesser goal, merely to corroborate the making of the statement of admission.¹⁰⁴⁵
- 7.306. Both of the interviewing Gardaí stated that Frank McBrearty Junior was sitting at the table when they entered the interview room. He immediately exploded, telling the Gardaí that they could "f-off" and that he had already made a statement to the other two and that he was fed up talking about the Late Richard Barron. He was not going to talk about Mr. Barron any more. He appeared to be very determined that he had said all he was going to say on the matter. He directed quite an amount of abuse at the Gardaí. They said that they made an attempt then to distract him by talking about other topics. They talked about his relationship with his father. Unfortunately that did not work and they said that this started off a new volley of abuse. At that stage, Sergeant O'Grady tried to engage him in conversation about boxing. He recounted how there was an

¹⁰⁴⁵ Transcript, Day 554, pages 81-82.

exchange whereby Frank McBrearty Junior seemed to relax and joked to the effect that Sergeant O’Grady could not have been a very good boxer due to the fact that he appeared to have a broken nose. Detective Inspector O’Grady said that he retorted that in fact he had never engaged in the sport of boxing. However, he said that this exchange lightened the mood between them and they were able to strike up some sort of rapport. He described how gradually they tried to get back to talking about the death of Mr. Barron. However, Frank McBrearty Junior was adamant that he was not going to speak about it any more. They asked him why he would not talk about the matter. He remained adamant that he was not going to discuss it further.¹⁰⁴⁶

- 7.307. Detective Inspector O’Grady said that while Frank McBrearty Junior stated that he had made a statement about the death of the Late Richard Barron and that he was not saying any more, that assertion by him was not noted by Sergeant McGrath, who was taking the notes. Detective Inspector O’Grady said that he could not answer for why Sergeant McGrath had not noted what Frank McBrearty Junior had said. All he could say was that they were making an effort to engage the man in the subject that was under investigation in an effort to develop what he had said in his previous statement. He gave the following description of the atmosphere during that interview:

I know what you are asking me, I am just saying that, I am trying to explain why I understand why he did not do it, but the focus I suppose would have been, or was to try and engage the man in the subject that is under investigation and to develop it from there. Now, it was a pretty instantaneous response, riposte from Mr. McBrearty. I suppose in the mood, in the atmosphere of it ... and it was followed, it wasn't just that line bye bye, it was, we are a shower of, and there was abuse hurled at us as well.

So our effort turned to trying to get the man to engage with us on the subjects. And it was very difficult and I have to say, Chairman, we worked very hard to try to get Mr. McBrearty to come back and talk to us about Richie Barron. But he was determined, he was absolutely determined that that was that. To again maybe try to use an analogy to help the Tribunal: last week Mr. Cush asked him a question about Edward Moss and Mr. McBrearty refused to answer any question about Edward Moss. I think something like eighteen times in a row, when he refused to answer a question on Edward Moss. Now, I am just trying to give the analogy of ... the man was so determined, and we can't break his will, we can't oppressively question him. I accept what you have said, but what I

¹⁰⁴⁶ Transcript, Day 554, pages 85-88.

am saying in the context of it was that this guy had shown this determination, we worked very very very hard to bring him back around to the subject. Time was not on our side. Perhaps if we had an hour and a half, perhaps if we had some longer time, things might have taken a different tack. Equally, we had another tack open to us which was a question and answer session, but it hadn't worked well earlier that day, I mean I think I said to you certainly when you put questions of a certain nature to Frank McBrearty, he just explodes back. So the hope was, let the man talk. Get him talking about the subject, get him back onto it and get him to tell us his story.¹⁰⁴⁷

- 7.308. Detective Sergeant McGrath stated that they had gone into the interview with a view to trying to develop the earlier statement made by Mr. McBrearty Junior. However, Mr. McBrearty Junior refused to engage with them. Detective Sergeant McGrath refused to talk about the Richard Barron investigation any more. He said that they were stonewalled and could not make any progress. They tried to get him to talk about other matters in the hope that they could then bring him back to the subject under investigation. He said that his colleague, Sergeant O'Grady, asked Mr. McBrearty Junior why he would not talk to them and what was wrong. They told him that they knew he had made a statement and asked him why he would not tell them the full truth in relation to the incident. Detective Sergeant McGrath was asked how they got from that position to a situation where Mr. McBrearty Junior was prepared to make a short statement to them. Detective Sergeant McGrath described how the second statement came about:

What happened was that we had this abuse from him that he wasn't talking any more about Richie Barron, I don't want to talk about it. We went from that stage, why won't you talk to us Frankie, why won't you engage with us, tell us what happened on the night, tell us the truth, tell us the full truth. Simply would not engage with us. So Eamon, this went on for a period of time, Eamon then interjected and asked, started talking about his father, you know, how are things going to be for him now and Eamon tried to engage him along those lines, he spoke about his father. He then started talking to him about boxing and the boxing came up and during the course of that there was an extensive conversation about the boxing in the sense that he thought Eamon was the worst boxer in Ireland, that he must have been on the canvas all the time, that he was the worst looking boxer he had ever come across in his life and he continued along those lines and

¹⁰⁴⁷ Transcript, Day 554, pages 91-92.

*he also spoke about the broken nose, the boxer's nose. That seemed to relax the tone of the conversation that we were having with him and I realised at that stage that the clock was coming to an end and I formally asked him then was he willing to make a statement and that's what occurred. I took the statement as he had dictated it to me. I read it over to him. He actually took the document in his hand. I didn't get a chance to put in "this statement has been read over to me and it is correct". I gave him, I actually gave him the statement to read it himself, because he wanted to read it himself and then he signed it.*¹⁰⁴⁸

The Second Statement

7.309. Frank McBrearty Junior's second statement reads as follows:

STATEMENT FROM FRANK McBREARTY, D.O.B. 22.05.69. 67, ELMWOOD DOWNS, LETTERKENNY, CO DONEGAL MADE AT DONEGAL GARDA STATION ON THE 04.12.96 MADE TO SERGEANT EAMON O'GRADY AND I WHO WAS CAUTIONED AS FOLLOWS "YOU ARE NOT OBLIGED TO SAY ANYTHING UNLESS YOU WISH TO DO SO BUT ANYTHING YOU DO SAY WILL BE TAKEN DOWN IN WRITNING AND MAY BE GIVEN IN EVIDENCE" FMcB

I have already made a statement to the other two Gardaí. I have co-operated with them. I have told them the truth about what happened.

Frank McBrearty Junior

Gerard McGrath, Sergeant

Eamon O'Grady, Sergeant¹⁰⁴⁹

7.310. Both Gardaí stated that when Mr. McBrearty Junior stated in the statement which he had made to them that he had co-operated with the other two Gardaí, it was understood by all concerned that he meant that he had co-operated with the previous set of interviewers, being Detective Sergeant Melody and Detective Garda Fitzpatrick. The Gardaí stated that Frank McBrearty Junior placed his initials after the caution and signed the bottom of the statement. They then appended their signatures to the foot of the statement beneath his signature. They said that this statement was taken between 20.55 hours and the conclusion of the interview at 21.16 hours. They stated that all they could get him to commit to was the two lines in the statement itself. They said that effectively Frank McBrearty Junior would not talk any more about the Barron investigation.

¹⁰⁴⁸ Transcript, Day 551, pages 116-117.

¹⁰⁴⁹ Tribunal Documents, page 470: see Appendix B2 which is a copy of the original handwritten statement.

Detective Sergeant McGrath stated that the reference in the caution part of the statement to the fact that it was taken at “Donegal Garda Station” was merely a mistake on his part. He stated that at the conclusion of the interview, the original of the statement which he had taken from Frank McBrearty Junior was handed by him to Superintendent John Fitzgerald.¹⁰⁵⁰

- 7.311. Mr. Martin Leonard stated that at 20.58 hours he had checked on the prisoner in the interview room while he was being interviewed by Sergeants McGrath and O’Grady. He noted that the prisoner was “okay with no complaints”. At the conclusion of the interview at 21.16 hours, Mr. McBrearty Junior was released. He was escorted from the interview room by Sergeant O’Grady to the area where he was processed by the member in charge. While there was an encounter on the corridor between Frank McBrearty Junior and Superintendent Fitzgerald, it was denied by the Superintendent that he requested to speak to Frank McBrearty Junior. He stated in evidence that he merely received a volley of abuse and could recall being called a “bastard” by Mr. McBrearty Junior who then proceeded on down the corridor. He denied that Mr. McBrearty Junior got down on his hands and knees while saying these words to him. Detective Inspector O’Grady had the same recollection of that incident.
- 7.312. Mr. McBrearty Junior was then processed by the member in charge and his property was returned to him. He was recorded in the custody record as finishing his period of detention at 21.18 hours. He accepts that he signed the custody record on his release.

Garda Profile of Frank McBrearty Junior

- 7.313. Evidence was heard in Private Session in relation to a profile which had been drawn up of Frank McBrearty Junior by Detective Garda Mick O’Malley. The sole reason for hearing evidence in relation to this document in Private Session of the Tribunal was a desire on the part of the Tribunal to spare Mr. Frank McBrearty Junior the upset of having personal details which were contained in that document aired in public. As the evidence in relation to the document was heard in Private Session, it is not possible to set out the detail of the evidence given on this topic. However, the crucial point is that while the document was drawn up by Detective Garda Michael O’Malley, it was denied by all of the Dublin based Gardaí that they had been shown any such profile of Mr. Frank McBrearty Junior in advance of their interviews with him.
- 7.314. The Gardaí maintained that they had been given background information in relation to Frank McBrearty Junior at the briefings which had occurred in advance of his arrest. However, they denied ever having sight of the document which had been drawn up by Detective Garda O’Malley.

¹⁰⁵⁰ Transcript, Day 551, page 100.

- 7.315. Mr. McBrearty Junior alleged that during his interviews he was subjected to prolonged periods of verbal abuse by the interviewing Gardaí. They have denied that any such abuse occurred. It is noted that in the profile document there were a number of matters referred to which were of an intensely personal nature. It is possible that this information could have formed the basis of verbal abuse if such was directed at Mr. McBrearty Junior. However, leaving aside the abuse allegation, the Tribunal notes that there was other material in the profile document that could have formed the basis of legitimate questioning of Mr. McBrearty Junior. This other material does not appear to have been put to him in the course of the interviews conducted by the Gardaí with Mr. McBrearty Junior on the 4th of December 1996. **In these circumstances the Tribunal is not prepared to make a finding that the four Gardaí who interviewed Mr. McBrearty Junior did in fact have access to the profile document in advance of their interviews with him.**

Subsequent Accounts Given by the Gardaí

Statements of Detective Sergeant Melody and Detective Garda Fitzpatrick

- 7.316. Detective Sergeant John Melody made a number of statements concerning the alleged statement of admission which he had taken from Frank McBrearty Junior. In a Statement of Evidence dated the 5th of December 1996, he stated that having cautioned Mr. McBrearty Junior, he asked him to tell them the truth about what happened to the Late Richard Barron on the 14th of October 1996. He stated that Mr. McBrearty Junior said that he would tell them the truth about what happened that night. Detective Sergeant Melody then asked Mr. McBrearty Junior if he would make a cautioned statement in writing about what happened. Mr. McBrearty Junior said that he would make such a statement. Detective Sergeant Melody then stated, “he dictated a statement to me which I wrote down in writing, when I finished the statement I read it over to him. I asked him if this statement was correct. He agreed that it was correct. I then asked him to sign this statement and he complied”.¹⁰⁵¹
- 7.317. Detective Sergeant Melody also made a statement as part of the defence to the civil action which was brought by Frank McBrearty Junior. He again stated that Frank McBrearty Junior dictated this statement to him which he took down in writing. He said that when it was finished he read the statement over to him and asked if it was correct and Mr. McBrearty Junior agreed that it was correct. He stated that Mr. McBrearty Junior then signed the statement and he and Detective Garda Fitzpatrick also signed it. In the statement he stated that Frank McBrearty Junior was calm during the interview, but got emotional when he related what

¹⁰⁵¹ Tribunal Documents, pages 150-152.

had happened between the Late Richard Barron and himself on the 14th of October 1996. He maintained that the statement was made in a free and voluntary manner and was obtained in accordance with the provisions of the Judges' Rules.¹⁰⁵²

- 7.318. On the 20th of April 2000 Detective Sergeant Melody made a statement to Detective Superintendent McGarty at Santry Garda Station. He again stated that Frank McBrearty Junior "dictated this statement" to him which he took down in writing. He again stated that Frank McBrearty Junior became emotional during the making of this statement when relating what had happened between himself and the Late Richard Barron on the night in question. He denied that Mr. McBrearty Junior had been assaulted, ill-treated, threatened, intimidated, or subjected to any physical or mental harm while being interviewed.¹⁰⁵³
- 7.319. On the 16th of July 2000 Detective Sergeant Melody made a further statement to Detective Superintendent McGarty. He said that after indicating that he would make a statement, Frank McBrearty Junior refused to sign the caution at the top of the statement. He then dictated his statement to Detective Sergeant Melody. He said that prior to finishing the statement Frank McBrearty Junior said that his father never offered to his knowledge money to anyone to not give evidence against him. In writing down this sentence Detective Sergeant Melody said that he read it over to Frank McBrearty Junior and that Mr. McBrearty Junior corrected the sentence by putting in the word "not" and that that is why the word appears to be put out of line in the handwritten statement. Detective Sergeant Melody stated that the statement was then handed over to Mr. McBrearty Junior, who acknowledged that it was correct and signed it. He said that when he was asked to initial the front page of the statement, he refused to initial or sign that part of the document. Detective Sergeant Melody stated that he passed the statement across the table for Frank McBrearty Junior to sign. This may account for the dirt that was found on one side of the page under forensic examination.¹⁰⁵⁴ Detective Sergeant Melody made a further statement to Detective Superintendent McGarty on the 27th of July 2000. In that statement he again reiterated that the statement had been made by Frank McBrearty Junior in the manner already outlined in his previous statements. He said that the written statement was the only written document created during the course of that interview. He said that the taking of the statement from Frank McBrearty Junior took some time due to the fact that he would lose concentration and become erratic. He also became emotional when he related what had happened between himself and the Late Richard Barron. He went on in the course of that statement to recount how he had told Sergeants McGrath and O'Grady about the statement immediately after

¹⁰⁵² Tribunal Documents, pages 154 -166.

¹⁰⁵³ Tribunal Documents, pages 167-175.

¹⁰⁵⁴ Tribunal Documents, pages 176-178, see also page 662, paragraph 1086.

the interview. He also outlined how he had then given the original of the statement to Superintendent John Fitzgerald.¹⁰⁵⁵

- 7.320. Detective Sergeant John Melody was interviewed by the Tribunal investigators on the 27th of January 2005. In the course of that interview, he outlined how it had taken the entire of the interview period to obtain the statement from Frank McBrearty Junior, due to the fact that he would spend much of the time going off on tangents completely unrelated to the narrative of the statement. He described how, on these occasions, it would be necessary to allow Frank McBrearty Junior to say what was on his mind and then to ask him whether he wanted it incorporated into the statement. When he said he did not wish it to be part of the statement, they then tried to continue with the narrative by re-reading the previous sentence and continuing on. He said that it was for this reason that the entire of the eighty minutes had been taken up in obtaining this relatively short statement.¹⁰⁵⁶ In the course of his evidence, Mr. Melody was asked why he had never given this account of Frank McBrearty Junior rambling off on tangents for long periods while he was engaged in giving the statement. He stated that he was never asked to explain why it had taken so long to obtain the statement from Mr. McBrearty Junior. He said the subject did not seem to come up in any of his interviews or statements made to Detective Superintendent McGarty. Nor did it occur to him as something that he would put into the statement made by him for the purpose of the civil proceedings. He said that he had never been involved in a civil action where anyone needed to come to ask him to address an issue prior to this in all of his career. Therefore, he said that he was not aware of what amount of detail was being looked for in the statement. He said that all he thought he was required to give was a statement as to how the statement came to be made and some of the surrounding circumstances: that is, that Frank McBrearty Junior was interviewed and that he was calm making the statement. This was his explanation for not referring to the “rambling off” aspect of the interview prior to speaking to the Tribunal investigators in January 2005.¹⁰⁵⁷ It is only proper to point out that the earlier statements and Mr. Melody’s interview with the Tribunal investigators also covered a number of other issues which arose in the course of the detention period. In particular, he vehemently denied the allegations that were made by Frank McBrearty Junior. These have not been summarised here, as the purpose of this summary is merely to look at what was said by the various Gardaí about the obtaining of the confession at various points down to the time that they gave evidence before the Tribunal.
- 7.321. Detective Garda John Fitzpatrick gave a number of statements on the matter. These were almost identical to the statements which had been made by his colleague Detective Sergeant Melody. In an undated statement of evidence, he

¹⁰⁵⁵ Tribunal Documents, pages 179-181.

¹⁰⁵⁶ Tribunal Documents, pages 514-581.

¹⁰⁵⁷ Transcript, Day 556, pages 34-35.

stated that when they went into the interview with Mr. McBrearty Junior at 19.05 hours, Detective Sergeant Melody asked Mr. McBrearty Junior would he make a cautioned statement about the whole affair, and Mr. McBrearty Junior agreed to do so. Detective Garda Fitzpatrick then continued “Detective Sergeant Melody then took down in writing the statement of Frank McBrearty Junior as dictated by him, on completion he read over same to him, he asked him if it was correct, he agreed it was, time 8.25 p.m., he signed same and both D/Sergeant Melody and I witnessed his signature”.¹⁰⁵⁸

7.322. Detective Garda Fitzpatrick also made a statement for the purpose of the defence of the civil action being brought by Frank McBrearty Junior. In the course of that statement he again stated that Detective Sergeant Melody took down in writing the statement of Frank McBrearty Junior as dictated by him. He said that on completion of the statement, Detective Sergeant Melody read it over to Mr. McBrearty Junior, and asked him if it was correct. Mr. McBrearty Junior agreed that it was and he then signed the statement. In that statement he also said that the prisoner was calm and got emotional when he related what happened. He did not elaborate on this aspect.¹⁰⁵⁹

7.323. Detective Garda Fitzpatrick also made a number of statements to Detective Superintendent McGarty. In a statement made on the 20th of April 2000 he gave a detailed account of the interviews that they had with Mr. McBrearty Junior. In relation to the taking of the statement he said that Detective Sergeant Melody wrote the statement of Frank McBrearty Junior as dictated by him. At a later stage in the statement he identified the contents of that statement. He stated that while making the statement Frank McBrearty Junior got emotional while he was relating what actually happened on the night of the 13th/14th of October 1996. Again, he did not elaborate on how this emotion manifested itself. In his statement he denied that he assaulted, threatened, intimidated or caused any distress of any kind to Mr. McBrearty Junior during any of the interviews.¹⁰⁶⁰ In a further statement made on the 16th of July 2000 he dealt with the signing of the statement and stated that he could not recall on what surface the statement was resting while it was being written down by Detective Sergeant Melody. He stated that he signed the statement with his own pen. He again stated that the statement was dictated by Frank McBrearty Junior and was taken down in writing on a “half sheet” by Detective Sergeant Melody. He stated that when Detective Sergeant Melody read over the reverse side of the page to Mr. McBrearty Junior, Mr. McBrearty Junior asked that the word “not” should be inserted into the sentence thereon. He then outlined how Frank McBrearty Junior signed the statement after it had been read over to him. He said that Detective Sergeant Melody had handed the statement over to him on the opposite side of the table

¹⁰⁵⁸ Tribunal Documents, pages 183-184.

¹⁰⁵⁹ Tribunal Documents, page 195.

¹⁰⁶⁰ Tribunal Documents, pages 196-202.

for this purpose. He was unable to account for any dirt that may have been found on forensic examination on the reverse side of the statement.¹⁰⁶¹ He made a further statement on the matter on the 22nd of July 2000. In that statement he stated that “during the taking of this statement, Frank McBrearty Junior started talking about family problems and he became emotional when he was telling us what he did to Richard Barron”. Mr. Fitzpatrick did not elaborate in that statement as to the length of time that may have been spent by Mr. McBrearty Junior in talking about family problems, nor did he elaborate on how he became emotional during the taking of that statement. He went on to state that there was no other statement or memo of interview taken by them with Frank McBrearty Junior during that particular interview and to outline what happened once the statement had been completed and the interview concluded. He outlined how they located Superintendent Fitzgerald and handed the statement to him and that he retained possession of the original of the statement thereafter.¹⁰⁶²

- 7.324. On the 27th of January 2005 Detective Garda Fitzpatrick had a detailed interview with the Tribunal investigators, Mr. Cummins and Mr. Finn. Also present was Detective Garda Fitzpatrick’s solicitor, Mr. Tom Murphy. In the course of the interview he dealt with the taking of the confession from Frank McBrearty Junior during the 19.05 hours interview. He stated that they did not take any memorandum of what was said leading up to the taking of the statement due to the fact that Frank McBrearty Junior had indicated straightaway that he would make a statement. He gave a detailed account of how during the taking of the statement Frank McBrearty Junior would go off on a tirade on one of his pet subjects. These were his father, the police or the local people in Raphoe. He said that after some time letting Frank McBrearty Junior speak about these topics, Detective Sergeant Melody would say to him “are you going to make the statement?” and then Frank McBrearty Junior would say “well, read out the last line to me” and then he would continue with the statement. He stated that this happened on a few occasions. He agreed that if the statement had been given in a single narrative it would have taken approximately ten to fifteen minutes to write it down. Detective Garda Fitzpatrick gave a detailed account of Frank McBrearty Junior rambling on about his father and his life and how he had difficulty growing up and how he alleged that he had not been given a chance to grow up properly. He also talked about going to Scotland and how he spoke about how he was of a rebellious nature. He said that because Frank McBrearty Junior went off on various tangents of his own, it took them until approximately 20.30 hours to take the statement from him. He also dealt with how the reference to his father on the second page of the statement came about. He said

¹⁰⁶¹ Tribunal Documents, pages 203-204.

¹⁰⁶² Tribunal Documents, pages 205-206.

that Detective Sergeant Melody at an earlier stage had asked him did he want to include something about his father in the statement when he was going off on a rambling account in relation to his father and he said he did and Detective Sergeant Melody had stated that he would come back to it at the end. He explained that that was how the last portion of the statement came to be written. He also said that when Frank McBrearty Junior had completed his statement, it was read over to him. He was asked if it was correct and he agreed that it was. He was also asked if he had anything else to say prior to it being read over to him and he said no. When he had signed the statement he was asked to initial the front page and the correction made on the second page. He refused to do this by saying “that’s it”. These were the only comments made by Frank McBrearty Junior after he had made the statement. Detective Garda Fitzpatrick was asked about the mention in the earlier statements that Frank McBrearty Junior became emotional at certain stages. Detective Garda Fitzpatrick stated that by saying he was emotional, he meant that he had his head down and he spoke quietly at that particular portion of the statement. He said that at that time Frank McBrearty Junior was not boisterous, he was very quiet. He said that when the statement had finished, it was handed over to Frank McBrearty Junior who took it in his own hands. He turned it around and he signed it and then he passed it back over to the two officers. These are the salient points made by Detective Garda Fitzpatrick in relation to the taking of the statement from Mr. McBrearty Junior.¹⁰⁶³

Statements of Sergeants Eamon O’Grady and Gerard McGrath

7.325. Statements were also made by the Gardaí in relation to the taking of the second short statement from Frank McBrearty Junior. In an undated statement of evidence made by Sergeant Eamon O’Grady, he merely stated that at 8.30 p.m. on the 4th of December 1996, he had gone to an interview room accompanied by Detective Sergeant McGrath where Frank McBrearty Junior was present. He said that Detective Sergeant McGrath cautioned the prisoner and they then continued to interview the prisoner concerning the murder of the Late Richard Barron. He said “Frank McBrearty volunteered to make a further cautioned statement to us, this was taken down in writing by Detective Sergeant McGrath, when this statement was completed, he signed same, which was witnessed by Detective Sergeant McGrath and I. The interview terminated at 9.15 p.m. when the prisoner was released”.¹⁰⁶⁴ He made a further undated statement, which appears to have been made for the purpose of the defence of the civil action brought by Frank McBrearty Junior. In that statement he dealt with all the interviews that he had with Mr. McBrearty Junior that day. He gave the same description as in his previous statement in relation to the last interview when the

¹⁰⁶³ Tribunal Documents, pages 588-632.

¹⁰⁶⁴ Tribunal Documents, page 105.

second short statement was taken from Mr. McBrearty Junior by Detective Sergeant McGrath. He stated that the statement was free and voluntary and was taken without any inducements being offered. He finished the statement by saying that he did not assault, ill-treat, harass or cause any harm to Mr. McBrearty Junior, nor did any other person in his presence do so.¹⁰⁶⁵

7.326. Detective Inspector O’Grady also made a number of statements to Detective Superintendent McGarty. In a statement made on the 21st of April 2000, he described the 20.30 hours interview. He stated that they had continued to interview the prisoner concerning the murder of the Late Richard Barron. He said that Frank McBrearty Junior volunteered to make a further cautioned statement, which was taken down in writing by Detective Sergeant McGrath. He said that Frank McBrearty Junior initialled the caution at the head of the statement and then at the completion of the statement he read it himself and then signed it. He said that the statement was made freely and voluntarily and in accordance with the Judges’ Rules. He said that in his dealings with Frank McBrearty Junior he found him to be a very volatile, aggressive and abusive person, particularly in the early interviews.¹⁰⁶⁶ On the 27th of July 2000 he made a further statement. This time he dealt with how Detective Sergeant Melody had shown him the statement of admission which had been made by Frank McBrearty Junior in the course of the interview which concluded at 20.30 hours. He stated that he saw the statement that Detective Sergeant Melody had read out to him in the corridor. As far as he could recall it was written on both sides of the same sheet of paper. He went on to describe how he and Detective Sergeant McGrath then entered the interview room and he stated that Frank McBrearty Junior “then dictated the statement which Detective Sergeant Gerry McGrath recorded. He signed the statement and it was witnessed by Detective Sergeant Gerry McGrath and I. There were no notes made during the course of this interview other than his statement”. It will be seen that in the course of these statements he did not give the detailed description of what went on in their interview leading up to the making of the two-lined statement.¹⁰⁶⁷

7.327. On the 25th of January 2005, Detective Inspector O’Grady had a detailed interview with the Tribunal investigators. In the course of that interview he gave a detailed description of the last interview that he had with Frank McBrearty Junior on the night of the 4th of December 1996. He outlined how Frank McBrearty Junior was very determined and told him that he had said all that he was going to say. He had made a statement to the other two Gardaí and basically he told them to “f-off”. He said that he point blank refused to talk to them in relation to the Barron investigation. He outlined then how they spoke about other topics in an effort to get him speaking to them. He outlined how there

¹⁰⁶⁵ Tribunal Documents, pages 112-113.

¹⁰⁶⁶ Tribunal Documents, pages 117-118.

¹⁰⁶⁷ Tribunal Documents, pages 119-120.

were references to boxing and how this seemed to calm the tone of the conversation and they began to get on a little more easily with one another. He said that after some time Sergeant McGrath asked Frank McBrearty Junior to tell them what happened on the night and he again said that he would not say anything further than what he had already told the other two Gardaí and that he had co-operated with them. He agreed then to make a statement to that effect and dictated a statement to Sergeant McGrath, which was written down. He said that Frank McBrearty Junior then took the statement in his hands, read it and signed it. He said that that concluded the interview. He said that there was no doubt between them that a statement had previously been made by Frank McBrearty Junior to Detective Sergeant Melody and Detective Garda Fitzpatrick. He said that while that was not explicitly stated in his short statement, it was the clear understanding that that was what was referred to in that statement. He said that the statement was very short because that was all that Frank McBrearty Junior was prepared to say to them. He was not prepared to say anything more.¹⁰⁶⁸ That is a summary of what Detective Inspector O’Grady told the interviewers about the taking of the second statement from Frank McBrearty Junior.

7.328. Detective Sergeant Gerard McGrath also made a number of statements concerning the taking of the second statement from Frank McBrearty Junior. In an undated statement of evidence, he stated “Frank McBrearty Junior agreed to make a further cautioned statement to us. I wrote down the statement as dictated by the prisoner stating “I have already made a statement to the other two Gardaí, I co-operated with them. I told them the truth about what happened”. I invited him to sign the statement which he did”.¹⁰⁶⁹ In a further undated statement of evidence he gave the same description of the taking of the second statement from Frank McBrearty Junior.¹⁰⁷⁰

7.329. On the 21st of April 2000 he made a statement to Detective Superintendent McGarty. He stated that having cautioned the prisoner at the beginning of the 20.30 hours interview, he and Detective Sergeant O’Grady continued to question him about the matter under investigation. He continued “Frank McBrearty Junior agreed to make a cautioned statement to us. I wrote down this statement as dictated by the prisoner. Prior to taking the statement I wrote down the heading of this statement and I wrote in the legal caution as follows, you are not obliged to say anything unless you wish to do so, but whatever you do say will be taken down in writing and may be given in evidence. He initialled this caution. At the end of this statement he read it over himself and he then signed it “Frank McBrearty Junior”. His signature was witnessed by D/Sergeant O’Grady and I.

¹⁰⁶⁸ Tribunal Documents, pages 633-680.

¹⁰⁶⁹ Tribunal Documents, page 129.

¹⁰⁷⁰ Tribunal Documents, page 139.

This statement was free and voluntary and in accordance with the Judges' Rules".¹⁰⁷¹

- 7.330. On the 27th of July 2000 he made a further statement to Detective Superintendent McGarty. In this he described how Detective Sergeant Melody showed him the statement of admission in the corridor at the conclusion of the earlier interview. He said that they then entered the interview room and cautioned Mr. McBrearty Junior and told him that they were continuing to investigate the death of Mr. Richard Barron. He stated "Frank McBrearty Junior then relayed that he had made a statement to the other two Gardaí and co-operated with them and told them the truth about what happened. I then asked Frank McBrearty Junior if he wished to make a statement about what he had said to me and he said he would. I then took a formal cautioned statement from him which I have outlined in my previous statement. He signed that statement and it was witnessed by D/Sergeant Eamon O'Grady and I. There were no further notes taken during the course of this interview".¹⁰⁷²
- 7.331. In the course of a detailed interview with the Tribunal investigators on the 25th of January 2005, Detective Sergeant McGrath gave a much more detailed account of the taking of the second statement from Frank McBrearty Junior. He gave the same description as had been given by Detective Inspector O'Grady. He outlined how Frank McBrearty Junior made it known to him that he was not going to say any more and had co-operated with the other two Gardaí. He stated that at approximately 20.50 or 20.55 hours he started taking the second statement from Frank McBrearty Junior, wherein he would only say that he had already told the other Gardaí what had happened that night and would say nothing more. He recalled that there had been some earlier conversation about boxing, which had lightened the atmosphere in the interview room considerably.¹⁰⁷³ He also stated that it was his belief that Frank McBrearty Junior was referring to the earlier statement that he had made to Detective Sergeant Melody and Detective Garda Fitzpatrick, when he stated in his second statement that they had already made a statement to the other two Gardaí. He described how at the conclusion of that interview he gave possession of the original of the second statement to Superintendent John Fitzgerald.

Handwriting

The Signatures of Frank McBrearty Junior

- 7.332. Frank McBrearty Junior has steadfastly maintained that he did not make any statement of admission while in custody at Letterkenny Garda Station on the 4th of December 1996. However, in a number of interviews and in his evidence, he

¹⁰⁷¹ Tribunal Documents, page 145.

¹⁰⁷² Tribunal Documents, page 148.

¹⁰⁷³ Tribunal Documents, pages 686-723.

had stated that if the expert evidence was to the effect that it was in fact his signature on the two statements, then he would allege that the signatures were obtained by way of a trick. In relation to the statement of admission, he alleged that the trick was that he was asked to sign the innocuous part of the second side of the sheet and that subsequent to this the Gardaí concocted the first page, which contained the inculpatory elements of the statement. Alternatively, he also put forward the view that the first page may have been written beforehand and not shown to him and that the second side of the sheet was written up in the interview room and it was this that he signed, not knowing that there was any writing on the first side of the page.

- 7.333. The Tribunal was required to consider two documents which, if true, constituted in the first place a statement accepting responsibility for the death of the Late Richard Barron and in the second place, a document confirming that the matters contained in the first document were true. Mr. McBrearty Junior declined to acknowledge that the signatures on these two statements were his. He answered questions relating to the signature with unsatisfactory answers to the effect of “if you prove that signature is mine, I will accept it”. Confronted with this, the Tribunal engaged the services of a number of handwriting experts to consider documents which were known to have been signed by Mr. McBrearty Junior and requested them to furnish a report as to whether the signatures on the two questioned statements and on an earlier permission which had allegedly been signed at 13.25 hours were those of Mr. McBrearty Junior. What follows is a summary of the information which the Tribunal gleaned from the evidence of these experts.

Expert Evidence on the Signatures

- 7.334. What purports to be the signature of Frank McBrearty Junior appears in five places in documentation created on the 4th of December 1996. It occurs in the following places: at the beginning of the custody record, at the end of the custody record, on the permission allegedly given by Frank McBrearty Junior to Detective Sergeant Melody to permit the searching of his house at 13.25 hours, on the second page of the statement of admission allegedly signed by Mr. McBrearty Junior at 20.25 hours and on the second statement allegedly furnished by him to Sergeants O’Grady and McGrath shortly after 21.00 hours. The first two signatures, being the signatures on the custody record, were accepted by Mr. McBrearty Junior as being his. He denied that the others were his signatures. As already noted, Mr. McBrearty Junior was somewhat equivocal in his denial in this regard. Nevertheless, the Tribunal is of the opinion that as these signatures had been denied, they would have to be investigated to establish whether they were in fact the signatures of Frank McBrearty Junior.

- 7.335. The Tribunal retained the services of four independent handwriting experts to examine the questioned signatures. The Tribunal was aided in this work by virtue of the fact that Mr. McBrearty Junior authorised the Tribunal to obtain discovery of samples of his signatures from the relevant period from any State agencies or business organisations which might have his signature in their records. The Tribunal was able to obtain a relatively large amount of documentation which appeared to have been signed by Mr. Frank McBrearty Junior in the period 1996 to 1998. Mr. McBrearty Junior subsequently confirmed to the Tribunal that the documentation which it had obtained did in fact contain his signature.
- 7.336. The Tribunal obtained the following documentation which contained the signature of Mr. Frank McBrearty Junior: Application for Renewal of Driving Licence dated the 13th of October 1997 (two signatures), a driving licence for the period of the 16th of September 1995 to the 15th of September 2005, application for Fuel Allowance dated the 18th of February 1998, application for Disability Allowance dated the 22nd of January 1998, a direct debit mandate in favour of Hibernian Life dated the 23rd of November 1998, instruction to pay direct debits addressed to Ulster Bank Raphoe dated the 18th of April 1997, a direct debit mandate in favour of Every Day Finance Limited bearing the date stamp of the 20th of October 1998, a direct debit mandate addressed to the Manager, Ulster Bank Raphoe dated the 25th of September 1998, direct debit mandate addressed to Ulster Bank Raphoe dated the 13th of January 1997, direct debit mandate in favour of Irish Permanent bearing the date stamp of the 12th of January 1997, a direct debit mandate to the Manager, Ulster Bank Raphoe dated the 20th of January 1997, a direct debit mandate addressed to Ulster Bank Raphoe dated the 16th of December 1998, direct debit instruction in favour of Sky Subscriber Services Limited dated the 14th of February 1997, direct debit instruction in favour of Abbey Finance Limited bearing the date stamp of the 22nd of July 1997, exchange of driving licence form B.900 dated the 1st of June 1994. In addition, the Tribunal also had the following documents which contain the signature of Frank McBrearty Junior: the custody record, an acknowledgement of receipt of property from Garda Niall Coady dated the 18th of December 1996 bearing reference number N.C. (69), an acknowledgement of receipt of property received from Garda Niall Coady dated the 17th of January 1997 bearing numbers N.C. (71), a typed copy of a statement of Frank McBrearty Junior dated the 18th of October 1996 which was countersigned by Mr. McBrearty Junior in two places at the offices of his solicitor on the 11th of April 2000.
- 7.337. Before they gave their unchallenged evidence to the Tribunal, the independent experts had available to them the originals of the three documents in which the

questioned signatures arose and the originals of the documentation outlined above, which contained the confirmed signatures of Mr. Frank McBrearty Junior. For the purposes of their reports and evidence, the experts were able to compare the questioned signatures with the confirmed samples taken from the same period. Each of the experts provided reports for the benefit of the Tribunal. These reports were made available to the parties in advance of the experts giving evidence.

The Evidence of Mr. Seán Lynch

7.338. Mr. Lynch furnished a number of reports which were of great assistance to the Tribunal.¹⁰⁷⁴ Mr. Lynch was attached to the Document and Handwriting Section in Garda Headquarters in the Phoenix Park, Dublin from 1982 until his retirement from the force in June 2005. He is the holder of a Diploma in Forensic Science Document Examination issued by the Forensic Science Society in the United Kingdom. During his service in An Garda Síochána he completed a number of courses outside the State, in particular at the Forensic Science Laboratory in Birmingham, England. It is an accredited training laboratory. He has also completed a number of courses in Belgium and Holland on the recognition of genuine and counterfeit documents including passports and identity documents. He was head of the Document and Handwriting Section of the Technical Bureau of An Garda Síochána at Garda Headquarters from 1989 until his retirement in 2005. He has been in private practice since that time.

7.339. Mr. Lynch stated that he was entirely satisfied with both the quantity and the quality of the control samples of the signature of Frank McBrearty Junior. He stated that it was particularly helpful that these signatures had been obtained from the same general period as that of the questioned signatures.¹⁰⁷⁵ He stated that in each of the questioned signatures he examined them by comparing that signature with the general body of confirmed signatures which had been furnished to him. The first questioned signature that he looked at was the signature appended to the second side of the statement of admission, which was alleged to have been written by Frank McBrearty Junior at approximately 20.25 hours on the 4th of December, 1996. In relation to that signature Mr. Lynch gave the following opinion:

A. *In my opinion Frank McBrearty Junior, the author of the other sixteen signatures, wrote the signature on the questioned document, the statement of 4.12.1996 at 8.25 p.m. ... I found all the letters, similarities between them. They agreed well with the questioned signature, all the samples. There was no differences. There is nothing that I*

¹⁰⁷⁴ Tribunal Documents, pages 220, 839, 551.

¹⁰⁷⁵ Transcript, Day 537, pages 11-12.

was alarmed at, or that I couldn't account for. The signature was a normal, natural signature, the questioned signature. There was no evidence of copying or forgery attached to it. It hadn't been traced or anything like that ... I did, yes. I examined all the documents I got, but in particular the statement, and I found no evidence of any forgery, copying or tracing or simulation of the questioned signature.

Q. What would you expect to find if there had been forgery?

A. I would expect to find indentations, the lines could be linked in or I would expect to find a hesitation or a tremor in the signature. I would also expect to find pen-lifts where the author would be looking at the original signature in trying to trace it or copy it.

Q. Trying too hard, so to speak?

A. Yes. And therefore there would be inclines and dots left at various positions on the signature. The questioned signature is free flowing and there is no evidence of anything like that.¹⁰⁷⁶

7.340. Mr. Lynch went on to explain how there were particular characteristics which appeared individual to the signature of Frank McBrearty Junior. In particular the letters TY at the end of the name McBrearty appear rather ornate, somewhat like a drawing rather than actual letters. It was a very personalised type of formation of these letters at the end of the word. He stated that in all of the signatures there was the same evidence of this ornate pattern of lettering at the end of the name. He stated that this would be difficult to copy or simulate. In addition, the word "Junior" in the signature was also quite personalised to the writer. Also, at the end of "Frank" the K was written somewhat like a H and disappeared in the questioned signatures and also in the confirmed sample signatures. Mr. Lynch outlined that when he examined the questioned signature against the sample signatures he was satisfied that there were significant similarities in letter formation throughout the two sets of signatures. Furthermore, the relationship between the letters within the signature itself was the same throughout the questioned signatures and the sample signatures. He found that there was a consistency between the size and length of the signature and also a consistency in relation to the spacings between letters.

7.341. Mr. Lynch explained his methodology in the following way. Mr. Lynch stated that when he examined the sixteen sample signatures of Frank McBrearty Junior, he

¹⁰⁷⁶ Transcript, Day 357, pages 13-14.

was satisfied that these were written by the same person. They have been confirmed by Frank McBrearty Junior as being his signatures. He then compared each of the questioned signatures with the confirmed samples and was of the opinion that the questioned signatures were written by the same person as had written the confirmed samples as furnished to him. He outlined his analysis in the following way:

I examined each one of the signatures individually, I made a drawing of each one of the signatures, I compared them. First of all I compared them to one another, sixteen of them. And I formed the opinion that they were all written by the same author. Then I compared ... I made a drawing of each signature and then I had a feel for the whole signatures, then I was able to exclude three signatures which are not – that I am satisfied were not Mr. McBrearty's and then of those sixteen signatures I was happy that each – that all of those sixteen signatures were written by the same person, Mr. McBrearty. I then compared those signatures with the questioned signature on the questioned statement and formed the opinion that the questioned signature on the statement fitted in with those sixteen signatures. There was no dissimilarities to say that it was not Mr. McBrearty's signature.

7.342. In relation to one of the documents on which a confirmed signature had been obtained, being the statement of the 18th of October 1996, which had been countersigned by Mr. McBrearty Junior in two places on the 11th of April 2000 at the offices of Binchys' Solicitors, Mr. Lynch stated that he was actually present in the solicitors' office at the time that Mr. McBrearty Junior affixed his signature on two occasions to that typed copy of his statement. He actually saw Mr. McBrearty Junior writing his signature in those two places. He stated that these two signatures fitted well when compared with the signature on the statement of admission allegedly signed at 20.25 hours on the 4th of December 1996.¹⁰⁷⁷

7.343. Mr. Lynch encapsulated his opinion in relation to the signature appearing at the foot of the statement of admission in the following way:

*On a scale of 1 to 10, as to whether it is the signature of Mr. McBrearty on the questioned signatures, I would give it 10. I would be happy enough that it is his signature. I have no cause for doubt that it's not his signature.*¹⁰⁷⁸

7.344. Mr. Lynch went on to express an opinion in relation to the second questioned signature, being the alleged signature furnished to Sergeants O'Grady and

¹⁰⁷⁷ Transcript, Day 537, pages 38-39.

¹⁰⁷⁸ Transcript, Day 537, page 40.

McGrath in the short statement signed some time after 21.00 hours on the 4th of December 1996. He said that he carried out the exact same comparison between that signature and the confirmed samples which had been furnished to him. Having done this comparison he stated that he was entirely satisfied that the signature on the second statement is that of Frank McBrearty Junior, the author of the signatures on the control samples.¹⁰⁷⁹ He stated that he reached this opinion due to the similarity and the lettering, in particular the F at the beginning of the word Frank and the “TY” at the end of the name McBrearty. There was also a similarity in the construction of the letters “JNR” at the end of the signature. He said that any variation that arose in the signature came within the normal range of variations that exist in the signature throughout the control samples. Mr. Lynch stated that he was not in a position to give any opinion as to the “FMcB” which appears beside the caution on that statement as these were blocked capitals and there were no comparative documents against which they could be examined.

- 7.345. Finally, Mr. Lynch gave his opinion in relation to the signature appearing on the consent to search the house, which was allegedly given at 13.25 hours to Detective Sergeant Melody. He stated that having carried out the same examination in respect of that signature and comparing it with the samples, he was satisfied that the signature on that document was Mr. Frank McBrearty Junior’s signature. He stated that on a scale of 1 to 10 he would place his opinion at 9.99 out of 10. He stated that having compared that signature with the confirmed samples he could find no dissimilarities between it and the range of signatures found in the confirmed samples that could not be accounted for by way of natural variation of the signature. He stated that there was no evidence of any mechanical aids which would be used in forging a signature. He stated that it was a normal, natural free-flowing signature, without sign of hesitation or pen-lifts, or any indication to show that it was a forgery. In particular, there were no indentations or tracks or lines drawn and filled in. Accordingly, he was able to discount the possibility of forgery of the signature.

The Evidence of Mr. James Nash

- 7.346. Mr. James Nash also furnished a number of helpful reports to the Tribunal.¹⁰⁸⁰ Mr. Nash is a former member of An Garda Síochána. He stated that he had been examining documents on a full time basis since 1975. From 1979 to 1989 he was head of the documents section in the Garda Technical Bureau, based at the Phoenix Park, Dublin. He retired from An Garda Síochána in May 1989. Since then he has operated as a forensic document examiner and handwriting consultant in a private capacity. He received his initial training at the Document Section of the Garda Technical Bureau and completed a six month course at the

¹⁰⁷⁹ Transcript, Day 537, page 45.

¹⁰⁸⁰ Tribunal Documents, pages 770, 843, 849.

Documents Section, Home Office Forensic Science Laboratory, Birmingham, England. He also attended courses at the Documents Sections, London Metropolitan Police Forensic Science Laboratory and at Interpol Headquarters, Paris. He is the holder of a Diploma in Document Examination issued by the Forensic Science Society. This diploma is reviewed every five years by the Society and they must be satisfied that the person in question is fit to hold the diploma for a further period of five years. Mr. Nash's diploma was last reviewed in 2006 and he was given permission to hold it for a further period of five years.

- 7.347. Mr. Nash had initially been retained by the McBrearty family to furnish a report in relation to the purported signature of Frank McBrearty Junior appearing at the foot of the statement of admission. A copy of that statement had been exhibited in an affidavit sworn by Chief Superintendent Denis Fitzpatrick in April 1997. Mr. Nash furnished his report on the 24th of July 1997. In order to compile that report he was furnished with a number of sample signatures from Frank McBrearty Junior and was able to compare these against the photocopy of the statement of admission which had been exhibited in the Chief Superintendent's affidavit. Due to the fact that he was not able to examine the original of the statement of admission at that time, his opinion on the matter had to be guarded. It was in the following terms:

From the handwriting evidence available, in my opinion, on balance of probabilities Frank McBrearty Junior, the author of the B.1 to B.19 specimen signatures, wrote the A.1 questioned signature. However, I would like to have an opportunity to examine the original questioned signature, in the event of a court hearing, in this matter. The examination of the original is the best evidence and it is possible I may find some evidence that may cause me to change the opinion, I have expressed.¹⁰⁸¹

- 7.348. Mr. Nash stated that he had had the opportunity to examine a very wide range of confirmed signatures from Frank McBrearty Junior, due to the fact that he had been furnished with nineteen cheques signed by Mr. McBrearty Junior at the time of his examination of the document in 1997. Mr. Nash was requested to examine the signatures in issue for the Tribunal. For that examination he had access to the confirmed signatures which had been obtained by the Tribunal and was able to compare these with the originals of the documents containing the questioned signatures. He began by stating that Mr. McBrearty Junior's signature was quite a complex series of pen strokes. Accordingly, it would be a very difficult signature to forge with any degree of fluency. He stated that given the fluency with which the signature was written in the questioned documents, he was of the opinion that it would almost be impossible for anyone to have forged those signatures with that degree of accuracy and fluency. On this aspect he stated the following:

¹⁰⁸¹ Tribunal Documents, page 771.

I have seen a lot of pretty good forgeries but they can't develop that speed and fluency and that unconscious movement, because if I am copying that, I have to stop to see how the next letter is formed and in doing that there should be evidence of the pen stopping on the line, even though you don't move it off the paper, there would be little ink blobs that shouldn't be there. In my opinion it would be almost impossible, I believe, impossible to do it with the fluency that is present in his signature. [Even if one were to practice a lot] you could but you are back down then to try and keep it within the range of variation that he has in his writing and as it was said by the other witness, if you are copying it, or trying to trace it, if two signatures are superimposed on each other, one of them has to be a forgery and even if you put in an indentation, I have seen a number of signatures done by making an indentation on the paper, it's almost impossible to follow the outline of that indentation and, again, even if Mr. McBrearty was asked to sign over that he wouldn't do it exactly the same. It would be, there would be that little variation in it again. But the letter formations and the connecting strokes and heights of letters will be the same but it would be almost impossible to reproduce that I'd say with the same speed and fluency.¹⁰⁸²

- 7.349. Mr. Nash stated that having particular regard to the letter formations and also to the connecting strokes between the various letters, he was of the opinion that none of the letter formations in the questioned signatures departed from the variation that Mr. McBrearty Junior has in his signature. He stated that none of the questioned signatures had any evidence of hesitation or tremor or evidence of pen lifts that would raise his suspicion that this was not a genuine signature. He did not find evidence of any of these matters in any of the questioned signatures. He stated that he found the questioned signatures to be fluently and freely written. The letter formations agreed well with the letter formations in the specimen signatures of Mr. McBrearty Junior. He found nothing in the questioned signatures that caused him concern. He stated that having reviewed the original questioned signature on the statement of admission and compared it against the confirmed samples, he did not wish to depart from the opinion given in his original report that on the balance of probabilities the signature written on the statement of admission was written by the same author as the specimen signatures that had been furnished to him. He stated that on the basis of there being no evidence of hesitation or tremor, or any evidence that would indicate forgery, he could only come to the conclusion that the signature on the statement of admission was that of Mr. McBrearty Junior.

¹⁰⁸² Transcript, Day 537, pages 52-53.

- 7.350. Mr. Nash also looked at the signature appearing on the second statement, being the statement given to Sergeants O’Grady and McGrath. He began by stating that he could not give any opinion in relation to authorship of the blocked initials “FMcB”. In relation to the signature at the foot of this statement, he stated that it had agreed well with the other specimen signatures. He was satisfied that it was written with a degree of speed and fluency that was consistent with the sample signatures. He was satisfied that the signature on that document was that of Frank McBrearty Junior. He indicated his level of satisfaction in the following terms:

Again, you see, I am, as I say ... all I can say is that it's a limited amount of writing. I found no evidence of forgery and it's on the balance of probabilities I am saying this is written by the author of the other specimen signatures. I am quite satisfied at what I am saying. I am loath to sort of give it numbers, but I am satisfied about what I am saying is the truth ... I am satisfied that the signatures, the questioned signatures I have examined are written, number one by the same author and because they agree well as to the various letter formations, the connecting strokes, the relative height of letters and the speed and fluency of the writing and the evidence of any forgery, in my opinion on the balance of probabilities Frank McBrearty wrote the questioned signatures that I have reviewed here today.¹⁰⁸³

- 7.351. Finally, Mr. Nash gave his opinion in relation to the signature that appears on the consent furnished at 13.25 hours. He stated that he was satisfied that that signature agreed well with all the other specimen signatures. He did point out that there was a slight difference in that signature in that there appeared to be a pen lift at the end of the “Y” appearing in the name McBrearty, whereas usually the pen continues in a backward movement to cross the “T” at that juncture. However, Mr. Nash was satisfied that that slight difference did not cause him any concern because everything else in the signature was fitting in and agreeing with the specimen signatures. Mr. Nash pointed out that there will always be natural variations in the way that a person’s signature is written. This can be caused by a number of different factors such as whether the author is sitting or standing at the time of writing the signature, the age and health of the person at the time of writing, the type of pen or writing implement used, the surface on which the document was written, the space available for writing the signature and the time available for appending the signature to the document. Mr. Nash stated that he was satisfied that the signature appearing on the consent document was that of Frank McBrearty Junior.¹⁰⁸⁴

¹⁰⁸³ Transcript, Day 537, pages 61-62.

¹⁰⁸⁴ Transcript, Day 537, page 79.

The Evidence of Mr. Kim Harry Hughes

7.352. Mr. Hughes furnished a number of helpful reports to the Tribunal.¹⁰⁸⁵ Mr. Hughes has practised as a forensic document examiner since September 1975. He is the holder of a Bachelor of Science Degree and is a registered forensic practitioner. He has given evidence extensively in the United Kingdom and also on occasion before the courts in this State. Mr. Hughes stated that he was very happy with the number and quality of the specimen signatures which had been provided to him. He said that it was important that they came from the relevant period and also that they were signatures which occurred in the ordinary course of Mr. McBrearty Junior's business and other activities. Before dealing with the individual documents, he gave the following global opinion on the questioned signatures:

Very simply, I am satisfied that the signatures in question are genuine signatures written by Frank McBrearty Junior. I have made a detailed comparison of both the questioned and the specimen signatures. I look for things when I make my comparison, first of all to look at the shapes, the designs of the letters in the questioned signature to see if they match with the ones in which the specimens and in this case they do. If you have a match between questioned and specimen signatures, the features within them, then really you have three possibilities as to why there are those similarities. The first possibility being that what you are looking at is a genuine signature. The second possibility is that somebody else, perhaps without the knowledge of Frank McBrearty's signature, just by chance happens to write in an exactly similar manner and the third possibility is for similarities that somebody has attempted to simulate, to copy his signature.

The signature is particularly nice. There is a lot of very unusual features in it. It is a very individual signature. I think the possibility that someone somewhere else will write Frank McBrearty Junior in this manner without knowledge of Mr. McBrearty's signature, is so small that you can safely ignore it. Therefore, I am left with possibilities. Either (a) they are genuine signatures, or (b) they are simulations of Mr. McBrearty's signature.

Now, when I make my comparison I have looked for letter designs and the letter designs, I have already said, correspond closely between questioned and specimen signatures. I also look for things that maybe the forger might miss. If you are copying Mr. McBrearty's signature you might expect that somebody doing that

¹⁰⁸⁵ Tribunal Documents, pages 224, 725, 845, 854.

would make a pretty good attempt at making the letters look pretty close to the way that Mr. McBrearty signs, but they would probably miss things like where the letters are relative to one another within a name, the relative heights of the letters to each other, the way that the signature sits relative to the line on which it is written. Little things like that that the forgers tend to miss. All of those types of what I call general features do also match very nicely between the questioned and the specimen signatures. But the real final clincher on it is, that if anybody has to try and copy Mr. McBrearty's signature, they would be writing something that is foreign to them. You have to copy something and do it in writing that is foreign to yourself. Now in doing that you are likely not to be able to do it at speed. You are going to have to do something very slowly to make sure that the letter designs are close to the normal signature of Mr. McBrearty. To do that, to copy the signature very well and to do it fluently would be extremely difficult indeed. Each of these signatures are very fluently written.

So, because of the closeness of correspondence of both letter designs, the general writing habits and finally the clinch of the fluency, I don't consider they can be forged signatures. They must, in my opinion, be genuine.¹⁰⁸⁶

- 7.353. Turning to the statement of admission, Mr. Hughes dealt with two distinct questions touching upon that document. Firstly, he dealt with the signature appearing on side two of the document. He also gave an opinion in relation to the sequence of writing between side one and side two of the document. In relation to the signature, he stated that there was a range of variations which occur naturally in Frank McBrearty Junior's confirmed signatures. He stated that the features appearing in the questioned signature on the statement of admission come within the band of variations naturally occurring in the sample signatures. He stated that in the examination of letter formation, in particular the letter "K" at the end of the name "Frank" and the letter "F" at the beginning of the name, he found that they were written in a very individual style. This style was evident in both the questioned signature and in the sample signatures. There were also features present in the way in which the letters "M" and "C" were written in the questioned signature which also appeared in the sample signatures. The letters "TY" at the end of the word "McBrearty" also exhibited features which were common between the questioned signature and the sample signatures. Mr. Hughes also stated that the relative size of the letters one to the other within the signature was consistent between the questioned signature and

¹⁰⁸⁶ Transcript, Day 544, pages 110-113.

the confirmed samples. In the circumstances it was his opinion that the signature appearing on the statement of admission was that of Frank McBrearty Junior.

Sequence of Writing

- 7.354. On the question of the sequence of the writing on the first side and second side of the statement of admission, Mr. Hughes stated that he looked at a number of different aspects in the examination of this issue. Firstly, he examined the ink on each side of the page. He was not able to differentiate between the ink on the front of the document and the ink used on the reverse of the document. He stated that this did not necessarily mean that the same pen had been used to write both sides of the document. This was due to the fact that a fairly cheap ballpoint biro would have the same ink even if a number of different ballpoint biros were used. It is almost impossible to differentiate between two pens from the same manufacturer. All he could say was that there was nothing inconsistent with the theory that both sides of the document had been written with the same pen. He stated that having used a number of techniques looking at the colour of the ink, looking at the shape and visual appearance of the ink line and examining it under infra-red technology, it was not possible to discern any difference between the ink used on the first side and that used on the second side of the page.¹⁰⁸⁷
- 7.355. Mr. Hughes stated that he then examined the handwriting itself to see if there was any obvious difference between the way that the writing was set out on the front page of the document and on the reverse side of the sheet. He stated that there was a slight difference in relation to the amount of the margin between the first side and the second side, but he did not see this as being significant. It could be explained by the simple fact of turning the page over to commence writing on the second side and the hand relative to the page itself may adopt a slightly different margin unintentionally. He also noted that the margin on the consent given at 13.25 hours was consistent with the margin appearing on the statement of admission.
- 7.356. Mr. Hughes also looked at the number of characters that appeared on each line on side one and side two of the statement of admission. He stated that while there was less writing on side two of the document, when one looked at the words and characters on those lines, and compared them to the lines appearing on the front side of the page, one found that there was a similar number of characters appearing in a number of lines on the first side of the document. Accordingly, he could not find any inconsistency in relation to the average number of characters appearing on the lines between side one and side two of the document. Mr. Hughes summed up his analysis of the handwriting between side one and side two in the following way:

¹⁰⁸⁷ Transcript, Day 544, pages 121-122.

*Basically, at the end of the day, I couldn't see any real difference or certainly nothing that is to my mind important between the writing on the front and the writing on the back which might indicate that in fact they were written at very different times.*¹⁰⁸⁸

- 7.357. Mr. Hughes was also asked to consider the possibility of whether the writing on side one of the document, which ended very neatly with a full stop at the end of the page, could have been written at some other time and in a manner so as to deliberately end neatly at the end of the first page. He stated that on a visual examination of side one of the document, the writing tended to be neat and evenly spaced. He stated that there was no evidence that any part of the text had either been cramped into the available space, so as to end at the correct place, or elongated out, so as to fill up the space so as to end at the foot of the page. He stated that it would be possible to practice writing a text so that it could appear evenly on the page and fill up the entire page ending at the foot of the page, but it would take quite some practice. He did not think it would be possible to do it spontaneously without showing signs that the text itself had been specifically “fitted in” to the available space. The only exception to the generally neat and consistent spacing of the words was the insertion of the word “not” in the second page of the statement of admission. He stated that this would appear to have been squashed into the line and on that basis he was of the opinion that it was probably added after the rest of the text on that line had been written. Counsel for Detective Sergeant Melody stated that that was exactly the case that his client was making, that the word “not” had been an addition made by Frank McBrearty Junior after the statement had been read over to him.
- 7.358. It was put to Mr. Hughes that on looking at side one of the statement of admission, there did not appear to be any difference between the writing containing the caution element at the top of the statement and the narrative of the statement itself. It was put to Mr. Hughes that this was surely inconsistent in that the Garda taking the statement, being familiar with the words of the caution, would tend to write that portion quickly and possibly not in the same even way that the narrative of the statement might be taken. Mr. Hughes did not agree with that proposition. He stated that if the person taking the statement was a very consistent writer it may well be that in taking down a narrative they would listen to portions of the narrative and then go back and actually write it in small segments so that there would be no discernable difference between the writing of the caution and the narrative portion of the statement itself. In other words, that the statement taker may not take down it down as dictation, but would listen to the narrative and write it down in segments, and this would explain the even consistent way in which it was written.¹⁰⁸⁹ Mr. Hughes was asked

¹⁰⁸⁸ Transcript, Day 544, page 124.

¹⁰⁸⁹ Transcript, Day 544, page 145.

whether the fluency of the writing of the statement would be affected by stops in the taking of the narrative:

Q. In terms of the fluency of the writing of the confession document can you tell us ... well one of the things that might happen during the course of the taking of a statement is that a person might be asked, if there were stops and goes, a person might be asked to clarify something and there might be a stop in the middle of the text to allow that to happen. Do you think that that would emerge in the fluency of the writing?

A. Certainly not with regard to the fluency of it, I wouldn't have thought. Possibly spacing and the size of the writing and the positioning of it relative to one another maybe. But this gentleman is obviously a very fluent writer, so I don't think the fluency would alter if there was a stop every few moments, no. Not the fluency.

Q. Is there anything in the document at all to indicate that there was such a stop or any stop during the course of the ...

A. Not that I found, the only sort of inconsistency is that word "not" on the back page, which as we now know was obviously fitted in.¹⁰⁹⁰

7.359. Mr. Hughes stated that he would not be in a position to give an opinion as to whether Mr. McBrearty Junior's signature had been placed on the document before or after the writing which appeared on side one of the statement of admission. However, he had also examined the document with a view to ascertaining whether side one and side two of the document were written on the same surface. He stated that on examination he found evidence of dirt on the reverse of side one. This would indicate that while the first side of the page was being written, it was resting on a surface which had some dirt on it which had transferred onto the reverse of the page during the act of writing the front page. He stated that on examination of the second side of that statement, there was evidence to suggest that the signature "Frank McBrearty Junior" was signed while the document was resting on something like a desk. He thought it was something like a wooden desk, with some sort of grain in it, because there was one point in the signature where the pen actually skips due to the grain in the wood as if it had hit a "pothole" or similar impediment. He gave the following conclusion:

¹⁰⁹⁰ Transcript, Day 544, page 150.

So the evidence is far from conclusive, but there is an indication possibly that you have the front page written on one surface, certainly the signature on the reverse side written on a different surface and possibly also the details on the back as well ... it's quite possible that someone has written page one on one particular surface, then the page has been turned over, no one knows the difference in time between the ends of page one starting and between page two being written, but there is an indication that perhaps the text at the back of the document is written on a different surface to that on the front, but certainly the signature was ... it could simply be that you are writing the front page on one surface and certainly as regards the signature of Mr. McBrearty if you imagine, I don't know the situation in the interview room, but I guess you have someone sitting at one side of the desk maybe with a backing sheet, which might even have a piece of photocopying paper with some toner on it which could have transferred to the back of the document and then when it comes to signing he might not have necessarily swung both bits of paper around to give to Mr. McBrearty, he may have picked the paper up, handed it over the desk for him to sign on what shall we say a wooden surface, hence the difference between what you see on the two sides of the documents. So there is nothing necessarily sinister in that finding.¹⁰⁹¹

- 7.360. Mr. Hughes stated that some considerable time previously he had been asked by the Carty investigation team to examine a number of desks in Letterkenny Garda Station. However, this examination had taken place six years after December 1996. He was not able to give any indication as to whether any of those desks had been used in the taking of the statement from Frank McBrearty Junior.
- 7.361. Mr. Hughes stated that he did ESDA testing on the statement of admission, but was not able to find any evidence of indented impressions which would enable him to give an opinion as to the sequence of writing between side one and side two on the basis of this test.
- 7.362. Mr. Hughes was not able to give any opinion as to the likely authorship of the initials "FMcB" appearing on the second statement of the 4th of December 1996. As stated in his global opinion referred to earlier, he was of the opinion that the signatures appearing on that statement and on the consent given at 13.25 hours were those of Frank McBrearty Junior.

¹⁰⁹¹ Transcript, Day 544, pages 132-134.

The Evidence of Mr. Robert Radley

7.363. Mr. Radley furnished a number of helpful reports to the Tribunal.¹⁰⁹² Mr. Radley holds a Masters of Science Degree in Forensic Science. He stated that he trained under his father Jack Radley who had been an acknowledged expert in the field and took over his practice in 1975. Mr. Radley is also the holder of a Diploma in Document Examination issued by the Forensic Science Society. He has been an examiner for that body for a number of years. He is a registered forensic practitioner, being registered with the Council for Registration of Forensic Practitioners, which is a government-backed body in England. It was set up to assist the courts in improving the standard of expert witness testimony. Mr. Radley had been involved in over 8,500 cases involving questioned documents from around the world. He has worked for a number of government agencies including the Commissioner of the Metropolitan Police, the Crown Prosecution Service and the U.S. Department of Justice. He has given evidence in the United Kingdom, Germany, Switzerland, Australia, Hong Kong and before the courts in this State.

Sequence of Writing

7.364. Mr. Radley began by outlining his investigation into the sequence of the writing on sides one and two of the statement of admission. He looked at a number of different matters. The first of these was the writing on the front side and on the reverse side of the sheet. He stated that this was a very distinctive style of writing, with a slight backward lean. He noted that the writing was well spaced throughout the document. There was no obvious difference in things such as pen pressure variation or slope variation within the document. He said that there was nothing outwardly to suggest from a visual examination that there were two different writing times. He stated that on occasion when you have two documents written by one individual you will find the writing pressure will vary, or the slope of the writing will vary slightly from one time to the next and there will be slight differences which occur purely through natural variation of writing style. He could find no significant variation between the writing style on the front and back to suggest that more than one period of writing was concerned with this document.

7.365. The next thing that he examined was the ink used in the statement of admission. Using infra-red techniques and microscopic techniques, he was unable to differentiate between the ink of the text, the questioned signature and the signature of Detective Sergeant John Melody. He stated that the fact that he was unable to differentiate between the ink used on the front side and on the reverse side of the sheet tended to indicate that the same pen had been used throughout the document. However, it was possible that different pens of the same make, or

¹⁰⁹² Tribunal Documents, pages 731, 746, 858.

indeed two unrelated pens which by chance had the same ink with identical visual infra-red reflectants and infra-red luminous qualities, had been used. Nevertheless, an examination of the ink used was consistent with the proposition that the text in the document, the signature of Frank McBrearty Junior and the signature of Detective Sergeant John Melody, were all written with the same pen. He stated that he had looked for any indication that would indicate that a different pen had been used between the front side and the reverse side of the sheet, albeit with the same type of ink. However, in this case everything that he saw was consistent between the front and the back of the document. Mr. Radley stated that he found no evidence whatsoever to suggest that more than one pen had been used. The only exception to this was the pen used for writing the signature of Detective Garda John Fitzpatrick. This was clearly in a different ink and written with a different pen or biro.¹⁰⁹³

- 7.366. Mr. Radley went on to outline how he carried out an ESDA test on the document. He stated that given the lightness of the writing on the body of the text and on the signatures of Frank McBrearty Junior and Detective Sergeant John Melody, this test was inconclusive in determining whether the first side had been written before or after the second side of the sheet. This was due to the fact that the text and these two signatures had been written in a particularly light hand, without forming any indentations on the reverse side of the sheet.
- 7.367. Mr. Radley explained that there was one area in which the ESDA test was able to give him the basis for making a limited finding. This was in relation to the signature of Detective Garda John Fitzpatrick. This had been written with a relatively heavy hand, thereby giving some indentations onto the reverse side of the sheet on which it had been written. Mr. Radley stated that from examining this portion of writing, he was able to make a limited finding as to the sequence of writing on the two sides of the document, as follows:

From the limited findings I came to the opinion that there is limited evidence to support the proposition that Mr. Fitzpatrick's signature was written after the writing on the front. That, as I say, there is limited evidence ... perhaps I should say the levels of confidence I usually express in terms of, firstly, is conclusive evidence. Secondly, there is very strong evidence to support the proposition and that is marginally below an absolute opinion.

Then there is strong evidence, which again is a very high level of confidence of opinion and then we have this term limited evidence, which covers a very wide range of findings which is not strong. In this case, as I say, there is limited evidence to support the

¹⁰⁹³ Transcript, Day 543, pages 6-8.

*proposition that Mr. Fitzpatrick's signature was written after the first page ... yes, it is, I would say, well above the balance of probability, but it does not reach a very strong level of confidence ... oh yes, it is a positive opinion so to speak ... yes, I believe it is more likely than not it was written after the first page, but of course one cannot determine at what point in time Mr. Fitzpatrick signed the document.*¹⁰⁹⁴

7.368. Mr. Radley also dealt with the proposition that the first side of the sheet may have been written at a different time and in particular that the text thereon had been neatly written so as to end precisely at the full stop at the foot of the page. He stated that he did not find any evidence to support that proposition:

A. *What one sometimes finds is that if you are deliberately trying to cram a text into a particular area, it's very difficult to get it absolutely spot on and certainly one sees occasions where say the last two or three suddenly become incredibly cramped because they hadn't gauged it quite right. In fact it would be enormously difficult, I think, to gauge precise spacing of letters and word forms to exactly fit all of this text onto a page*

Sometimes you see the converse situation where they run out of what they had to say two lines up and the letters and words all stretch out. In this case you don't see anything of that nature. It is very nicely consistent right down to the terminal. And it is also consistent with the spacing of the wording on the reverse. So I find nothing again to support the proposition that it has been written to fill the space.

Q. *Can you draw the conclusion that it wasn't?*

A. *No I can't. I can't say definitely that it is natural writing that could not have been done after the event, it would have to be very cleverly done if indeed one could gauge precisely how much writing we have to cram into the page and be accurate to within a centimetre.*

Q. *I said draw the conclusion, I suppose on your scale of levels of satisfaction how would you express your levels of conclusions or determinations in relation to that proposition?*

¹⁰⁹⁴ Transcript, Day 543, pages 10-12.

- A. *I would rather put it in a slightly different way. I would say it would be very difficult to put a fixed text into a page with that level of precision. I cannot say it cannot be done. What I say is that there is just no evidence to support that proposition.*¹⁰⁹⁵

Signatures

- 7.369. Mr. Radley went on to deal with the questioned signatures. He began by stating that he was satisfied with the quality and quantity of the confirmed signatures which had been given to him by way of control samples against which he could compare the questioned signatures. He stated that the confirmed signatures were all internally consistent, one with the other, and they were consistent with the writings of one individual. He stated that having established what were the acceptable known writings of Mr. McBrearty Junior, he then compared each of the questioned signatures separately with the comparison signatures. On examination of the comparison signatures, he discovered that there was a large number and variety of differences between them. He looked at features such as letter construction, spacing of letters, pen pressure variation, the proportion of letters one to another and the relative internal letter proportioning within each letter itself, such as the position of the cross bar of the “T” to the overall height of the letter itself. He also looked at alignment of the signature in relation to the line on which it was written. Speaking generally, one could see that Mr. McBrearty Junior was erratic in the way that he wrote his signature. He did not sit all the letters neatly on the line on which he was writing. He stated that he assessed all of these features in the questioned signatures and compared them with the corresponding features that are seen in the confirmed signatures. He found that there were a large number and variety of significant similarities, whilst he could find no differences to which he attached significance in any of the signatures. He stated that while there were some minor variations and differences within the questioned signatures; there were similar variations and differences within the confirmed sample signatures. This was due to the fact that Mr. McBrearty Junior’s signature was naturally quite variable. He had certain structures, such as the letters “TY” at the end of the name “McBrearty”, which varied quite considerably in their form of execution throughout the control samples. Mr. Radley said that this was probably due to the fact that these signatures appear to be executed very rapidly, almost scribbled at times. The minor differences that he found were in relation to letter formation. However, the significant elements were the correlation of the other structural details. In this regard the fluency with which the signature was written was very important. Mr. Radley noted that it was a long signature, “Frank McBrearty Junior”, and there

¹⁰⁹⁵ Transcript, Day 543, pages 13-14.

was quite an amount of writing in the signature itself. The word “Frank” was usually written without the pen lifting from the paper; the “Mc” was then written, followed by the “B”. The rest of that name, the letters “earty” was written without the pen lifting from the paper and the word “Junior” was usually written without the pen lifting from the paper as well, although sometimes there was a slight pen lift at the end of the signature as the writer came back to do the cross stroke. Mr. Radley concluded this aspect by giving the following opinion:

All of those features, both structural, fluency, pen pressure, spacing, alignment, proportions, all correspond very closely for each of the signatures examined. From that point of view I formed an opinion that Frank McBrearty Junior wrote each of the six signatures, that’s including those last two on the statement I referred you to.¹⁰⁹⁶ [These were in fact the signatures appended to the statement dated the 18th of October 1996, and were confirmed signatures].

7.370. Mr. Radley stated that looking at the questioned signatures, these varied quite a bit, one with another. This is due to the fact that Mr. McBrearty Junior was a variable writer. However, when one examined the relevant letters in which the variations occurred and examined these against the confirmed samples, one saw that the same variations were found within the letter formation in the known samples. He said that this was an extremely significant point because if you have a case of multiple forgery of a particular signature, it would be extremely rare for the forger to be able to attempt naturally to introduce variation into the forged signature. The forger will practice and practice a particular style and form of signature similar to that of the authentic author and as a result what one will find with forgeries is that there is a very characteristic style of the forger’s writing due to the fact that he is trying to reproduce time and again the same style. Quite clearly this had not happened in this case. Mr. Radley stated that if the questioned signatures had been forged, then the forger not only took a number of master signatures to copy, it would appear that he had mastered each of the signatures to the point where Mr. Radley could find no significant evidence suggesting forgery. Mr. Radley was of the opinion that this was a very strong reinforcing factor indicating that the questioned signatures were genuine.

7.371. Mr. Radley stated that none of the questioned signatures showed the typical features generally associated with forgeries:

The classic features are, wrong structures, invariably poor laboured handwriting because you are trying to draw somebody else’s very rapid, almost scribbled signature at times. The concentration

¹⁰⁹⁶ Transcript, Day 543, page 24.

required in that drawing process almost invariably leads to heavy consistent pen pressure. It's very unusual for a forgery to show so many features that the forger would have to appreciate. In other words, the fluency, pen pressure variation, alignment of letters to the written line, the spacing, the slope variation, etc. The only slight ... there was one signature which has ... in fact I think it's this one, the 4th of December's statement, it does have particularly in the structure of the capital B a couple of kinks in the line, which if you look at it and initially I thought this doesn't look quite right, it looks hesitantly executed and that is the sort of thing that you quite often see in forgeries.

However, on microscopical examination and also very importantly looking into the reverse of the page it does appear those kinks correspond to a dip in the writing surface. In other words the pen has come down on a smooth writing surface and has suddenly hit a pothole, if you like and the pen has bounced and carried on ... Now, I mean, that was one of the first things that I noted on that signature, but having pursued it I was quite happy it had an innocent explanation.¹⁰⁹⁷

- 7.372. Mr. Radley gave the following global opinion in relation to the questioned signatures:

Yes. In my opinion I have no reservation in any of these questioned signatures ... when I say in my opinion I consider it was written by Mr. McBrearty, I have no doubts in my mind. The converse way of looking at it is how likely is it that somebody could actually copy any of these signatures, or the whole group of signatures, and I find that it is so unlikely that in realistic terms I believe that the possibility can be disregarded ... In my opinion Mr. McBrearty wrote these.¹⁰⁹⁸

- 7.373. Mr. Radley also gave his opinion in relation to the questioned signature appearing on the second statement. He stated that this was a signature which was written very rapidly and fluently, it was almost a scribbled signature. He stated that in his experience one did not come across rapidly scribbled brilliant forgeries. Even a really top notch pen-man, the forgers that have been studied, would not be able to produce such a signature. Given the almost scribbled effect of the signature, it would be enormously difficult to copy it with accuracy in getting the variation of slope, proportioning, fluency, and pen pressure things right all within the one signature. In the circumstances Mr. Radley was satisfied that this questioned signature was that of Frank McBrearty Junior.

¹⁰⁹⁷ Transcript, Day 543, pages 26-28.

¹⁰⁹⁸ Transcript, Day 543, pages 32-33.

- 7.374. Mr. Radley also examined the signature on the consent to search the house which had been given at 13.25 hours. He stated that in relation to this signature he found no significant cause for concern. Given the speed with which the signature was written and the letter formation therein, he was satisfied that it was not a forgery. He was satisfied that that signature too was written by Frank McBrearty Junior.

Conclusions on the Handwriting Issues

- 7.375. The Tribunal has been greatly assisted by the expert evidence given in this sub-module. That evidence has been in the form of a number of written reports from the four independent experts, together with their oral testimony before the Tribunal. While each of the experts approached their examination of the questioned signatures in slightly different ways and on occasion gave slightly different emphasis to differing aspects of their analysis of the questioned signatures, they all, at the end of the day, came to the same conclusions: that the questioned signatures were those of Frank McBrearty Junior. None of their findings were challenged before the Tribunal. The Tribunal accepts the evidence given by Mr. Lynch, Mr. Nash, Mr. Hughes and Mr. Radley and makes the following findings:
- (a) The Tribunal is satisfied that the signatures appearing on the questioned documents, being the consent given at 13.25 hours on the 4th of December 1996, the statement of admission signed at 20.25 hours on the 4th of December 1996 and the short statement made to Sergeants O’Grady and McGrath shortly after 21.00 hours on the 4th of December 1996, were all signed by Frank McBrearty Junior.
 - (b) As to the sequence of writing on side one and side two of the statement of admission, the Tribunal accepts that an examination of the ink, the writing style, the spacing of the text and the number of characters appearing on each line of both sides of the sheet, does not disclose anything inconsistent with the proposition that the entire of the document was written at or about the same time.
 - (c) ESDA testing on the main body of the text and on the signatures of Frank McBrearty Junior and of Detective Sergeant Melody was inconclusive. However, the testing done on the signature of Detective Garda John Fitzpatrick revealed limited evidence to suggest that his signature was appended after the text on side one of the statement had been written. This was put by Mr. Radley as being above the balance of probabilities. It constitutes a positive finding by the expert on this aspect. The Tribunal accepts this evidence and holds that the

signature of John Fitzpatrick was appended after the writing on side one of this statement.

- (d) The Tribunal cannot make a finding in relation to whether the text on side one was deliberately “fitted in” to fill that side of the page. The Tribunal accepts that there is no evidence contained in the writing appearing on side one which would suggest that this was so. However, the experts who examined this aspect were agreed that with practice and patience it would have been possible to write the first page so as to get the text neatly into the entire of the space available on that page. However, this would have taken quite some time to achieve. It would have been impossible to have done it deliberately, but at the same time spontaneously. In these circumstances, the Tribunal rules out the possibility of side one having been deliberately written up by Detective Sergeant Melody after the interview ended and before the statement was shown to Sergeants O’Grady and McGrath and to the officers. There simply was not time for him to have done so.
- (e) On the basis of the expert evidence alone, the Tribunal cannot exclude the possibility that side one of the statement of admission could have been written on that side of the sheet in advance of the commencement of the relevant interview. The theory of confession by trick is dealt with in greater detail in the main conclusions section of this chapter.
- (f) The Tribunal accepts the evidence given by Mr. Kim Harry Hughes that there was evidence that suggested that side one of the statement of admission was written while the sheet was resting on one surface, being a somewhat dirty surface, whereas the signature of Frank McBrearty Junior was appended to side two of the statement while the sheet was resting on a different surface, probably a wooden surface with a grain in it. Mr. Radley also found evidence of a similar kink in one of the letters in the signature Frank McBrearty Junior, which appeared on the statement of admission, which was consistent with a pen hitting a “pothole” or kink in the writing surface. The evidence was inconclusive as to the surface on which the text on side two of the statement was written. Accordingly, the only finding which the Tribunal is prepared to make is that it is probable that the signature, Frank McBrearty Junior, was written while the page was resting on a different surface, being a wooden surface, to that on

which the sheet had been resting while the text on side one was written. As pointed out by Mr. Hughes, this could have been due to the fact that the sheet may have been handed across the table to Mr. McBrearty Junior for signature at the end of the taking of the statement. He may have appended his signature to the sheet while it was resting on the bare table top. This would account for the kink which appears in the body of his signature on that document.

Conclusions in Respect of the Arrest on the 4th of December 1996

Preamble - Difficulties with Mr. McBrearty Junior's Testimony

- 7.376. Before setting out the conclusions of the Tribunal on the issues raised, it is necessary to outline some of the difficulties experienced by the Tribunal in obtaining evidence from Mr. McBrearty Junior.
- 7.377. The Tribunal had intended to take the Arrests and Detentions module immediately on the conclusion of the Barron Investigation module. This would have been the natural and logical sequence in which to deal with these modules. However, as the Barron Investigation module drew to a close, Mr. McBrearty Junior indicated to the Tribunal that he would not be in a position to participate in the Arrests and Detentions module due to a number of commitments. Initially, he stated that as his civil action was due to be heard before the High Court, he would not be available to attend at the Tribunal. The Tribunal agreed to defer embarking upon the hearings in relation to his arrest and detention until the conclusion of his High Court action.
- 7.378. At a later stage, when his civil action had been settled, Mr. McBrearty Junior indicated to the Tribunal that he would not be in a position to give evidence before it due to the fact that he was going to the United States of America on holidays. In the circumstances which presented themselves to the Tribunal at that time, it was decided that rather than have a long period in which the Tribunal was unable to get on with its work, it would embark on the hearings in relation to a different set of modules. It was at that time that the Tribunal heard the three modules which concerned Terms of Reference (d), (g) and (i) upon which it submitted reports in May 2006. On the conclusion of those modules, the Tribunal was in a position to embark on the Arrests and Detentions module which commenced hearings in relation to the arrest and detention of Katrina Brolly on the 21st of March 2006.
- 7.379. The Tribunal appreciated that Mr. McBrearty Junior had considerable difficulty in appearing before it. While he had been granted a right of legal representation, he was not able to obtain the services of lawyers to assist him before the Tribunal.

To alleviate this situation, the Tribunal made available to Mr. McBrearty Junior the facility to have consultations with the Tribunal's own counsel to discuss any difficulties that he may have had in giving his evidence before the Tribunal. Tribunal counsel, and in particular Mr. Paul McDermott SC, along with the Tribunal solicitor, met with Mr. McBrearty Junior before and during the time that he gave his testimony. These meetings were to discuss various concerns that he had at the time. At all times, the Tribunal attempted to afford him every possible assistance, so that he would not be disadvantaged by the lack of legal representation in the hearing chamber.

- 7.380.** Mr. McBrearty Junior attended before the Tribunal initially on the 8th and 9th of October 2006. During this time he gave evidence in chief. However, before commencing his evidence, he stated that if any of the four Gardaí who had interviewed him remained in the hearing room, he would not give his evidence. While these gentlemen had a right to stay in the chamber to hear the allegations being made against them, they graciously agreed to retire to another room, where they could watch the proceedings on closed circuit television. The Tribunal is grateful for their assistance in enabling it to continue with its work on that occasion.
- 7.381.** At the conclusion of the second day, Mr. McBrearty Junior stated that it was not possible for him to remain in Dublin to continue giving his evidence due to family and other commitments. The Tribunal facilitated him by agreeing at his request to move to Donegal Town for the taking of his evidence. This was resumed later in the month of October 2006. When he had concluded giving his evidence in chief, he refused to allow himself to be cross-examined by legal representatives on behalf of any of the Gardaí against whom he had made allegations. He walked out of the witness box.
- 7.382.** It was indicated by the Tribunal that it would have to take account of his behaviour and might have to take steps to bring the matter before the High Court. This was due to the fact that the parties against whom allegations had been made by Mr. McBrearty Junior were being deprived of their constitutional right to fairness of procedures in not being allowed to cross-examine him. However, it was indicated to Mr. McBrearty Junior that he would be given an opportunity to change his mind. Subsequently, Mr. McBrearty Junior did reappear before the Tribunal sitting in Dublin for the purpose of being cross-examined. Again, the four Dublin based Gardaí had to absent themselves from the hearing room.
- 7.383.** Mr. McBrearty Junior was cross-examined by the lawyers representing a number of the Gardaí against whom he had made allegations. However, he again walked

out of the witness box while being cross-examined by the solicitor representing Mr. John O'Dowd. He would not entertain cross-examination about his arrest and detention on the 4th of February 1997. This action placed the Tribunal in a very difficult position as regards the allegations made by Frank McBrearty Junior in respect of that arrest, due to the fact that he had not permitted himself to be fully cross-examined on those allegations. However, he had been cross-examined by most of the parties who wished to do so in respect of the arrest on the 4th of December 1996. For the reasons set out hereafter, the Tribunal is in the position to reach conclusions in relation to all of the allegations made in respect of that arrest.

- 7.384.** It must also be said that the Tribunal had considerable difficulty in extracting a coherent account from the evidence of Mr. McBrearty Junior. On occasions he simply refused to answer the question that was asked of him, but tried to divert onto other topics that he felt were important. At other times he was abusive and evasive in the answers that he gave to counsel. It was only due to the persistence and patience of Tribunal counsel that it was possible to get a coherent narrative from him in the days that he gave evidence in chief.
- 7.385.** In the course of his evidence Mr. McBrearty Junior alleged that he had suffered severe psychiatric injury as a result of his dealings with the Gardaí, both at the time of his two arrests and subsequently. He stated that he had received psychiatric care for almost eight years due to alleged abuse at the hands of the Gardaí.¹⁰⁹⁹ Later in his evidence he stated that in the months after his arrest he became psychiatrically ill. He said that he became paranoid. He used to go out into his garden every night with a torch looking for bugs and searching the garden for Gardaí. He stated that at that time he was displaying very erratic behaviour.¹¹⁰⁰ He stated that he was suffering from severe depression at the time that he had his interview with Mr. William Flynn. He also maintained that he was unwell at the time that he made his statement to the Garda Complaints Board in February 1998.
- 7.386.** Mr. McBrearty Junior was requested on a number of occasions to consent to the furnishing of his medical records for that period to the Tribunal. He sought an explanation from the Tribunal as to the purpose of seeking these records which was furnished and is set out at Appendix C to this report. He denied the Tribunal access to these records. The Tribunal feels that it has been severely hampered in its investigation by the refusal of Mr. McBrearty Junior in this regard.
- 7.387.** The reader will note from the foregoing that Mr. Frank McBrearty Junior paid scant respect to the Tribunal. In his evidence he used foul language. He was argumentative and abusive. He threatened and criticised me, Tribunal counsel

¹⁰⁹⁹ Transcript, Day 505, page 42.

¹¹⁰⁰ Transcript, Day 415, page 12.

and the personnel of the Tribunal. He walked out of the Tribunal on two occasions and refused to answer further questions or be cross-examined. He failed to co-operate with the Tribunal when it moved to Donegal Town especially to facilitate him in giving his evidence, which when given, was given in a manner which would not be tolerated in a court of law. The reader may well wonder why the Tribunal tolerated these acts of contempt by Mr. Frank McBrearty Junior. The answer is that it did so only with the objective of fulfilling its mandate to carry out its enquiry as fairly and as expeditiously as possible. The powers given to the Tribunal are set out in section 1(2) of the Tribunals of Inquiry (Evidence) Act, 1921 as amended and by section 4 of the Tribunals of Inquiry (Evidence) (Amendment) Act, 1997. In summary, the Tribunal is empowered by these sections to refer such a matter to the Director of Public Prosecutions and enable him to review the conduct of the person concerned. The Director can, if so minded, prosecute the offender for his conduct and if convicted, the offender will be punished. This provision does not advance the Tribunal's business. The other procedure enables the Tribunal to refer the matter to the High Court to seek an Order that the witness be directed to answer the appropriate question, or otherwise co-operate with the Tribunal. Such procedures are cumbersome and time consuming and in fact require that the Tribunal brings its hearings to a halt while the matter is being dealt with. When Mr. McBrearty Junior behaved as he did, I was faced with the option of tolerating his conduct and requesting that the Tribunal counsel and staff do likewise, or in the alternative proceeding down the path of delay.

- 7.388.** In the final analysis there were two factors which made me decide against proceeding against Mr. McBrearty Junior. First, Mr. McBrearty Junior appeared to have great difficulty in giving his evidence to the Tribunal. He told the Tribunal that he had undergone medical treatment for a psychiatric disorder. The nature of this disorder is unclear. However, he has referred, on a number of occasions during his evidence, to the fact that he had received medical treatment. It was manifest that he found his appearances at the Tribunal profoundly upsetting and disturbing, to the extent that in my view he lost control of himself on a number of occasions. The second matter to which I had to have regard was the fact that the Tribunal had heard sufficient evidence from Mr. McBrearty Junior to enable it to substantially complete its mandate, save for certain isolated issues which do not affect the overall report.
- 7.389.** In these circumstances I came to the conclusion that it would not have been the wish of the Oireachtas, and accordingly in the public interest, that Mr. McBrearty Junior should be subjected to further court proceedings and even punishment, when he has already been the victim of the events which are recounted in these reports, simply because of his abominable conduct at the Tribunal.

General Conclusions

7.390. The following are the main conclusions reached by the Tribunal in respect of the issues raised in connection with the detention of Mr. Frank McBrearty Junior at Letterkenny Garda Station on the 4th of December 1996. Less significant or ancillary conclusions are contained in the body of this chapter.

1. The reasonable suspicion on which the arrest was made of Frank McBrearty Junior on the 4th of December 1996, was grounded on the statement of Robert Noel McBride made on the 29th of November 1996. That was a false statement in its entirety. Members of An Garda Síochána had been complicit in the extraction of that statement from Mr. McBride. This aspect has been the subject of detailed analysis in the Tribunal's second interim report. In these circumstances, the Tribunal had already found that the arrest of Frank McBrearty Junior on the morning of the 4th of December 1996 constituted an unlawful arrest.¹¹⁰¹
2. The Tribunal has already outlined its conclusions on the issues arising in connection with the effecting of the arrest and in the early periods of detention. It is not necessary to repeat those conclusions again.¹¹⁰²
3. In respect of the last of the afternoon interviews, being the interview conducted from 17.01 hours to 18.10 hours between Detective Sergeant Melody, Detective Garda Fitzpatrick and Frank McBrearty Junior, the Tribunal accepts the evidence given by Mr. Melody and Mr. Fitzpatrick that towards the end of that interview there was a change of attitude on the part of Mr. McBrearty Junior. It appears that this was brought about due to the change in the tenor of the questions which were put to him at that time. The Tribunal accepts that when the interviewing Gardaí stopped putting it to Mr. McBrearty Junior that he had committed "murder", but instead put to him what might be termed a "softer option" to the effect that he and Mark McConnell had merely gone up to have words with Mr. Barron, and that something happened on that road which led to his death, Mr. McBrearty Junior for the first time made no reply to these questions. Why he elected to make no response to these questions, the Tribunal cannot say. However, the Tribunal accepts that at the end of that interview he did indicate to the Gardaí that he would think about making a statement in the matter. Again, what prompted him to give that indication to the Gardaí at that time remains unknown.
4. The Tribunal accepts the evidence of Mr. Martin Leonard that on the

¹¹⁰¹ Second Interim Report, Chapter 5.

¹¹⁰² See paragraphs 7.60, 7.68-7.69, 7.72-7.73 and 7.107-7.112.

two occasions that he visited the interview room in the period after the tea break, he found that the personnel in the room were as recorded in the custody record. The Tribunal finds that the sequence of interviews as recorded in the custody record was an accurate record of the sequence of interviews in the Garda station that evening.

5. Accordingly, the Tribunal rejects the sequence of interviews as put forward by Mr. Frank McBrearty Junior in his evidence. The Tribunal finds that there were two interviews after the meal break, the first commencing at 19.05 hours with Detective Sergeant Melody and Detective Garda Fitzpatrick. The second interview commenced at 20.30 hours with Sergeants O’Grady and McGrath, terminating for the purpose of his release at 21.16 hours.
6. Having carefully considered all the evidence of Frank McBrearty Junior, together with the evidence of Detective Inspector O’Grady, Detective Sergeant McGrath, Mr. Melody and Mr. Fitzpatrick and having considered the documentary evidence including the various statements and interviews given by all of the relevant witnesses, the Tribunal finds that Frank McBrearty Junior was subjected to inappropriate behaviour during his period of detention in Letterkenny Garda Station on the 4th of December 1996. However, the Tribunal is also satisfied that Mr. McBrearty Junior has grossly exaggerated the level of abuse which he received.
7. The Tribunal finds that post-mortem photographs were presented to Mr. McBrearty Junior in the course of his detention. He was able to describe the photographs in detail. He made a complaint about seeing the photographs to his solicitor on the day after his release. There is also evidence that he complained about the photographs to Mr. Martin McCallion on the evening of the 6th/7th of December 1996. The Tribunal is satisfied that he was shown these photographs. The Tribunal is also satisfied that this occurred after the evening meal break and rest period which had taken place between 18.10 hours and 19.05 hours.
8. The Tribunal also accepts the evidence given by Mr. McBrearty Junior that he received a considerable amount of verbal abuse during his period of detention. He made complaints to his solicitor on the day after his release about the various forms of verbal abuse that were directed at him. However, the Tribunal is also satisfied that Mr. McBrearty Junior has exaggerated the level and scale of this abuse.

The Tribunal is satisfied that the verbal abuse occurred after the evening meal break during the first of the evening interviews, commencing at 19.05 hours. Even though this verbal abuse may have been generated by the conduct of Mr. McBrearty Junior, it does not excuse the fact that such abuse occurred at the hands of members of An Garda Síochána.

9. The Tribunal accepts that on occasion Mr. McBrearty Junior attempted to stand up and leave the interview room, but was prevented from doing so by Detective Garda Fitzpatrick. He may well have been pinned against the wall to prevent his departure. However, the Tribunal does not accept that Mr. McBrearty Junior threw Detective Garda Fitzpatrick over a table. This is an exaggeration on the part of Mr. McBrearty Junior in relation to this incident.
10. The Tribunal does not accept the allegation made by Frank McBrearty Junior that his chair was kicked from under him, or that he was tumbled from the chair onto the ground, by Detective Sergeant Melody and that as a result of that he injured his neck or back and required medication. The Tribunal is satisfied that this was a false allegation, which was built around Mr. McBrearty Junior's request for painkilling tablets which was made to the member in charge at 17.40 hours. Mr. Melody did not assault Mr. McBrearty Junior in the manner alleged.
11. The Tribunal does not accept the allegation that Frank McBrearty Junior was physically or verbally abused by Detective Inspector O'Grady or Detective Sergeant McGrath. The Tribunal accepts the evidence given by these two officers that they did not assault Mr. McBrearty Junior during their interviews with him. Both officers gave their evidence in a straightforward and frank manner. The Tribunal is satisfied that they were telling the truth. The Tribunal also notes that Mr. McBrearty Junior has been inconsistent with his description as to how he was treated by these two Gardaí during the day. At various stages he has alleged that they assaulted him, while at others he has alleged that they were nice to him at different times during the day. The Tribunal rejects this allegation made by Mr. McBrearty Junior against Detective Inspector O'Grady and Detective Sergeant McGrath.
12. The Tribunal rejects the allegation made by Mr. McBrearty Junior that he first made a statement in relation to his movements to Sergeants McGrath and O'Grady, followed by a second short statement to the

effect that he had co-operated with the other two Gardaí which he said he made to Detective Sergeant Melody and Detective Garda Fitzpatrick. This is a complete inversion of the sequence of statements actually made. It was part of a hypothesis put forward by Mr. McBrearty Junior to the effect that the Gardaí had obtained a statement in relation to his movements, that that statement was then destroyed by the Gardaí and the confession was substituted in its place with his signature forged thereon. The Tribunal rejects this hypothesis in its entirety.

13. The Tribunal rejects the allegation made by Frank McBrearty Junior to the effect that during his period of detention he was shown a bogus statement allegedly made by Mark McConnell. The Tribunal is satisfied that this is a lie told by Frank McBrearty Junior. I have already found that a bogus statement allegedly made by Frank McBrearty Junior was indeed shown to Mark McConnell during his period of detention. I am satisfied that Mr. McBrearty Junior on hearing of this state of affairs at some stage after his release from custody, adopted a parallel allegation for his own use. I am satisfied on the evidence given by Detective Inspector O’Grady, Detective Sergeant McGrath, Mr. Melody and Mr. Fitzpatrick, that no such bogus statement was shown to Frank McBrearty Junior during his period of detention.
14. The Tribunal does not accept that Mr. McBrearty Junior complained of mistreatment to the member in charge but was ignored. I am satisfied that this allegation was also borrowed from the allegation made by Mr. Mark McConnell concerning his period in detention.

Conclusions on the Confession Issue

15. In attempting to determine whether any false statement of admission was made by Mr. McBrearty Junior, and, if so, how that came about, the Tribunal has been greatly hampered in its investigation by the attitude and evidence of Mr. Frank McBrearty Junior. There were three people in the interview room between 19.05 hours and 20.30 hours. Two of those people, Mr. Melody and Mr. Fitzpatrick, have given an account as to what they say occurred in the room during that period. The third person in the room, being Mr. Frank McBrearty Junior, has not given a full account as to what happened in the room. For example, he has given a totally implausible sequence of interviews which does not mirror the interviews that actually took place. In these circumstances, it was difficult for the Tribunal to determine what actually happened in the interview room.

16. Mr. McBrearty Junior's failure to give a proper account of what transpired during the relevant interview may well be accounted for, in part, by the time that has elapsed since the incident and giving his account to the Tribunal. However, the Tribunal recognises that he has had an opportunity to give a proper account on a number of occasions as detailed in the report and these accounts have conflicted significantly so as to cast doubt as to their accuracy. The fact that Mr. McBrearty Junior was over-wrought and under pressure while in custody might contribute to some extent to his failure to accurately recollect what happened. However, it is the Tribunal's view that neither this, nor the lapse of time, could justify the unsatisfactory account which he in fact gave. Nevertheless, the Tribunal was able to make progress having regard to the substantial amount of evidence adduced in relation to the issues during the course of its oral hearings. It should be noted that in making any finding of fact on any issue it was mindful of the difficulties with Mr. McBrearty Junior's evidence and exercised caution when considering it.
17. It appears to the Tribunal that there are only four possible scenarios in which the statement of admission could have come about. These are as follows:
 - (a) The statement of admission was obtained voluntarily from Mr. McBrearty Junior in the manner described by Mr. Melody and Mr. Fitzpatrick;
 - (b) The statement of admission was obtained by means of a trick whereby the first side of the page was written up by Detective Sergeant Melody in advance of going into the interview room and it was only the second side, which contained the comments in relation to his father, that was seen and signed by Mr. McBrearty Junior in the course of the interview period. The Tribunal has already rejected the contention that the confession was obtained by means of a trick whereby the first side of the sheet was written up after the second side was signed by Mr. McBrearty Junior in the course of the interview;
 - (c) The false statement of admission was made by Mr. McBrearty Junior deliberately, either out of mischief, or as a means of getting revenge on the Gardaí for the fact that he had been arrested in front of his children and detained in custody;

(d) The statement of admission was made by Mr. McBrearty Junior during the interview which commenced at 19.05 hours because his will had completely crumbled. This could have happened due to inappropriate behaviour by the Gardaí, or without any such behaviour, simply because the prisoner found the pressures of his detention too great to bear.

18. Turning to the first possible scenario, the Tribunal does not accept the evidence given by Mr. Melody and Mr. Fitzpatrick as to how this false confession came to be made. Their account of Mr. McBrearty Junior spending long periods of time, amounting to almost sixty minutes, rambling off onto other topics and then reverting to continue the narrative on a continual basis is not credible. If that had in fact happened, the narrative in the statement would have been far more disjointed. Instead it is a coherent and cogent narrative with each sentence bringing the story logically from one stage to the next. Furthermore, having viewed Mr. McBrearty Junior over a number of days in the witness box, and having experienced his volatile temperament at first hand, the Tribunal does not accept that on all but one of the occasions on which he was supposed to have digressed onto a tangent, he would have declined the opportunity to include any part of the tirade in his statement. It is simply unbelievable that Mr. McBrearty Junior would adopt such a strict editorial policy in respect of his statement.
19. The Tribunal also notes that the first time that the detailed account of how Mr. McBrearty Junior would spend very large periods of the interview rambling off onto other topics was first articulated in the course of an interview with the Tribunal investigators in 2005. While Mr. Fitzpatrick had mentioned Mr. McBrearty Junior speaking of family matters and being emotional when telling them about what he had supposedly done to Mr. Barron, in his statement of the 22nd of July 2000, he did not give any detailed account of the difficulties allegedly encountered by them in taking the statement from Mr. McBrearty Junior. The Tribunal is forced to the conclusion that this account, first articulated in detail in 2005, was an attempt to explain the missing time in the interview. In their earlier statements the two Gardaí had merely said that Frank McBrearty Junior had “dictated” the statement to them. If that had been done, it would only have accounted for approximately fifteen to twenty minutes of the eighty minute interview. In order to account for the remainder of the period,

they had to come up with some explanation as to how it took the entirety of the period to take down a relatively short statement; hence the account that Mr. McBrearty Junior spent large periods rambling off onto other topics and then returning to the narrative of the statement. The Tribunal rejects this account.

20. The Tribunal is also struck by the fact that the statement which was ultimately made by Frank McBrearty Junior in the course of that interview bore a striking resemblance to the general Garda theory, which had been articulated in the scenario put to Róisín McConnell earlier in the afternoon by Inspector McGinley and had also been put in a series of questions to Mr. McBrearty Junior by Detective Sergeant Melody and Detective Garda Fitzpatrick in their interview prior to the evening meal break. The Tribunal is concerned by the fact that when Mr. McBrearty Junior came to make a false statement in the matter, the statement that he did make very largely mirrored the prevalent Garda theory in the investigation. There has been no rational explanation as to why he would adopt those features in a false statement.
21. The Tribunal also rejects the evidence that Mr. McBrearty Junior became emotional, in that he became quiet and bowed his head, when telling the relevant portion of the statement as to how he had struck the Late Mr. Barron. Given that this was an entirely fictitious account of something that did not take place, the Tribunal does not accept that Mr. McBrearty Junior would have put on such an act when recounting the critical part of the statement. The Tribunal rejects this portion of the evidence. In the circumstances, the Tribunal rejects the account given by Mr. Melody and Mr. Fitzpatrick as to how the false confession was made. The first scenario is rejected.
22. The second scenario is that the confession was obtained by a trick. This possibility is based upon the theory that Mr. McBrearty Junior signed a short statement to the effect that his father would not bribe witnesses, but he did so without knowing that the confession to the murder of the Late Richard Barron was written on the back of the sheet of paper that he was signing. This theory presupposes that Detective Sergeant Melody and Detective Garda Fitzpatrick had written out the confession before the commencement of the interview. There are a number of matters which might be seen as lending support to this theory. First there is the fact that the alleged

confession fills the entire of the page upon which it is written down to and ending at the right hand side of the bottom line of the page. This might be taken as unusual and indeed create a suspicion that it was written in this way so as to make the next logical space for an addition of any matter on the blank sheet over the page. A reader of the entire document would find nothing unusual therefore in the fact that this statement concerning Mr. McBrearty Senior stood alone on this side of the page.

23. Next, there is the fact that the narrative of the alleged confession appears to end two lines short of the end of the page and that these two lines are filled out with a statement to the effect that Mr. McBrearty Senior would “look after” the matter. This statement concerning Mr. McBrearty Senior is the only part of the page which does not constitute part of the narrative of how the events of the night occurred. It might give rise to the belief that these two lines were added in order to fill up the entire of the page. This suspicion might then be enhanced by the fact that over the page there is a statement to the direct contrary, relating to the fact that Mr. McBrearty Senior would not bribe witnesses. There is, moreover, the fact that the narrative of the alleged confession follows the scenario put by Inspector McGinley to Mrs. Róisín McConnell with striking similarity. This might add support to the belief that the account of the incident as told in the alleged confession represents the belief which was held by the Gardaí as to the way in which the incident occurred.
24. The expert evidence in relation to the matter is to the effect that it would be possible with patience and practice for a careful writer to write out the first page in such a way that it would end neatly at the end of a page, without having the appearance that the text was “fitted in” to the space available on that page. However, the Tribunal also notes that the expert opinion is to the effect that there is no forensic evidence to suggest that side one and side two of the sheet were written at different times.
25. It should also be noted that at the top of the second page the number “2” is written. This would have indicated to Mr. McBrearty Junior that there was something coming before the writing on that page. If he had turned the page over, he would have seen the writing on the first side. Had he done so, the trick would have been discovered, with serious consequences for the Gardaí concerned. While I cannot rule

out the possibility that the number was inserted afterwards, there is no evidence that it was in fact written in later. A further difficulty would have been caused by the thin quality of the paper. When lifted in the air, the writing on side one is clearly visible on the reverse, although this would have been disguised if it was resting on a dark coloured background. This would have made detection of the trick all the more likely.

26. In considering the theory that the first page was written up prior to the second page, which page was written up in the interview room and then presented to the prisoner for his signature, the Tribunal considers it unlikely that the Gardaí would take such a chance with a written statement of admission. There is no signature or initials of Frank McBrearty Junior on side one of the sheet. The fact that Frank McBrearty Junior would not initial the caution on the first side of the page and would only sign at the end of the statement, is consistent with the volatile and strong willed temperament of the man. The Tribunal accepts that he refused to initial or sign that page. One must also keep in mind that Mr. McBrearty Junior does not make the case that he was tricked into making any confession to Detective Sergeant Melody and Detective Garda Fitzpatrick. His evidence has been that he did say something about his father not intimidating any witnesses, but that was in the statement which he says he made concerning his movements to Sergeants McGrath and O'Grady. I have already found that no such statement was made by Mr. McBrearty Junior to these two gentlemen. Mr. McBrearty Junior does not allege that he signed the second side of the statement of admission not knowing that the first side already contained writing thereon. Indeed, when the confession was first made public as an exhibit to the affidavit sworn by Chief Superintendent Denis Fitzpatrick on the 21st of April 1997, Mr. McBrearty Junior did not at that time raise any issue that he had in fact signed the second side of the statement unaware that the first side existed. He did not make the case that he had been tricked in this manner. Instead, he sent a photocopy of the handwritten original of the confession to Mr. James Nash, a handwriting expert, with a view to establishing whether his signature thereon was a forgery.
27. Mr. McBrearty Junior did at one stage state that if the experts said that it was his signature on the documents; then it must have been obtained by a trick. However, he did not elaborate on that bald assertion. At no stage has Mr. McBrearty Junior ever made the case

that he was in fact tricked into signing page two by Detective Sergeant Melody and Detective Garda Fitzpatrick. On the contrary, the case which he makes is in conflict with the theory. From the outset, Mr. McBrearty Junior has denied that he signed this document for Detective Sergeant Melody and Detective Garda Fitzpatrick. His account is in conflict with the possibility that this theory is correct. Furthermore, the conclusion set out in the next section concerning the second statement, to the effect that Frank McBrearty Junior in saying that he had “told them the truth about what happened” constituted an acknowledgement by him that he had made a statement to Detective Sergeant Melody and Detective Garda Fitzpatrick about the death of the Late Mr. Barron, is inconsistent with the proposition that the confession was obtained by a trick. He was acknowledging that he knew of the earlier statement, which he could not have done, if it had been obtained unknown to him by means of a trick.

28. In the circumstances I am quite satisfied that the false confession was not obtained by means of any trick, whereby Frank McBrearty Junior was tricked into signing the second side of the page, not knowing that there was an inculpatory statement already written on the first side of the page. The notion of confession by trick can be discounted.
29. The third possible scenario was that the false statement of admission was made deliberately by Mr. McBrearty Junior either out of mischief, or as a method of getting revenge on the Gardaí for the fact that he had been arrested in front of his children and detained at Letterkenny Garda Station. While this theory was canvassed in a general way with Professor Gisli Gudjonsson, it was never realistically put to Mr. McBrearty Junior. It was referred to in the submissions furnished on behalf of Detective Inspector O’Grady, Detective Sergeant McGrath and Mr. Melody. I do not accept this as a likely reason as to why Mr. McBrearty Junior would make a false confession. When one considers that the confession not only implicated him in a crime that did not occur, but also implicated his cousin Mark McConnell in the same crime and also contained an assertion that his father, on finding out what had happened, said that he would “look after it” for Mr. McBrearty Junior, the Tribunal regards it as highly unlikely that Mr. McBrearty Junior would have included these elements if he was merely making the false statement out of mischief or as a means of getting revenge against the Gardaí. The Tribunal is satisfied that this

scenario can be discounted as a possible explanation as to how the false confession came to be made.

30. The final possible scenario is to the effect that Mr. McBrearty Junior completely disintegrated during his period of detention, such that his will crumbled and he made a false confession due to the pressures that were on him at that time. This may have happened with or without inappropriate behaviour on the part of the interviewing Gardaí. The evidence in favour of this scenario consists of the fact that during the second of the afternoon interviews, there was a discernable change in attitude on the part of Mr. McBrearty Junior. When the softer option was put to him, he appeared to mellow and for the first time was recorded as making no response to certain issues that were put to him. He stated at the end of that interview that he would think about making a statement. The Tribunal cannot speculate as to why he gave that indication to the Gardaí at that time. However, it is positive evidence that his will was beginning to crumble prior to the time that he went on his meal break.
31. Also in support of this theory is the evidence of Mr. and Mrs. McConnell that Frank McBrearty Junior was in an extremely distressed state when they saw him immediately upon his release from the Garda station. On that occasion, he told Mark McConnell not to believe anything that the Gardaí had said about him while in custody. This supports the inference that he realised that he had made a confession to the Gardaí. The evidence of Mr. McBrearty Junior's state of distress was supported by the evidence of Mr. Sweeney who gave him a lift home that night. In addition, it appears that when he was subsequently arrested in relation to the Edmond Moss complaint on the 4th of February 1997, his solicitor found him to be literally terrified of the prospect of undergoing further interrogation in a Garda station.
32. The Tribunal also notes that Mr. McBrearty Junior has made desperate and, at times, wild allegations to show that he could not possibly have made any such statement of admission to Mr. Melody and Mr. Fitzpatrick. While initially he seemed to agree with the sequence of interviews and the making of statements and the persons to whom they were made, he subsequently changed the sequence of interviews and inverted the sequence of statements which he alleged he made. He also made numerous allegations of forgery against a number of

different Gardaí. In latter times he drew away from these allegations when it became apparent that the expert evidence would establish that his signature was on the questioned document. In addition, on the 13th of December 1996, Detective Sergeant Melody and Detective Garda Fitzpatrick told Frank McBrearty Senior that his son had made a written confession to the murder of the Late Richard Barron. Mr. McBrearty Junior denied that that was ever discussed between him and his father subsequently. The Tribunal regards that as simply unbelievable. This evidence is rejected. All of this indicated to the Tribunal that Mr. McBrearty Junior is using every means possible to get away from the idea that he made a statement of admission while in custody in Letterkenny Garda Station.

33. Having considered all of the evidence and having carefully observed Mr. McBrearty Junior's demeanour in the witness box, I am satisfied that on the balance of probabilities his will crumbled during the course of the day, such that he was prepared to make a false confession along the lines of the prevalent Garda theory during the first of the evening interviews.
34. The Tribunal, as stated, is satisfied that Mr. McBrearty Junior was abused in the form of verbal abuse and by being shown post-mortem photographs. This abuse occurred after the evening meal break at 18.10 hours. The Tribunal was impressed by the evidence of Detective Inspector O'Grady and Detective Sergeant McGrath. It accepts that these men did not abuse Mr. McBrearty Junior during their periods of interview with him. Accordingly, the Tribunal is satisfied that the abuse occurred during the first of the evening interviews, which was with Detective Sergeant Melody and Detective Garda Fitzpatrick. Without the assistance of Mr. McBrearty Junior and on the evidence presented, the Tribunal cannot make a finding on the balance of probability that it was this abuse which caused his will to crumble. It cannot be ruled out as being a contributory factor leading to the making of the false confession. Similarly, the manner of questioning earlier in the day by which the "softer option" was put to Mr. McBrearty Junior may also have been a contributory factor, though I cannot make a finding that this was so on the balance of probability.
35. Mr. McBrearty Junior has demonstrated time and again to the Tribunal that he is a man of robust character and strong will. He might be considered an unlikely candidate to have made a false confession.

However, there are many different circumstances in which a false confession can come about. Persons exhibiting diverse physical and mental characteristics have been caused to make false confessions in the past. Even persons who appear to be of robust disposition can in certain circumstances make false confessions. During the course of the Tribunal hearings expert evidence has been made available to show the variety of circumstances in which false confessions are made. This matter is dealt with at length in Chapter 15 of this report.

The Second Statement

36. The Tribunal accepts the evidence given by Detective Inspector O’Grady and Detective Sergeant McGrath as to the demeanour of Frank McBrearty Junior during the last interview between 20.30 hours and 21.16 hours. It accepts that by that time Frank McBrearty Junior would not engage further in the investigation of the death of Mr. Richard Barron. The Tribunal finds that Mr. McBrearty Junior did make and sign the second short statement to Sergeants O’Grady and McGrath. I am also satisfied that in making that statement, Mr. McBrearty Junior was referring to a statement that he had made some short time earlier to Detective Sergeant Melody and Detective Garda Fitzpatrick. I accept the evidence given by Detective Inspector O’Grady and Detective Sergeant McGrath that that was the clear understanding of all those concerned at the time that the second statement was made by Mr. McBrearty Junior.

Final Conclusion

37. In summary, the Tribunal is satisfied that Frank McBrearty Junior has made a number of wild and largely unfounded allegations against almost every member of the Gardaí with whom he had dealings on the 4th of December 1996. He has always denied making any confession. In this denial he has given a completely false account of the sequence of interviews with a view to establishing that he could not have made the confession at the time alleged by the Gardaí. At various stages he denied that it was his signature on the documents. He alleged that his signature was a forgery on the questioned documents. He later changed this stance to say that if the experts said that it was his signature, then it had been obtained by a trick. He has been inconsistent in the accounts that he has given. The Tribunal is completely satisfied that the signatures on both statements, as well as on the permission that was given at 13.25 hours, are those of Frank McBrearty Junior.

38. As to how the false confession came to be made, the Tribunal can say the following: for the reasons already stated, I do not accept that it was made in the manner described by Mr. Melody and Mr. Fitzpatrick. Nor was it obtained by a trick. Nor was it concocted by way of a forgery. I am satisfied on the balance of probabilities that at some stage in the day, most likely in the late afternoon, Mr. McBrearty Junior's will crumbled such that he agreed with the general Garda scenario and made a false confession. Whether this came about by virtue of the pressures of finding himself in custody, or was due to some aspect in the makeup of his personality, or was due to the inappropriate behaviour on the part of his interrogators, or was caused by the introduction of the soft option in the course of the earlier questioning or was caused by a combination of some or all of these factors remains unresolved. Without the assistance of Mr. McBrearty Junior, the Tribunal cannot make a finding as a matter of probability as to what particular matters caused his will to crumble in the way that it did. To make such a finding would be to enter into the realm of speculation. This the Tribunal is not prepared to do.
39. The Tribunal accepts the evidence of Detective Inspector O'Grady and Detective Sergeant McGrath as to how the second statement was made.
40. The glaring fact remains that Mr. Frank McBrearty Junior made a false confession. The Gardaí were happy to rely upon it as the successful conclusion of their investigation into what they suspected to be the murder of the Late Richard Barron. An application was made in June 1997 at the District Court for an order permitting the further arrest and detention of Mark McConnell whom the Gardaí continued to suspect of murder and whom they wished to interview further on the basis of this false confession. The outrageous and shocking series of events that led to this lamentable state of affairs has already been fully addressed in the Tribunal's Second Report. The task which An Garda Síochána must set itself is to ensure that nobody in the future is put in this appalling position due to police deceit, negligence and tunnel vision. The Tribunal is satisfied that this case will take its place as a further notorious example of a false confession. Such cases have been experienced in many countries and generated a great deal of study and research, resulting in useful reform. This has a direct bearing on the confession of Frank McBrearty Junior. Despite the unfortunate failure on the part of the various witnesses to tell the full

truth about these events, there are useful lessons to be learnt in the future as to how interviews may be conducted in order to minimise the danger of obtaining false confessions. The personal pain and trauma to the victim of a false confession and their family and the damage done to their status in the community are enormous. The damage done by the obtaining of a false confession to the reputation and morale of An Garda Síochána is also shattering and debilitating to the force. It can only be addressed by constant professionalism and vigilance against obtaining such a confession. To this end, An Garda Síochána must robustly embrace change. They must seriously and effectively study and adopt best practices of interviewing and investigation. The Tribunal has, for this reason, sought the views of An Garda Síochána and other police forces as to how this might best be achieved. This is discussed in Chapter 15.

PART II

The Case of Edmond Moss

- 7.391. Mr. Frank McBrearty Junior was arrested by Garda John O’Dowd at 12.52 hours on the 4th of February 1997 on suspicion of having committed an offence contrary to section 18 of the Offences Against the Person Act 1861, in particular that he had assaulted one Edmond Moss on the 30th of December 1996. The Gardaí had obtained a statement from Mr. Moss and also from a number of other witnesses to the alleged assault. They carried out an investigation into the matter which resulted in the arrest of Frank McBrearty Junior and proceeded on to the submission of a file to the Director of Public Prosecutions. It ultimately resulted in a trial before the Circuit Criminal Court sitting at Letterkenny, Donegal.
- 7.392. At the trial, two of the accused persons, Mr. Martin McCallion and Mr. Liam O’Donnell, were found not guilty by the jury on the direction of the Trial Judge. The case against Mr. Frank McBrearty Junior went to the jury for their consideration. After a short period of approximately forty minutes, they returned a verdict of Not Guilty. It was not part of the Tribunal’s remit to enquire into that acquittal, or to question it in any way, or indeed, to question the acquittals of Martin McCallion and Liam O’Donnell.
- 7.393. Term of Reference (f) of the Tribunal’s Terms of Reference required the Tribunal to enquire into the following matter:

The circumstances surrounding the arrest and detention of Frank McBrearty Junior on the 4th of February 1997 and his subsequent prosecution in the Circuit Criminal Court in relation to an alleged assault in December, 1996 on Edward Moss with particular reference to the Garda investigation and the management of both the investigation and the role of the Gardaí in the subsequent prosecution.¹¹⁰³

- 7.394. In essence, the Tribunal was required to look into two distinct areas in relation to this term of reference. The first question that had to be answered was whether the Gardaí acted appropriately in the manner in which they investigated the complaint which had been made by Mr. Moss in his statement to Garda John O’Dowd made on the 31st of December 1996. The question which arises in relation to that matter was whether Mr. Moss had subsequently indicated to the Gardaí that he wished to withdraw his complaint and whether the Gardaí disregarded this request and continued with the matter under investigation as a means of harassing members of the McBrearty family and Mr. Frank McBrearty Junior in particular. The second question which then arises for consideration is

¹¹⁰³ Tribunal’s Terms of Reference – paragraph (f).

whether the arrest which was carried out on the 4th of February 1997 was a lawful arrest. The final question which arises is whether Mr. Frank McBrearty Junior was mistreated during his period of detention at Letterkenny Garda Station on the 4th of February 1997.

The Garda Investigation

7.395. On the 31st of December 1996, Mr. Edmond Moss went with his girlfriend Ms. Pamela McCready (she subsequently became his wife) to Raphoe Garda Station for the purpose of making a complaint in relation to an incident that had occurred at Frankie's Nightclub, Raphoe, in the early hours of the 30th of December 1996. Garda John O'Dowd had just started his tour of duty in Raphoe Garda Station. He described how he heard a knock at the door and on answering it, saw before him a man who was on crutches with his leg in a plaster of paris cast. He had cuts and bruises to his face. That was Mr. Moss. He said that he was there to make a statement of complaint.¹¹⁰⁴ Garda O'Dowd brought them into a room in Raphoe Garda Station where they sat down at a table. Mr. Moss then proceeded to give Garda O'Dowd a detailed statement outlining what had happened to him at the nightclub in the early hours of the previous day. He stated that he had gone with his girlfriend and with two friends, Larry and Teresa Harper, to Frankie's Nightclub in Raphoe on the night of the 29th of December 1996. They arrived at the disco shortly before midnight. Having paid in, they had a few drinks and went out dancing on the floor. At approximately 02.00 hours the disco came to an end and the national anthem was being played. It was then that the incident occurred. Mr. Moss described it in the following way in his statement:

... At 2.00 a.m. exactly the national anthem came on. While we were standing up I noticed Teresa Harper getting weak and she seemed to be slipping to the ground with Larry preventing her from hitting the ground. Teresa was now lying on the ground and she appeared to be getting weaker. Myself and Larry went to her assistance and we carried her a distance of a few feet onto the carpet. As we were assisting Teresa a man pushed his way in among us. I didn't know who he was at this stage. He was, I would describe as small, with short black hair and stocky build. He was wearing a rusty coloured jumper with a round neck. He wasn't dressed as a bouncer. This man said he knew first aid. He got down beside Teresa. He pushed her head down between her legs and seemed to be handling her very rough. Teresa seemed to have fainted. I told this man that we were taking Teresa out for some air. This man got angry with me and jumped up and squared up to me face to face. He then said to me "do

¹¹⁰⁴ Transcript, Day 559, page 72.

you know who I am” in a very aggressive tone. I told him I didn’t care who he was, that I was taking this girl out for some air. He then said “I am Frank McBrearty’s son” and with that he hit me in the face with his fist.

As he did this, three men who were dressed as bouncers grabbed hold of me. The biggest one grabbed a hold of me around the neck. I am 6 foot 1 inch and he was taller than me. The other two held my arms. I don’t know who these fellows were, but I could identify the taller one. I at no stage had the slightest thought about causing any sort of trouble and I didn’t at any stage strike out at anyone at any time during the course of the whole night. While the three bouncers grabbed a hold of me Frank McBrearty kept punching me. I couldn’t offer any resistance to protect myself as the bouncers had me left open to be viciously assaulted. Young Frank kept punching me with both fists on the upper body and head, while the three bouncers held my arms and one of them held me around the throat. I was completely defenceless. I received injuries to my chest, which is now very painful, different parts of my head, my right eye is now black and swollen, my nose is injured with cuts and bruises. I have several marks to my face, my left ear and I have a cut on the top of my head.

After I received several punches I was dragged towards the exit door. The bouncers pushed me out the exit door and I fell to the ground. As I got up off the ground I felt a severe pain in my right leg and I couldn’t stand on it. As I was raising my body up off the ground I saw young Frank McBrearty again. He immediately hit me in the face and I fell to the ground again. This was just outside the exit door of Frankie’s Nightclub. This blow stunned me as I hit my head off the ground this time.

I was helped off the ground by Declan Dolan (son of Charlie) and a Hegarty fellow both from Argary. These two lads helped me down to the corner of the Tudor Lounge just across from D.J.’s Chipper. I looked around and saw that young Frank McBrearty was arguing with my girlfriend. I stepped back to her and young Frank McBrearty approached me again and again hit me in the face. I fell down on one knee and these two lads Dolan and Hegarty helped me up. McBrearty went away. After a while Larry Harper came down from Frankie’s car park along with his wife and myself and Pamela got into his car and went home to Castlefin. The same day, Monday, 30th December 1996 I attended the Casualty Unit of Omagh General Hospital. I had an x-ray done of my right leg to discover I had a fracture to it. It is now in plaster and I am on painkillers. I am now presently out of work because of my injuries and will be for the foreseeable future.

Signed Edmond Moss

Witness John O'Dowd Garda 21727A

Date 31.12.96.¹¹⁰⁵

7.396. Ms. Pamela McCready also gave a statement to Garda John O'Dowd that day. It was a detailed statement which described an assault carried out on her boyfriend by Frank McBrearty Junior. It was in the same terms as the statement which had just been given by Mr. Moss.¹¹⁰⁶ On the 3rd of January 1997 Mr. and Mrs. Harper went to Raphoe Garda Station where they gave witness statements to Garda John O'Dowd. Mr. Harper gave an account that was identical to that which had been given by Edmond Moss and Pamela McCready. He was only able to deal with the early part of the alleged assault, as he had remained with his wife who had fainted on the dance floor. Accordingly, he did not see anything of what transpired once they left the immediate area of the dance floor. Mrs. Teresa Harper in her statement was only able to give an account of how Edmond Moss was when they met up with him some short time later outside the nightclub. She had fainted at the time of the initial assault and accordingly could not give any description of it.¹¹⁰⁷

7.397. On the 6th of January 1997 Mr. Declan Dolan gave a statement to Garda O'Dowd. He outlined how he had met his friend Edmond Moss who was with his girlfriend Pamela McCready in Frankie's nightclub on the night of the 29th/30th of December 1996. He said that Mr. Moss was in good form and was sober. He described how he and his girlfriend danced with Edmond Moss and his party at some stage during the evening. He gave a slightly different account of the assault to that which had been given by Edmond Moss and the earlier witnesses:

As the national anthem progressed I saw Teresa fall to the ground. She fell against somebody as she fell to the ground. Immediately Larry, Eddie, Gregory O'Hagan and Pamela and I went to her assistance. Eddie and Larry were trying to bring her around. At this stage the music was over and I saw young Frank McBrearty and his brother arriving. I saw Eddie Moss holding one arm of Teresa Harper and Frank McBrearty holding the other. They were trying to lift her but she fell down on the ground again. Eddie Moss then had a discussion with Frank McBrearty Junior as to what they should do with her. I heard Frank McBrearty saying "you can do whatever the fuck you want to do with her". I heard Eddie Moss say something like "I am trying to do what's best for her". At this stage Eddie Moss and Frank McBrearty were nearly nose to nose, they were that close. My friend

¹¹⁰⁵ Tribunal Documents, (Edward Moss Book of Evidence), pages 1-3.

¹¹⁰⁶ Tribunal Documents, (Edward Moss Book of Evidence), pages 14-15.

¹¹⁰⁷ Tribunal Documents, (Edward Moss Book of Evidence), pages 16-18.

Gregory O'Hagan then said to Eddie and Frank "settle down lads we want to get this girl sorted out".

Just then I saw Frank McBrearty striking Eddie Moss in the face with his right fist. Just as this happened three more bouncers were around Eddie Moss. One whom I know is Liam O'Donnell grabbed him around the neck. Immediately another bouncer Marty McCallion, started punching Eddie Moss in the face. He hit him in the face about five times. He moved down to the body and gave him several punches in the ribs while he was still being held around the neck by Liam O'Donnell. I am aware Martin McCallion partakes in boxing matches at local clubs.

At the same time while Marty McCallion was beating Eddie Moss, young Frank McBrearty was also punching him. Frank McBrearty punched Eddie three/four times more in the face. Both McBrearty and McCallion punched Eddie Moss from the dance floor to the emergency exit while Liam O'Donnell was pulling him by the neck towards the exit door. At no stage did Eddie Moss lift his hand to offer any form of violence to anyone that night. The ways he got a beating from the two bouncers and also being held around the neck by a very large bouncer, he had no way to defend himself. When the group landed at the emergency exit Eddie was thrown out on the tarmac. I was immediately behind him at this stage. When Eddie got up on his feet young Frank McBrearty said to him "do you know who I am?". Eddie said "you are Frank". Frank McBrearty said "I am young Frank McBrearty". With that young Frank McBrearty hit Eddie Moss in the face again. Eddie Moss didn't go down. Then Marty McCallion moved in and hit Eddie a number of times more in the face. This felled Eddie. As Marty McCallion was going back into the dance hall, he grabbed Gregory O'Hagan by the throat and drew back his fist to hit him. I believe he would have hit him only for Liam O'Donnell the bouncer was there. He is a neighbour of ours. Frank McBrearty and Marty McCallion then went back into the dance hall. Myself and Larry Harper then went to Eddie's assistance. I saw that he was bleeding out of his nose and there was a number of marks on his face. When we got him up off the ground I noticed Eddie was limping badly on his right foot. We got him into Larry Harper's car and Larry took him home ...¹¹⁰⁸

7.398. On the 9th of January 1997 Gregory O'Hagan gave his statement to Garda O'Dowd at Raphoe Garda Station. His account was similar, though not identical, to the account which had been given by Mr. Declan Dolan.¹¹⁰⁹

7.399. **Having obtained the statement of complaint from Mr. Moss and the**

¹¹⁰⁸ Tribunal Documents, (Edward Moss Book of Evidence) pages 19-21.

¹¹⁰⁹ Tribunal Documents, (Edward Moss Book of Evidence)pages 22-23.

supporting witness statements, the Tribunal is entirely satisfied that Garda John O'Dowd was fully justified in assuming that this was a bona fide complaint on the part of Mr. Moss. There was nothing in the way in which it was made, nor in the matter complained of, which should have alerted him to the possibility that problems would be encountered as the case proceeded. It was a perfectly normal complaint by an obviously injured party, which was supported by apparently independent witnesses.

- 7.400. In the interim, Mr. Moss had consulted his solicitor Mr. John Fahy of John Fahy & Co., Solicitors, 5 Church Street, Strabane, County Tyrone. By letter dated the 6th of January 1997 Mr. Fahy wrote to Garda John O'Dowd at Raphoe Garda Station requesting a copy of the statements which had been made by Mr. Moss, his girlfriend Pamela McCready and the other witnesses. As these statements had been obtained by the Gardaí as part of an ongoing criminal investigation, copies of the statements were not furnished to Mr. Fahy.

Reaching a Compromise

- 7.401. Mr. Moss recalled that some short time after he had first instructed his solicitor, he received a visit to his home from a neighbour, Mr. Connolly. He was asked whether he would meet with Frank McBrearty Senior in an effort to settle the matter. He agreed to do this. On the following evening, Frank McBrearty Senior called around to his house, where they had a discussion standing just outside the house. He said that Mr. McBrearty Senior stated that he had come with a view to reaching some sort of settlement rather than taking the matter to a civil action. After some negotiation it was agreed between Mr. Moss and Frank McBrearty Senior that he would accept the sum of £10,000 Sterling in full and final settlement of the matter. Mr. Moss was clear in his understanding of the agreement that he had reached with Mr. McBrearty Senior: that he had agreed to drop both his civil action and any prosecution that he might take against Mr. McBrearty Senior, Mr. McBrearty Junior, the nightclub or any of the bouncers working in the nightclub.
- 7.402. After the meeting with Frank McBrearty Senior, Mr. Moss contacted his solicitor and told him that he had reached a settlement of the matter with Mr. McBrearty Senior. His solicitor told him that it was too early to make a decision as regards the injuries that he had suffered. However, Mr. Moss told him that he had agreed to settle the matter and asked the solicitor to attend with him at a meeting which had been arranged at the offices of V.P. McMullin & Son in Ballybofey, County Donegal on the 14th of January 1997. Mr. Fahy stated that although it was in his opinion too early to settle any claim that his client might have, particularly due to the fact that they did not have any medical reports in relation to his injuries at

that time, he nevertheless agreed to accompany Mr. Moss to the meeting, as he had made up his mind that the matter had already been settled. The Gardaí in Raphoe were unaware of what was taking place between Mr. McBrearty Senior, Mr. Moss and their respective solicitors. The Gardaí were not responsible for the uncertainties and contradictions which followed.

- 7.403. A number of things happened on the 14th of January 1997. Mr. Peter Murphy, a solicitor in the firm of V.P. McMullin & Son, who were the solicitors representing Frank McBrearty Senior at the time, wrote to Mr. McBrearty Senior in relation to the forthcoming settlement meeting:

Mr. Frank McBrearty (Snr),
Tullywrap,
Raphoe,
Co. Donegal.

Reference PM/mg

14th January 1997

Dear Frank,

At your request I have prepared a form of discharge for signature by Edward Moss arising out of the incident at the Parting Glass on the 29/30th December last. You tell me that he has to sign it this morning. As I have said his signing this agreement and accepting the sum of £10,000 is no guarantee the Gardaí will not prosecute somebody arising from the incident. In fact I am of opinion that this agreement and discharge is of no consequence in a criminal prosecution. As to the civil action I am of opinion that it is unlikely Edward Moss would be advised to bring a claim having settled with you in advance and having been given full opportunity to seek independent advice.

Yours sincerely,

Peter F.R. Murphy
V.P. McMullin & Son

Notwithstanding the reservations expressed both verbally and in the above I hereby irrevocably retain and authorise you to have the said Discharge signed and hand over the sum of £10,000 to Edward Moss.

Dated this 14th day of January 1997.

Signed Frank McBrearty (Snr)¹¹¹⁰

- 7.404. Mr. Fahy recalled that there was some discussion at the meeting as to whether

¹¹¹⁰ Tribunal Documents, (Edward Moss Book of Evidence), page 496

any discharge that was signed could make any reference to the withdrawal of the criminal prosecution. It was decided that no mention should be made of that aspect. However, he was clear in his recollection that all parties were agreed that the payment of the money to Mr. Moss would bring an end to both the civil and criminal proceedings. He said that it was on that basis and having received firm instructions from his client that he agreed to write a letter intimating to the Gardaí that Mr. Moss did not wish to proceed with the prosecution. At the meeting, the agreed sum of £10,000 Sterling was paid over to Mr. Moss in cash. As part of the agreement, he signed a Discharge which was in the following terms:

Discharge

I, Edward Moss, Garvagh, Castlederg, County Tyrone hereby acknowledge receipt of the sum of ten thousand pounds (£10,000) which I accept in full and final settlement of all possible or potential claims competent to me against Frank McBrearty & Co. Ltd., Frank McBrearty Senior and Frank McBrearty Junior, or their servants or agents, whether now or hereinafter to be manifest arising directly or indirectly out of an incident which occurred on the 29th/30th December 1996 in or near the Parting Glass premises, Raphoe, in which I allege I sustained personal injuries, loss or damage. In consideration of the said sum I hereby absolutely and finally hereby discharge and indemnify the said Frank McBrearty Senior, Frank McBrearty Junior, Frank McBrearty & Co. Ltd., together with their servants or agents, from all claims made by me or on my behalf of whatsoever nature of which I now or at any time in the future could have arising out of the said incident insofar as they could relate to the above named parties.

I understand that this Agreement and Indemnity is made at my request and on the strict understanding that it does not constitute an admission of liability on the part of the said above named parties, their servants or agents or any of them.

I further acknowledge and accept that I was given full opportunity by Frank McBrearty Senior to seek independent advice prior to entering into this agreement and will sign same in the presence of my solicitor John Fahy.

Signed by the said Edward Moss in the presence of John Fahy, Solicitor, Strabane.

Edmond Moss¹¹¹¹

¹¹¹¹ Tribunal Documents, (Edward Moss Book of Evidence), page 497.

- 7.405. By letter dated the 16th of January 1997, Mr. Fahy wrote to the Gardaí at Raphoe Garda Station informing them that his client wished to withdraw his statement of complaint. This was the first notification that the Gardaí received of any compromise between Mr. Moss and Mr. McBrearty Senior:

Re: Our Client – Edward Moss, 49, Carn Road, Garvaggh, Castlederg

Dear Sirs,

We refer to the above and a complaint made by our client concerning injuries sustained by him at Frankie's nightclub on the 30th of December 1996. Please take note that our client has instructed us to write to you to formally withdrawing (sic) his statement of complaint. Please note that our client does not require any action on foot of the statement of complaint.

Yours faithfully,

John Fahy & Co.¹¹¹²

A Further Statement from Edmond Moss

- 7.406. Mr. John White stated in evidence that upon receipt of the solicitor's letter, he asked Garda John O'Dowd to telephone Mr. Moss and ask him to call to the station. He wanted to find out if Mr. Moss genuinely wished to withdraw his complaint in view of the fact that this had been a serious assault giving rise to significant injuries. As a lot of Garda time had been spent in obtaining the various witness statements and preparing the file, he stated that he could not simply let the matter drop as a result of a letter from a solicitor. It was for this reason that he decided to speak to Mr. Moss himself. Mr. White stated that if it had been a minor matter or perhaps a dispute between people living in the same town or close to each other, then it might be appropriate to stop a criminal investigation if the complainant indicated that he was happy to let the matter drop. However, where it was a serious assault between people who were otherwise unknown to each other, it was a different matter altogether. It was for this reason that he felt that it was appropriate that the matter should continue to be investigated and that a file should be sent to the Director of Public Prosecutions for his consideration. **The Tribunal is satisfied that in directing Garda O'Dowd to telephone Mr. Moss, Sergeant White acted correctly in the circumstances. The Tribunal does not criticise him for taking this step. He was quite correct to require Mr. Moss to attend at Raphoe Garda Station to clarify the position. There was no evidence that Mr. Moss was pressurised to attend at the Garda station.**
- 7.407. On the 21st of January 1997, Edmond Moss attended at Raphoe Garda Station.

¹¹¹² Tribunal Documents, (Edward Moss Book of Evidence) , page 12.

Mr. White stated that Mr. Moss was quite confused about the effect that the settlement of a civil action had on the ongoing criminal prosecution. Sergeant White explained to him that the civil action was quite separate to the criminal prosecution. He explained to him that the criminal investigation would have to go ahead because a lot of Garda time had been spent in preparing the file and due to the fact that it was a serious assault. He stated that Mr. Moss was still angry about his injuries and did not want Frank McBrearty Junior to get away with the assault which he alleged had been perpetrated upon him. Mr. White denied in evidence that he put any pressure on Edmond Moss when he called to the station that day.

- 7.408. While at the Garda station Mr. Moss made a statement which was witnessed by Sergeant John White. That statement was in the following terms:

Further to my previous statement made on the 31st December, 1996, I wish to state that since I have been assaulted in Frankie's Nightclub in Raphoe, I have been visited on three occasions at my home in Castlederg by Mr. Frank McBrearty Senior who owns Frankie's Nightclub. He first visited me between 7 p.m. and 8 p.m. on Monday 6th January 1997. He was with Josie Connelly, a neighbour of mine at Garvaghblen, Castlederg, who worked for years with Mr. McBrearty in Scotland. Mr. McBrearty blamed his son Frankie for being totally in the wrong and he wanted to come to an agreement with me to withdraw my complaint that I had made to the Gardaí and not to take any civil action against him. Mr. McBrearty did not mention any sum of money, but there was an understanding that money would be paid to me for withdrawing charges. He visited me twice more at my home and I met Mr. McBrearty in Mulrine's solicitors office in Ballybofey. I had Mr. John Fahy, a solicitor in Strabane with me for legal advice. Mr. McBrearty was present at this meeting. I signed the document stating that I would not take any civil action against his club, his family or his employees for assaulting me on the 30th of December 1996. I understood from my solicitor that I would not take any proceedings against Mr. McBrearty Junior that's Frank, or the other bouncers who assaulted me. This meeting took place on Tuesday, 14th January 1997. I have been advised by my solicitor that I should now withdraw my complaint of assault which I made on 31.12.1996 to Garda O'Dowd. I am now asking that my complaint be withdrawn. If the Gardaí bring a prosecution against the men that assaulted me on 30.12.1996 I will go to court if I am summonsed to court.

It was not really my idea to withdraw my complaint. I was given £15,000.00 in Sterling notes in a plastic bag by Mr. McBrearty in Mulrine's

office in Ballybofey. Since I came to Raphoe Garda Station on 31.12.1996 I was told by my family and friends in Castlederg how long I spent in the station. It surprises me how Mr. McBrearty came across this information. I know this information came from Mr. McBrearty. They must be watching Raphoe Garda Station. I have heard this statement read over to me and it is correct.

Signed Edward Moss

Witness John White Sergeant 19787D¹¹¹³

- 7.409. In his evidence, Mr. Moss stated that his solicitor had told him that in order to honour his agreement with Mr. McBrearty Senior, the next thing that he had to do was to withdraw his statement. He said that was the reason why he withdrew the statement. He felt that it was something that he had agreed to do. Accordingly, he had no problem with the letter which had been sent on his behalf by Mr. Fahy formally withdrawing his statement. His understanding was that after the settlement meeting in Ballybofey, the matter was entirely closed.¹¹¹⁴ Mr. Moss went on to indicate that when he got to Raphoe Garda Station, Sergeant White explained to him that the settlement only dealt with his civil claim. He said that the Sergeant explained that these were criminal proceedings and that the Gardaí had spent many hours working on the file and that they would be proceeding with the criminal charges. They asked him, if he was needed as a witness, would he go to court, to which he replied that he would.¹¹¹⁵
- 7.410. Mr. White's account of the meeting in the Garda station that day was largely similar to that given by Mr. Moss. He said that Mr. Moss was confused about the effect of the settlement agreement and was not insistent on withdrawing his complaint. He said that he explained to Mr. Moss that given the seriousness of the complaint and the amount of work that had been put into it, he intended to proceed with the investigation and furnish a file to the Director of Public Prosecutions. When he asked Mr. Moss as to whether he would attend to give evidence at the trial, Mr. Moss indicated that he would attend as a witness if a subpoena issued. Mr. White denied that there had been any pressure whatsoever placed upon Mr. Moss to make the statement that he made at Raphoe Garda Station on the 21st of January 1997. He said that Mr. Moss furnished all the information that was provided in that statement including an incorrect amount for the settlement figure. We will see that this latter aspect is dealt with in a subsequent statement on an occasion when Mr. Moss brought in the actual Discharge Note that was signed at the settlement meeting, wherein the true settlement figure was recorded. In relation to the last portion of the statement,

¹¹¹³ Tribunal Documents, (Edward Moss Book of Evidence) pages 4-5.

¹¹¹⁴ Transcript, Day 566, pages 148-153.

¹¹¹⁵ Transcript, Day 566, page 157.

wherein there was a reference to Edmond Moss learning from family and friends that he had been into the Garda station and the fact that Mr. McBrearty Senior was aware of that, Mr. White stated that that portion had come in because Mr. Moss was whinging that word had got back to his family and friends that Mr. McBrearty Junior was aware that he had been in the Garda station making a complaint. Mr. White was adamant that this was what Edmond Moss had relayed to him in the course of their discussion on the 21st of January 1997. He said that at the conclusion of the statement it was read back to Mr. Moss, who agreed that it was correct and signed the statement.

- 7.411. **Having heard the evidence given by Mr. Moss, Mr. O'Dowd and Mr. White in relation to this meeting at Raphoe Garda Station, the Tribunal is satisfied that Mr. Moss was confused and unsure of his position at the time that he met with Sergeant White. The Tribunal accepts that Sergeant White did no more during this discussion than attempt to bring order to this confusion, and in particular that he did not exercise any pressure on Mr. Moss to proceed with the prosecution of the offence.**

The Superintendent's Direction

- 7.412. It appears that some time after Sergeant White received the letter dated the 16th of January 1997 from John Fahy & Co. and after he had learnt that there had been a settlement reached between Mr. Moss and Frank McBrearty Senior, he contacted Superintendent John Fitzgerald to obtain directions in relation to the matter. Mr. Fitzgerald had a recollection that Sergeant White did come to him and inform him that there had been a serious assault at Frankie's Nightclub on the 30th of December 1996, leading to injuries to one Edmond Moss. He was also told that there had been a subsequent exchange of monies between Mr. McBrearty Senior and the injured party. He also had a recollection that there was some reference to Mr. Moss withdrawing his statement and what effect that might have on the investigation. Mr. Fitzgerald advised the Sergeant to continue investigating the matter and send a file in due course to the Director of Public Prosecutions. He said that he was quite happy that that was the proper course to take, notwithstanding any purported settlement of the civil action.¹¹¹⁶
- 7.413. Mr. White made the point that his primary purpose in speaking to Mr. Moss on the 21st of January 1997 was to ascertain whether Mr. Moss would in fact come to court for the criminal prosecution. This was necessary due to the fact that Mr. Moss resided in the North of Ireland. Accordingly, he was not amenable to the normal means of securing the attendance of a witness at a criminal prosecution. He said that if Mr. Moss had been unwilling to attend as a witness, there was no reality to mounting the prosecution as he was the complainant in the case.

¹¹¹⁶ Transcript, Day 561, pages 886-88.

However, he said that Mr. Moss was willing to continue with the criminal prosecution, although he did not want to be seen to be the driving force behind any such prosecution. Mr. Moss stated that the statement may have been read over to him, but he only signed it as he wanted to get home at the time. He said that what was in the statement did not really bother him very much one way or the other. Mr. Moss stated that when he went to the Garda station it was only to withdraw his original statement of complaint and that he felt under pressure to co-operate with the Gardaí as far as the criminal case was concerned.¹¹¹⁷

7.414. He denied that the statements he had made to Sergeant White were made voluntarily. However, in the course of cross-examination, it was put to him that at the subsequent criminal trial defence counsel had put to him on no less than sixteen occasions, that his statements were not made voluntarily and that on each of these occasions he had replied that they were made voluntarily. It was also put to him that on seven occasions it was suggested that there was pressure put on him by Sergeant White to make the statements and on each of these occasions he denied that there was any such pressure placed upon him. Mr. Moss accepted that in the course of the criminal trial he had asserted that the statements that he had made were made voluntarily and had also denied that any pressure had been put upon him by Sergeant White to make those statements.¹¹¹⁸

7.415. **In the light of the repeated denials made by Mr. Moss in the course of the criminal trial, that his statements were made involuntarily, or that pressure had been placed upon him to make them, the Tribunal rejects the suggestion that Mr. Moss was put under pressure by Sergeant White to make these statements.**

7.416. Mr. John O'Dowd stated that when he saw the letter dated the 16th of January 1997 from John Fahy & Co., he thought that that would be the end of the matter. However, he said that when Sergeant White brought the matter to the attention of Superintendent Fitzgerald, the direction was to continue with the investigation. He said that when Mr. Moss came into the Garda Station on the 21st of January 1997, he did not appear to be very bothered by the matter one way or the other. He was not insisting that his statement of complaint be withdrawn, but equally he was not pressing that the criminal prosecution should continue. Mr. O'Dowd stated that he came across as an easy going type of person who had suffered serious injuries. He stated that Mr. Moss appeared happy enough that the matter would proceed to court.¹¹¹⁹

A Further Statement from Edmond Moss

7.417. On the 19th of March 1997, Mr. Moss attended at Raphoe Garda Station and made the following statement:

¹¹¹⁷ Transcript, Day 566, page 175.

¹¹¹⁸ Transcript, Day 567, pages 86-88.

¹¹¹⁹ Transcript, Day 559, page 88.

Further to my previous statement I wish to state that I have now given Garda John O'Dowd permission to have access to my medical records regarding injuries which I received on Monday morning, 30th December 1996 in Raphoe for the purpose of a prosecution. I thought that because Frank McBrearty had paid me the £15,000.00 I had to withdraw my statement of complaint. I am now clear that this is not the case. I have heard since from a fellow in Omagh that was in Frankie's that night, that young Frank McBrearty actually jumped on my leg when I was lying on the ground that night. He saw it happening. I am very annoyed about this. I will try and get his name for you and ring you with it. I do not want to withdraw my statement of complaint. I want young Frank McBrearty and the other bouncers who assaulted me prosecuted and I will give evidence at their trial. I am self-employed and I was out of work for eight weeks because of my injuries. I have heard this statement read over to me and it is correct.

Signed: Edward Moss

Witnessed: John White, Sergeant, 19787D

Witnessed: John O'Dowd, Garda, 21717L¹¹²⁰

- 7.418. Mr. White stated that Mr. Moss had been contacted in relation to obtaining copies of his medical reports. These were needed for the investigation file which was being prepared at that time. He stated that it was Mr. Moss who provided the information in that statement concerning the alleged witness from Omagh and as to what he had apparently seen on the night in question. He said that Mr. Moss was indignant about this additional information. He said that although Mr. Moss indicated that he would try to get the name of the witness, no name was ever forthcoming. Mr. White also took the opportunity to clarify again with Mr. Moss that he wished to proceed with the prosecution and that, if needed, he would attend in court as a witness. He said that Mr. Moss readily gave this assurance. He denied that there was any pressure or intimidation brought to bear on Mr. Moss in relation to his participation in the criminal prosecution.¹¹²¹
- 7.419. Mr. Moss stated that he had gone to the Garda station that day because he had been asked to give permission in relation to obtaining his medical records. He said that the reference in the statement to the witness in Omagh was merely a passing comment that he made in relation to something that he had heard in relation to what some unidentified person had said they had seen on the night in question. He agreed that he had said that he would try and get the name of the person. However, he did not agree that this meant that he was happy that the

¹¹²⁰ Tribunal Documents, (Edward Moss Book of Evidence), page 6.

¹¹²¹ Transcript, Day 595, page 109.

prosecution was proceeding. He said he did not feel that he wanted anything more to do with the prosecution, but at the same time he felt that he had to co-operate with the Gardaí. When it was put to him that the last sentence of the statement contained a very positive assertion that he wished the prosecution to continue, he gave the following rather equivocal response:

A. *It may have been said to me that they would be prosecuted like. But at the same time, I felt that I was being sort of wooed that way, to feel that way you know.*

Q. *In what sense? Can you try and fill that in for us?*

A. *If you are trying to co-operate you are trying to do what you think is required of you.*

Q. *Yes. I suppose it is asserted there that you want the man prosecuted and you will give evidence at the trial. There is an enthusiasm there that comes from the statement?*

A. *Well, it's not an enthusiasm coming from me.*

Q. *Well, where was it coming from?*

A. *It had to come from the guards like that was taking the statement.*¹¹²²

7.420. Mr. Moss stated that it was made clear to him by Sergeant White at that meeting that they were going to proceed with the criminal prosecution and that it was up to him to appear as a witness for the prosecution. He did not accept that by signing the statement he was showing any enthusiasm for the prosecution. He denied that that was the case. He said that he felt under considerable pressure at that time.

7.421. Following that visit to Raphoe Garda Station and the furnishing of a consent in relation to his medical reports, two medical reports were obtained in relation to the injuries suffered by Mr. Moss. In a report dated the 3rd of April 1997, Dr. R.W.A. Bailie, a general medical practitioner, stated that when he saw Mr. Moss on the 2nd of January 1997, he recounted that he had been the victim of an assault at around 02.00 hours on the 30th of December 1996 at Frankie's Nightclub in Raphoe. His patient reported that he had been punched several times about the face and chest and was also kicked on the right lower leg. An x-ray taken at the Casualty Department in Tyrone County Hospital revealed a closed fracture of the lateral malleolus of the right ankle. A below knee plaster of paris cast had been applied in the hospital. There was also bruising of the right eye and around the nose. An abrasion was seen upon the lower aspect of the left side of

¹¹²² Transcript, Day 566, page 181.

the nose. There was mild lower jaw tenderness, but clinically no fracture. There was tenderness over the chest, but there was no bruising. The doctor reported that the plaster cast was removed on the 14th of February 1997. At that stage Mr. Moss was partially able to weight bear on the right ankle, but was not fully weight bearing. Physiotherapy treatment was arranged at Tyrone County Hospital. The doctor was of the opinion that he would probably make a full recovery from his injuries, although he thought that that could take some time.¹¹²³

7.422. On the 21st of April 1997 Mr. D.J. D.T. Pinto, a consultant surgeon in Tyrone County Hospital, furnished a report in relation to Mr. Moss's injuries. He stated that Mr. Moss had presented at the Casualty Department walking with a limp. He gave a history that he had turned over on his ankle and had a tender bruise over the medial aspect of the ankle. He gave no other history as to how the injury had occurred. X-rays revealed a spiral fracture of the lower third of the right fibula, but the ankle joint itself was quite normal. A plaster cast was applied and Mr. Moss was reviewed on the 10th of January 1997. On further review the plaster cast was removed. It was noted that he had failed to keep a number of appointments at the Casualty Department. It appeared that he did not return to the hospital for the purpose of having the plaster of paris removed and the doctor was unaware as to who had removed same.¹¹²⁴ When giving his evidence, Mr. Moss was asked why he had told the casualty doctors that he had turned on his ankle, rather than telling them of any assault. Mr. Moss stated that his only purpose in going to the hospital was to get the plaster cast put onto his leg and after that he was going to go home. As he did not know the doctor he said that he did not feel that it was necessary to get into detail as to how the injury occurred. He said that he did not feel that there was any benefit in telling the doctor "the whole ins and outs of it" in relation to the injury.¹¹²⁵

7.423. The Tribunal considered the possibility that this somewhat optimistic and benign medical report was furnished by Mr. Moss in an effort to downgrade the injuries and thereby to encourage the Gardaí not to go ahead with the prosecution. However, on consideration the Tribunal does not think that this was in fact what happened. The report was furnished by the consultant surgeon in Tyrone County Hospital. It is unlikely that Mr. Moss could have dictated to him what material he would put into his medical report. Certainly the content of the report does not support the case that the Gardaí were pressurising Mr. Moss to continue with the prosecution against Mr. McBrearty Junior. While it is possible that Mr. Moss may have tried to downgrade his injuries to the doctor with a view to lessening the case against Frank McBrearty Junior, this does not in any way add to the case that was put forward that Sergeant White was proceeding with the prosecution as a vendetta against Frank McBrearty Junior.

¹¹²³ Tribunal Documents, (Edward Moss Book of Evidence) page 9.

¹¹²⁴ Tribunal Documents, (Edward Moss Book of Evidence), page 10.

¹¹²⁵ Transcript, Day 566, page 185.

A Further Letter from the Solicitor

- 7.424. On the 30th of April 1997, Mr. Fahy wrote a further letter on behalf of his client. This letter effectively called on the Gardaí to stop harassing his client and threatened that if they failed to do so, he would take the appropriate steps to have them so restrained:

Re: Our Client – Edward Moss, 49 Carn Road, Garvagh, Castlederg, Co. Tyrone. Incident at Frankie's Nightclub on 30th December 1996.

Dear Sirs,

We refer to the above and previous correspondence therein.

Our client asserts that you have been continually harassing him by telephone and that you have insisted that he attend at the Garda station to make further statements, which statements have not been made voluntarily. We hereby call upon you to desist from this course of action otherwise we would be obliged to take the appropriate court proceedings to have you so restrained.

Yours faithfully,

John Fahy & Co.¹¹²⁶

- 7.425. Mr. Fahy's recollection was that Edmond Moss made contact with him by telephone complaining of two matters firstly, that the Gardaí were telephoning him and requiring that he should attend at the Garda station to make further statements and secondly, that he felt that he was perhaps getting undue attention at vehicle checkpoints that were mounted in the Donegal area at the time. The solicitor said that he got the impression that Mr. Moss felt that he was being pressurised by the Gardaí because they were insisting that the criminal prosecution should go ahead. He was concerned about the vehicle checkpoints, due to the fact that, although he lived in the North of Ireland, he did considerable work in the Donegal area. His girlfriend also lived in County Donegal. Mr. Fahy was not sure that the attention that he was getting at the vehicle checkpoints was connected to any pressure that the Gardaí may have been putting on him in relation to continuing with the prosecution against Frank McBrearty Junior and the bouncers. Mr. Fahy stated that as a result of the telephone calls from his client, he wrote the letter of the 30th of April 1997. Mr. Fahy confirmed that Mr. Moss did not make any specific complaints against any named members of An Garda Síochána in relation to the complaints that he was making generally. Mr. Fahy thought that he had received two calls from Mr. Moss in advance of his writing that letter. He was unable to say how much telephone traffic Mr. Moss

¹¹²⁶ Tribunal Documents, (Edward Moss Book of Evidence), page 13.

alleged there had been from the Gardaí to him. Mr. Fahy stated that although there was a threat to institute proceedings if the Gardaí failed to heed the content of the letter, this was not actually discussed with Mr. Moss. He stated that in reality it was probably going to be prohibitive on a cost basis to pursue any injunctive relief in that regard. Mr. Fahy was asked whether he was clear that he had full instructions to write such a letter. He said that he could not see how such a letter would issue without instructions coming from the client.¹¹²⁷

7.426. According to Mr. Fahy, that was effectively the last contact between Mr. Moss and Mr. Fahy in relation to this topic. While they did have subsequent dealings, Mr. Fahy stated that that was the last time that he received instructions from Mr. Moss in relation to this particular prosecution. However, as we will see later in the narrative, this cannot be correct, because Mr. Moss returned to Mr. Fahy to obtain a copy of the Discharge note. It also appears that Mr. Fahy wrote shortly in advance of the trial to the District Court Clerk in Letterkenny. This correspondence will be looked at later in the chapter.

7.427. Mr. Moss stated that he had telephoned his solicitor and complained that he had been receiving phone calls at the behest of Sergeant White telling him that he had to attend the Garda station, and he also felt that he had received undue attention at vehicle checkpoints from Garda O'Dowd. He said that it was in response to these complaints that his solicitor wrote the letter. When pressed as to the number of telephone calls that he had received, he said that he had received phone calls in advance of attending at the Garda station on the 21st of January 1997 and the 19th of March 1997. He could only indicate that there was "a phone call or two" made in relation to his attendance at the Garda station. He said that there might have been other occasions when he did not answer the telephone, but felt under pressure from the Gardaí to co-operate. In relation to the attention at the vehicle checkpoints, he said that on one occasion he had been driving somewhat quickly through Raphoe when he had been stopped by Garda John O'Dowd. He said that Garda O'Dowd on recognising him, merely passed the time of day with him and told him to drive more carefully. He allowed him to proceed on without further ado. Mr. Moss summarised his thinking at the time in the following way:

A: *I felt that once I had dropped my civil actions against the McBreartys that I wanted no more to do with it and that the reason for me having to keep continuing to attend the Garda station and make a further statement, things like that, that I felt under pressure doing that and it wasn't a normal practice for me to be ... you know, it wasn't normal practice in everyday life,*

¹¹²⁷ Transcript, Day 560, pages 84-90.

I have never had no dealings with the law and I felt under pressure or threatened by the law in that way.

Chairman: Mr. Moss why do you say things in your statement like: "I want you to go ahead with it, I want the McBreartys prosecuted, I feel very angry about this". Why were you saying that if it wasn't true? Do you see my point?

A: I see your point.

Chairman: I am sure you do.

A. Yes.

Chairman: I am trying to unravel this. On the one hand you are making what may well be taken as a very serious allegation against the guards that here was someone who didn't want to go on with the thing and they are prodding and pushing him and making him go ahead with it. Now they have a job to do and if someone wants to go ahead with a case then they must make sure that it goes ahead properly and they might ring you up and they might say listen, come on in and make a statement. And if you are telling them I want to go ahead with the case, who could blame them for doing that. Do you understand?

A: They asked me would I attend.

Chairman: But on the other hand, I want you to make it clear, don't come down the middle on this now, you must go down black or white?

A: Yes.

Chairman: Either you did want to go ahead with the case and they were doing their duty or they were doing something totally different that was wrong. Where do you stand on that?

A: Well, where I stand on it is when they mention the criminal case it was felt that they were going ahead with the criminal case and if I was asked to attend as a witness that I would do and I agreed to doing that.

Chairman: You did agree?

A: I did agree.

Chairman: Well then, were you saying to the guards ... were you saying something like this: look it I thought that I could back out of this, but now I see that I have an obligation to co-operate with the guards and go ahead with the case, is that what you are saying?

A: I felt obliged to continue with it.

Chairman: Then you were willingly going ahead with it?

A: Yes, willingly going ahead with it.

Chairman: Why are you talking about pressure for so?

A: I felt that the fact that it wasn't normal practice for me to be phoned up by a guard to be asked to attend the Garda station and things like that, it wasn't everyday life for me.¹¹²⁸

7.428. Mr. White stated that although the letter was in strong terms and was not very pleasant, he did not take any great notice of it. He stated that Mr. Fahy was known to be a "tough" solicitor who would tend to write strongly worded letters on behalf of his clients. He was almost sure that he brought the letter to the attention of Superintendent Kevin Lennon. He was not aware as to whether any response was sent back to Mr. Fahy in relation to the letter. He stated that he had not harassed Mr. Moss in any way. Indeed, he stated that Mr. Moss was always quite anxious that the criminal prosecution would proceed any time that he had contacted Sergeant White, although he was also anxious that he would not be seen as the driving force behind the prosecution. He said that every time that he met Mr. Moss, he was very strong and was adamant about the case continuing and was never suggesting that the case should stop. He said that when he showed the actual letter to Mr. Moss later in the following year, Mr. Moss distanced himself considerably from the wording in the letter.¹¹²⁹ It does not appear that this letter was treated by Sergeant White with any great degree of seriousness. He did not make any contact with Mr. Moss upon receipt of the letter.

Sergeant White's Report

7.429. On the 2nd of May 1997, Sergeant White submitted his covering report with the investigation file to the Superintendent at Letterkenny Garda Station for onward

¹¹²⁸ Transcript, Day 566, pages 189-191.

¹¹²⁹ Transcript, Day 595, pages 111-114.

transmission to the Director of Public Prosecutions. Having summarised the investigation and the various witness statements that had been obtained, he recommended that Frank McBrearty Junior and Mr. Martin McCallion should be prosecuted under section 47 of the Offences Against the Person Act 1861 in respect of the assault on Mr. Moss. He also recommended that Mr. Liam O'Donnell should be prosecuted for common assault on Mr. Moss on the same date. In the report he also drew attention to what he regarded as being an attempt by Frank McBrearty Senior to pervert the course of justice by paying money to the complainant so as to prevent him being a witness in a the criminal prosecution.¹¹³⁰

- 7.430.** In the course of cross-examination of Mr. White by counsel acting on behalf of Mr. Moss, it was put to the witness that the report was improperly drafted: in particular, that the Superintendent and the Director of Public Prosecutions were not made aware of the fact that Mr. Moss wanted to withdraw his statement of complaint. This was rejected by Mr. White. He pointed out that he had referred to the relevant correspondence from Mr. Fahy in the body of the report and had also dealt with the fact that when Mr. Moss subsequently came to the Garda station he was confused as to the effect of the settlement meeting and made a statement acknowledging that he wanted to go on with the prosecution. That was the statement made on the 21st of January 1997. Mr. White pointed out that all of the relevant correspondence from Mr. Fahy was attached as an appendix to his report. In these circumstances, both the Superintendent and the Director of Public Prosecutions would have been fully aware of the correspondence from Mr. Fahy and could have directed further enquiries to be made of that solicitor, if they felt such enquiries were necessary.
- 7.431.** Counsel also criticised Sergeant White's report due to the fact that there were references therein which, it is alleged, were unfairly prejudicial to the McBreartys. It was pointed out that attention had been drawn to the fact that Mr. McBrearty Senior was Lord Mayor of Raphoe in rather dubious circumstances. Sergeant White was also critical in the report of Frank McBrearty Junior being antagonistic towards members of the Gardaí in front of customers in his licensed premises. He had also alleged that there were a number of serious assaults outside the McBrearty licensed premises. I think that in considering the content of the report, one has to look to all of the documents which accompanied the report. A total of fifteen statements were attached to the report. There were three statements from Mr. Moss, together with statements from the independent witnesses and from a number of Gardaí who had taken part in the investigation. There were also a number of memoranda of interview which were taken of Mr. McBrearty Junior, Mr. O'Donnell and Mr. McCallion. In addition, copies of the relevant

¹¹³⁰ Tribunal Documents, (Edward Moss Book of Evidence), pages 268-277.

custody records were furnished with the report together with a list of exhibits and the appendices containing the correspondence from Mr. Fahy. **I do not think the fact that an investigating Garda is critical of the accused in the body of the report is necessarily indicative of his being prejudiced towards the accused, or of his urging the Director of Public Prosecutions to bring a prosecution. The Tribunal accepts the assertion that was made by Mr. White that the Director of Public Prosecutions is entitled to know the surrounding circumstances to a case if he is to make an informed decision as to whether or not a prosecution should proceed. The Tribunal does not criticise Mr. White for the content of this report.**

- 7.432. There does not appear to have been any further development in the matter until November 1997 when Detective Sergeant White received word that the Director of Public Prosecutions had given a direction that Mr. McBrearty Junior, Mr. McCallion and Mr. O'Donnell should be tried on indictment in the Circuit Criminal Court for an offence contrary to section 18 of the Criminal Justice (Public Order) Act, 1994 in respect of the assault on Mr. Edmond Moss on the 30th of December 1996. Mr. White stated that he received this information on the 25th of November 1997 and on the following day he rang Mr. Moss seeking to obtain a copy of the Discharge Note which he had signed at the settlement meeting held in the solicitors' office in Ballybofey on the 14th of January 1997. Detective Sergeant White made a note in his diary of the telephone call which he made to Mr. Moss:

2.00 p.m. to 10.00 p.m. 6.00 p.m. – Call from Edward Moss, who stated that he was returning my call. He stated that he had asked Mr. Fahy for a copy of document signed in Ballybofey but did not receive same. He will ask again and ring me A.S.A.P.¹¹³¹

- 7.433. Mr. White stated that he had requested Mr. Moss on a previous occasion to obtain a copy of the Discharge Note, but had never received it. It was for that reason that he made further contact with Mr. Moss when the directions had been received back from the Director of Public Prosecutions.
- 7.434. It appears that Mr. Moss did obtain a copy of the Discharge Note from his solicitor. He brought it to Detective Sergeant White at Ballybofey Garda Station on the 1st of February 1998. As well as handing over a copy of the Discharge Note, he also made a further statement in the matter:

Further to my previous statement, I wish to state that I made a mistake in the last statement that I made to you on 21st January 1997. I stated that I got £15,000.00 Sterling from Frank McBrearty Senior. In fact I got

¹¹³¹ Transcript, Day 595, page 110.

£10,000.00 Sterling from him in McMullins' office in Ballybofey last January, 1997. This was just a mistake on my part. I have given you a copy of the document that I signed on that day in Ballybofey. It is signed by myself and my solicitor John Fahy. I have marked this document E. Moss. 1. When I made the statement to you on the 21st January 1997. I knew that you were going to continue your investigation into the assault on me on 30.12.1996. I only withdrew my complaint in that statement because my solicitor told me to do so. I have now been issued with a summons to go to court on the 26th of January 1998 and I will go there and give evidence. I have now been shown a letter sent to you by my solicitor on 30th April 1997. I did not authorise Mr. Fahy to send this letter. I did not feel at any time that either yourself or any guard were harassing me. All of my statements were made voluntarily. I have now signed this letter E. Moss. 2. One of the main reasons that I asked you to withdraw my statement of complaint on the 21st January 1997 was that I thought that I did not have any choice in the matter after signing the document in McMullins' office in Ballybofey in January 1997. I understood that part of the agreement was that I would withdraw the criminal complaint against Frank McBrearty and the bouncers. I only got a copy of this document last week from my solicitor. This is the document that I have signed E. Moss. 1. I was confused over the matter but I did not ever wish to withdraw my complaint regarding the assault. I was seriously assaulted on 30 /12/96. I have suffered a lot of pain resulting from this incident and I still suffer from my broken leg. I have heard this statement read over to me and it is correct.

Signed: Edward Moss

Witnessed: John White, D/Sgt. 19787D¹¹³²

- 7.435. In his evidence before the Tribunal, Mr. Moss dealt with a number of issues arising out of this statement. Firstly, he said that the reason that he had initially overstated the amount of the settlement figure was that he did not want the Gardaí to know the exact details of the settlement, which he regarded as being solely his business. It was put to him in cross-examination that that did not make sense as a logical reason for overstating the amount of the settlement figure. He responded that he simply did not want the Gardaí to know his business. He denied that he had overstated the settlement figure because he felt that he had been short-changed in the actual settlement figure that had been reached with Mr. McBrearty Senior. He denied that it was on that account that he was anxious to go ahead with the criminal prosecution. It should be noted that in the statement made on the 1st of February 1998 he merely stated that he had made

¹¹³² Tribunal Documents, (Edward Moss Book of Evidence), page 7-8.

a mistake in relation to the amount of the settlement. This of course came to light due to the fact that the correct settlement figure was actually stated in the Discharge Note which Mr. Moss brought to the Garda station that day.

7.436. Mr. Moss went on to explain the comments that he had made in relation to the letter written by the solicitor on the 30th of April 1997. He said that he had authorised Mr. Fahy to write a letter on his behalf, but he was unaware of the exact words that were used in the letter. Accordingly, he was not aware that Mr. Fahy had accused the Gardaí of “harassing” him. In his evidence Mr. Moss said that he did in fact feel that he was harassed. It was put to him that he had said completely the opposite in his statement. He said that he accepted that the words were printed there, but that is not how he felt at the time that he made the statement. He said that he did feel compelled to co-operate with Detective Sergeant White in the criminal proceedings against the McBreartys. It was put to him that in the course of that statement he had clearly stated that all his statements to the Gardaí were made voluntarily. He said that he accepted that that was what was written in the statement, but it was not how he felt. He said that he felt that if he did not say the things that were in the statement, he would be in trouble with the Gardaí.

7.437. However, when asked by the Chairman what might have given him that impression, he said at first that he had no access to legal advice. When pressed on the matter as to why he felt that he would be in trouble if he did not make the statement in the terms that he did, he said that he felt that he would be in trouble for wasting police time.¹¹³³ The Tribunal tried to elicit from Mr. Moss exactly what his position was in relation to the statement made on the 1st of February 1998:

Chairman: Well, it's as clear as this: you had a feeling you were going to get into trouble?

A: Aye.

Chairman: Unless you signed up to this?

A: Mm-hmm.

Chairman: What gave you that feeling?

A: It was not just, it wasn't as clear as day like or nothing like that, just a feeling that you got. Like it was just a feeling that you got at the time. It wasn't ... it was no physical or nothing, it was just a feeling that you got by it, you know?

¹¹³³ Transcript, Day 566, pages 200-202.

Chairman: I don't?

A: I cannot explain it to you in any ... how I should explain it, but I just can't really explain it.

Chairman: You are back-tracking on everything that the solicitor had written on your behalf?

A: Mm-hmm.

Chairman: Why did you do that?

A: I did not back-track on what the solicitor said, I was asked was them my exact words and I said no.

Chairman: No, but that was your sentiment?

A: Aye.

Chairman: You had asked the solicitor to write a letter to that effect for you and he had done it and now you are telling the guards that you did not authorise it at all?

A: I didn't say I didn't authorise it, I said them wasn't my exact words. That is how I felt at the time. I wasn't back-tracking or nothing, but that is how I felt. And I felt under pressure from the whole thing as it intensified like, you know?¹¹³⁴

- 7.438. Mr. White stated that when Mr. Moss came into the Garda station that day, he had the Discharge Note with him. He did indicate to Detective Sergeant White that he had incorrectly stated the amount of the settlement figure due to the fact that he did not want to tell the Gardaí his business. Mr. White also stated that Mr. Moss told him that people thought that he had settled for too little. Mr. White thought that by over-stating the amount of the settlement figure, Mr. Moss may have been trying to save face in the matter. He said that Mr. Moss also re-asserted that he would go to court and give evidence. Mr. White stated that there was no way that he would have been prepared to have a witness give evidence in the Circuit Court if that witness felt that he had been pushed into it. He said that it would not have looked very good for him if it came out at the trial that he had been pushing a witness into giving evidence that he did not want to give. He accepted that he did raise the letter that had been sent by Mr. Fahy with Mr. Moss. He said that he did this purely for clarification. He said that Mr. Moss stated to him that he had not authorised his solicitor to say the things that had been said in that letter. He said that was why he put that into the statement. He

¹¹³⁴ Transcript, Day 566, page 203-204.

said that Mr. Moss was an easygoing type of person and that he had no difficulty getting on with him. He said that on that occasion Mr. Moss had freely travelled over to Ballybofey Garda Station from the North of Ireland when he was under no compulsion to do so. When he got there, he made a statement correcting the amount of the settlement figure, gave him a copy of the discharge note, dealt with the content of the letter which had been sent by his solicitor and also confirmed that he was prepared to attend at the criminal trial as a witness. Mr. White made the point that if Mr. Moss had actually complained to his solicitor about being harassed by Detective Sergeant White, then he would not have taken all these steps voluntarily a considerable time later in February 1998. Again, this statement would appear to have been read over to Mr. Moss and was signed by him on its conclusion.

Further Letters from the Solicitor

7.439. Later in the month of February 1998, there was a curious exchange of correspondence between Mr. Fahy and the solicitors representing Frank McBrearty Senior. By letter dated the 28th of February 1998, Mr. Fahy wrote to the District Court Office in Letterkenny in the following terms in relation to the prosecution being brought by the Director of Public Prosecutions against Mr. McBrearty Junior, Mr. O'Donnell and Mr. McCallion concerning the assault on Edmond Moss:

Dear Sirs,

We have been consulted by the above named who has instructed us to indicate to you that he is not prepared to attend court as a witness in relation to the prosecution of all of the above named. In due course we confirm that we propose to take from him a formal statement of withdrawal. Our client has instructed us to indicate that this letter can be used in the formalising of any such proceedings.

Yours faithfully,

John Fahy & Co.¹¹³⁵

7.440. By letter of the same date addressed to Binchys Solicitors, who were the solicitors acting on behalf of Frank McBrearty Senior, Mr. Fahy sent to them a copy of the letter which he had sent to the District Court Office in Letterkenny. Mr. Fahy's letter to the District Court Office was acknowledged on the same date by Superintendent Kevin Lennon who indicated that the matter had been passed to the member concerned. He stated that he would revert further in the matter in due course. By letter dated the 3rd of March 1998, Mr. Fahy wrote directly to

¹¹³⁵ Tribunal Documents, (Edward Moss Book of Evidence), page 499.

Frank McBrearty Senior in Raphoe, enclosing a copy of the response which had been sent to him by Superintendent Lennon. Some days earlier on the 26th of February 1998, Frank McBrearty Senior had written the following letter to his solicitor, Mr. Ken Smyth:

Dear Ken,

I need to talk to you urgently re ongoing matters.

Mr. Eddie Moss has instructed John Fahy & Co., Solicitors, Strabane, that he is withdrawing as a State witness.

We need to discuss the upcoming summonses on 9th March, either in Dublin or here in Raphoe, at least a week in advance.

I have tried to contact you on a number (14) occasions this week. I appreciate that you are busy, but these matters are urgent.

Yours sincerely,

Frank McBrearty 25/2/98¹¹³⁶

- 7.441. The letter which Mr. Fahy sent to the District Court Office on the 24th of February 1998 was not put to him in evidence, as it was not available at the time that he gave evidence before the Tribunal. It will be recalled that Mr. Fahy had indicated in his evidence that his last dealing with Mr. Moss was in the two telephone calls that he received in advance of his writing the letter which had accused the Gardaí of harassing his client on the 30th of April 1997. Mr. Moss was not asked about the letter of the 24th of February 1998, as it was not available at the time that he gave evidence either. It was available at the time that Mr. White gave evidence. However, he stated that he had no knowledge of it and had never seen it prior to it being produced to him in the Tribunal. He could not assist in any way in relation to the letter. All he could say was that Mr. Moss had at all times appeared to him quite willing to appear as a witness. He was never aware of any indication to the contrary. He noted that in the letter dated the 24th of February 1998 it was indicated that a formal statement of withdrawal would be taken by Mr. Fahy from Mr. Moss and forwarded in due course. It appears that no such statement was ever forthcoming.
- 7.442. It is not at all clear as to what gave rise to the correspondence passing between Mr. Fahy and the District Court Office in Letterkenny and the copying of that correspondence and subsequent correspondence connected therewith to Mr. McBrearty Senior and his legal advisers. All that one can say is that it would appear that Mr. Fahy was informing Mr. McBrearty Senior's legal advisers that his

¹¹³⁶ Tribunal Documents, (Edward Moss Book of Evidence), page 498.

client, Mr. Moss, did not intend to participate in the criminal proceedings. How and why he came to do that at that time is not known.

7.443. By letter dated the 7th of April 1998 Mr. Kenneth Smyth, solicitor, wrote to Superintendent Kevin Lennon indicating that he understood that Mr. Moss had withdrawn his complaint. He indicated that the Superintendent had said that there was some confusion in as much as Mr. Moss's solicitor was saying that he had withdrawn the complaint, but that Mr. Moss had not yet indicated that to the Superintendent. It was on this basis that Mr. Smyth had the understanding that the summons was still in being, but had been adjourned until later in the month of April 1998. On the 22nd of April 1998 Mr. Smyth wrote to John Fahy & Company informing them that he had received a letter from Superintendent Lennon which suggested that Mr. Moss had not withdrawn his complaint. It requested that Mr. Fahy would let him know in writing what the true position was.¹¹³⁷ It does not appear that any response was received to that letter.

7.444. Matters proceeded in the usual way, with service of the book of evidence on the accused taking place prior to the 26th of August 1998. On that date, Mr. Smyth wrote to Superintendent Lennon indicating that there appeared to be some confusion as to whether or not Mr. Moss was going to attend at the trial to give evidence. He noted that the Superintendent had been furnished with copies of correspondence from solicitors in the North of Ireland indicating that Mr. Moss did not intend to pursue the matter. Mr. Smyth stated that as his clients were about to incur considerable legal expense, he was anxious to know whether or not Mr. Moss was definitely going to proceed with the matter. He requested that the Superintendent write to him definitively on the point. He indicated that if that was not done, his clients would be forced to seek legal costs against the State if the prosecution was discontinued at a later stage. It does not appear that Mr. Smyth received any response or assurance in relation to this matter. There was, however, an amount of correspondence dealing with various exchanges of documents prior to the commencement of the criminal proceedings. These were initially set to commence on the 26th of April 1999. By letter dated the 19th of April 1999, Mr. Smyth wrote to Mr. Fahy in the following terms:

Dear Mr. Fahy,

You will be aware that we act for the three accused in relation to the Circuit Criminal Court trials which are listed for hearing at Letterkenny Circuit Court on Tuesday, the 22nd of April 1999. It would be a great favour if you were able to confirm that you would be able to attend Letterkenny Circuit Court at some stage on the 27th of April 1999. If you have seen the national papers over the past week or two, you will have

¹¹³⁷ Tribunal Documents, (Edward Moss Book of Evidence), page 505.

seen that certain disturbing allegations concerning some members of the local Garda Síochána have begun to come to light, counsel would welcome any assistance that you can give in relation to an apparent “hidden agenda” on the part of An Garda Síochána concerning the McBrearty family and what was described in a secret Garda memo as “the extended McBrearty family”.

I look forward to hearing from you and thank you in anticipation of your assistance.

Yours sincerely,

p.p. Binchys

Ken Smyth ¹¹³⁸

- 7.445. Mr. Fahy responded to the letter from Ken Smyth dated the 19th of April 1999 by letter dated the 29th of April 1999, in which he stated that the writer knew and was in regular contact with Frank McBrearty Senior. The writer was aware of the allegations made against the Garda Síochána, however, he did not feel that he would be able to give any assistance to Mr. Smyth. However, he was prepared to speak to him at any time.¹¹³⁹ From the foregoing correspondence, it would appear that there was remarkably close contact between the solicitor acting for the complainant in the forthcoming criminal proceedings and members of the accused’s family and his legal advisers.

The Criminal Trial

- 7.446. The commencement of the trial had been deferred until the 4th of May 1999. On the first day on which the trial was scheduled to commence, Mr. Moss did not turn up. Mr. Moss stated that he had not attended at the court that day due to the fact that he had work which he was scheduled to do. He stated that he had been in court on a few other occasions when the case had not been heard. He did not attend on that day due to the assumption that the case would not be heard on that day as on previous occasions. He said that he subsequently learnt that a Bench Warrant had been issued for his arrest. When he was told about that and that he had to turn up on the following day, he did so. He said he was reluctant to take part as he did not want to be in the court at all.¹¹⁴⁰ Mr. White stated that he was very shocked when Mr. Moss did not turn up for the first day of the trial. He stated that he had not had any indication between the 1st of February 1998 and May of 1999 that Mr. Moss had any difficulties in relation to attending to give evidence at the trial. He said that when the Bench Warrant had issued, he made contact with Mr. Moss and informed him about that. He said

¹¹³⁸ Tribunal Documents, page 521.

¹¹³⁹ Tribunal Documents, page 526.

¹¹⁴⁰ Transcript, Day 566, page 196

that there was no difficulty when he contacted Mr. Moss and informed him of the situation. He did not indicate any objection to coming to court.¹¹⁴¹

- 7.447. The trial commenced on the 5th of May 1999. Evidence was given by a number of witnesses, including Mr. Moss. As already noted, the result of the trial was that all three of the accused were acquitted. Mr. O'Donnell and Mr. McCallion were acquitted by the jury on the direction of the trial judge. The matter was left to the decision of the jury in respect of Mr. Frank McBrearty Junior. They returned a verdict of Not Guilty in his case.

Conclusions on the Garda Investigation

- 7.448. The central question for determination on this aspect of the module is whether the Gardaí, and in particular Detective Sergeant White and Garda John O'Dowd, in some way put pressure on Mr. Moss to continue with the criminal investigation, even though he had indicated to them a desire to withdraw his statement of complaint. The question for determination is whether the Gardaí did that and, if so, whether they were motivated primarily by a desire to prosecute and convict Frank McBrearty Junior. Mr. Moss in his evidence dealt with this very point. In the course of cross-examination by Mr. Dorrian, solicitor on behalf of Mr. White, he was asked whether at any stage he had said to Sergeant White that he would prefer to get out of the criminal prosecution altogether and would prefer if he could withdraw his statement of complaint:

*I never said that to Sergeant White. But that's how I felt, that I didn't want any criminal part in it.*¹¹⁴²

- 7.449. Later in the course of that cross-examination the Tribunal tried to clarify with Mr. Moss exactly where he stood on the matter:

Chairman: You said to Mr. Dorrian, "I never said to Sergeant White that I wanted to withdraw my complaint". That's what you said to him. Now I can understand your answer, you mightn't have used those precise words, but did you ever say to him "look, I don't want to go on with this?"

A: I never said that I didn't want to go on with it, but I felt that they were going ahead with the criminal case and it was out of my hands, that I had to participate in this.

Chairman: I know that. I know that you now know and you knew then it was out of your hands. But did you ever say it to him?

¹¹⁴¹ Transcript, Day 595, page 138.

¹¹⁴² Transcript, Day 567, page 64.

A: *I never physically said to him, no. But like my friends and my family knew how I felt about it. I suppose I should have said to him, but I did not say it to him ...*

Chairman: *Did you ever say or do anything that makes Sergeant White think that you didn't want to go ahead, because that is what Sergeant White is going to tell me?*

A: *I possibly didn't say, no.¹¹⁴³*

7.450. In the course of the same cross-examination, Mr. Dorrian also put the following question to Mr. Moss:

Q: *Mr. Moss, I accept that is what you are saying now, that that is not how you felt. But if that is not how you felt, I am going back to an earlier question I put to you, why didn't you say to Garda O'Dowd or to John White, look, I am not happy with this and I am feeling a wee bit under pressure about it and I don't want to go any further with it?*

A: *I didn't say, it was stupid of me not to say it, but I didn't say.*

Q: *But then how would they know that you were under pressure?*

A: *I was only doing what I thought was required of me to do at the time.¹¹⁴⁴*

7.451. Having considered all of the oral testimony and documentary evidence provided on this part of the module, I am in a position to make the following findings in relation to the Garda investigation into the complaint made by Mr. Edmond Moss that he was assaulted at Frankie's Nightclub on the 30th of December 1996:

1. Mr. Moss made his initial statement of complaint entirely voluntarily. According to Mr. White, the Gardaí were not aware of the incident until it was reported to them by Mr. Moss. Once a statement of complaint was furnished to them, the Gardaí were obliged to take steps to thoroughly investigate the matter, which appeared to have involved a very serious assault. I find that Garda O'Dowd carried out the task of obtaining the relevant witness statements in a diligent and proper manner.
2. Unknown to the Gardaí, Mr. Moss subsequently proceeded to settle the civil aspects of his case against Frank McBrearty Ltd. That was

¹¹⁴³ Transcript, Day 567, pages 66-67, 81.

¹¹⁴⁴ Transcript, Day 567, pages 78-79.

something which he was entitled to do. It may well have been that bound up in the settlement agreement was some form of gentleman's agreement to the effect that he would withdraw his statement of complaint to the Gardaí. That was certainly an impression that he had coming away from that settlement meeting. However, that was not something which he could be legally compelled to do by the receipt of money paid by Frank McBrearty Senior. Once the consequences of the settlement of the civil action and the fact that such settlement would not impact upon the criminal investigation and prosecution were explained to Mr. Moss, I am satisfied that he was happy to let the criminal aspect proceed, although he may not have wished to have been seen as the instigator of the ongoing criminal investigation.

3. I accept the evidence given by Mr. White that when it was explained to Mr. Moss that settlement of the civil aspects of the case did not affect the criminal prosecution, Mr. Moss was agreeable to allowing the criminal prosecution to proceed. It may well have been put to him that the Gardaí had expended a considerable amount of time and effort in obtaining statements as part of their investigation and that, given the severity of the matter, a file would have to be prepared and would be forwarded to the Director of Public Prosecutions. Mr. Moss may well have felt that he had no choice but to co-operate with the Garda investigation and that the criminal investigation was out of his hands. That was in fact the reality of the situation. However, that does not mean that Mr. Moss was pressurised into making any statements or pressurised into continuing with the matter against his will. I do not accept that that was so. In the course of the criminal trial, Mr. Moss repeatedly stated that all the statements that were made by him were given voluntarily and also denied that any pressure had been put upon him by Detective Sergeant White to continue with the prosecution. Mr. Moss has tried to paint a different picture in his evidence before the Tribunal. However, as already noted, he stopped short of actually alleging that he told Detective Sergeant White that he wished to withdraw his statement and did not wish to continue with the matter. In the circumstances, I find that there was no undue pressure brought to bear on Mr. Moss by Detective Sergeant White or any other member of An Garda Síochána to co-operate with the criminal investigation.
4. Even on Mr. Moss's own evidence, he never indicated to Detective

Sergeant White that he wanted to withdraw his statement of complaint and have nothing more to do with the prosecution. Indeed his actions in attending at the Garda station on a number of occasions, in furnishing a consent to releasing his medical records, in providing further information about a witness from Omagh, and in obtaining a copy of the Discharge Note, are not consistent with a desire on Mr. Moss's part not to co-operate with the Garda investigation.

5. I accept the evidence given by Mr. Fitzgerald that he was informed about the investigation and that it was indicated to him that a letter had been received from a solicitor indicating a desire on the part of his client to withdraw the statement of complaint; he nevertheless gave the direction that the investigation was to proceed. Once that direction was given, Detective Sergeant White and Garda O'Dowd had no choice but to proceed with the investigation. I can find no fault with the direction that was given on that occasion by Superintendent Fitzgerald. In complying with that direction, Detective Sergeant White and Garda O'Dowd were following a lawful order from a superior officer. That was something which they were duty bound to do. I do not criticise them for continuing with the investigation. Even if Mr. Moss had been a reluctant witness or developed cold feet about giving evidence in the criminal trial, the Gardaí had a public duty to investigate the allegation that a serious criminal offence had been committed. It would be wrong and contrary to public policy if the reluctance of a witness to testify in the criminal trial should, of itself, determine that a crime should not be investigated or prosecuted.
6. In summary, therefore, while I do not find that there was anything wrong in the way that the Gardaí investigated this matter and brought it to trial before the Circuit Criminal Court, I remain unconvinced that their motivation was unconnected to their antipathy towards the accused.

The Arrest and Detention of Mr. Frank McBrearty Junior on the 4th of February 1997

Introduction

- 7.452. Mr. Frank McBrearty Junior was arrested outside Raphoe Garda Station at 12.52 hours on the 4th of February 1997 by Garda John O'Dowd on suspicion of having committed an offence contrary to section 18 of the Offences Against the Person

Act, 1861. He was released that evening at 22.18 hours. This section of the report will examine the legality of that arrest and the method in which it was effected, and examine whether Mr. McBrearty Junior was abused either physically or verbally during the course of his detention at Letterkenny Garda Station.

- 7.453. The Tribunal has been hampered in its work in relation to this aspect of the module. This was due to the fact that Frank McBrearty Junior walked out of the witness box while he was being cross-examined by Mr. Tom Murphy, the solicitor acting on behalf of Mr. John O’Dowd. Mr. McBrearty Junior refused to answer any questions put to him in cross-examination concerning his arrest and detention on the 4th of February 1997. Accordingly, neither Mr. O’Dowd, nor Mr. White, were afforded the opportunity to test any of the allegations that had been made by Mr. McBrearty Junior in relation to that period of detention. He denied them the opportunity to exercise their constitutional right to cross-examine him on these allegations. Mr. White and Mr. O’Dowd subsequently gave evidence in relation to their dealings with Mr. McBrearty Junior on that occasion.
- 7.454. In the circumstances where a party has not been given the opportunity to test the accusations made against him by another party by way of cross-examination, the Tribunal cannot make any findings on those allegations against a party who has been denied the right of cross-examination. However, if the Tribunal were to be satisfied on the evidence before it that there was no substance to the allegations made by the complaining party, then the Tribunal would be in a position to make findings in the matter, notwithstanding the absence of cross-examination on behalf of the parties against whom the allegations had been made.
- 7.455. In addition, in this module, the Tribunal was aided by the fact that a video recording was made by Sergeant White of the initial arrest at Raphoe Garda Station and a portion of the interviewing of Mr. McBrearty Junior at Letterkenny Garda Station on the 4th of February 1997. In these circumstances, the Tribunal was entitled to question the officers in relation to matters that were disclosed in the video and were independent of any evidence given by Mr. McBrearty Junior.

The Arrest

- 7.456. As already noted, Superintendent Fitzgerald gave the direction that the investigation into the complaint made by Mr. Edmond Moss was to continue notwithstanding the fact that a letter had been received from his solicitor indicating that he wished to withdraw his original statement of complaint. Mr. Fitzgerald explained that this direction was given by him due to the fact that there had been a complaint of a very serious assault and a number of statements had been obtained from independent witnesses which gave credence to the

complainant's statement; and in these circumstances he felt that it was a matter which should be properly investigated and a file prepared and forwarded to the Director of Public Prosecutions. He gave that direction to Sergeant White. He stated that he envisaged that in the course of the investigation it would probably be necessary to arrest Frank McBrearty Junior. Mr. White had a recollection that he and the superintendent discussed the necessity of making the arrest. His recollection was that Superintendent Fitzgerald advised him that the arrest should not take place either near the family home, or near Mr. McBrearty Junior's place of work in the nightclub premises, due to the fear that this could give rise to difficulty in effecting the arrest.

7.457. An opportunity to arrest Mr. McBrearty Junior presented itself on the 4th of February 1997. On that morning Mr. McBrearty Junior had gone to Raphoe Garda Station in relation to obtaining a new tax book for his car. Having completed his business with Sergeant Hannigan in relation to that matter, Mr. McBrearty Junior stated that he then proceeded into Raphoe. He stated that as he was heading for home, a member of the Barron family started to follow him. He stated that he went back to the Garda station because he did not want any confrontation with that person. He made a complaint to Garda John O'Dowd about the matter. He stated that he then had an argument with Sergeant Hannigan about complaints that his solicitor had made to the Garda Complaints Board about the manner in which he, his wife and his children had been treated at the time of his arrest in December 1996. He told Sergeant Hannigan that an Inspector would be coming from Dublin to investigate the complaints that he had made. As he was leaving the station he was arrested in the forecourt area by Garda John O'Dowd. He was arrested on suspicion of having committed an offence contrary to section 18 of the Offences Against the Person Act, 1861, in particular of having assaulted Edmond Moss on the 30th of December 1996.¹¹⁴⁵

7.458. Mr. White stated that the decision to effect the arrest was very much a spur of the moment decision. He stated that he did not know that Mr. McBrearty Junior was going to come back into the station to make a complaint after his dealings in relation to the tax form. He said that when Mr. McBrearty Junior did come back into the station, he then indicated to Garda John O'Dowd that that would be an opportune moment to arrest Mr. McBrearty Junior as part of their investigation into the complaint made by Mr. Moss. He then retrieved a video camera for the purpose of recording the arrest. He said that he did this because there had been numerous complaints made by members of the McBrearty family in relation to the Gardaí. Also, he feared that the arrest itself might be difficult and that Mr. McBrearty Junior might get violent. If that happened, he wanted to be able to record it on video. He stated that he had his own personal video which he used

¹¹⁴⁵ Transcript, Day 515, pages 33-35.

to bring with him in the car. He was not sure whether the video camera on this occasion had been in the car or actually inside the station. In the events which transpired, Mr. McBrearty Junior did not resist the arrest or become violent in any way. He went quietly into the patrol car.¹¹⁴⁶ The Tribunal has been furnished with the video recording which was made by Sergeant White of the arrest. It is clear that the arrest went smoothly, without any aggression on the part of Mr. McBrearty Junior.

- 7.459. The Tribunal is unable to accept that the arrest of Mr. McBrearty Junior on this occasion occurred, as the Tribunal was informed, on the spur of the moment because an opportune moment emerged when Mr. McBrearty Junior called to the Garda station. The arresting party had available to it a video camera ready to record the arrest and moreover had in its possession subsequently, when it took Mr. McBrearty Junior to Letterkenny Garda Station, two Notices of Intention to Prosecute, which they intended to serve upon him. The Tribunal feels that it is unlikely that the camera would have been available and the Notices of Intention to Prosecute to hand if this arrest happened spontaneously as suggested.
- 7.460. In evidence, Mr. McBrearty Junior alleged that he received severe verbal abuse from Sergeant White and Garda O'Dowd during the short car journey from Raphoe Garda Station to Letterkenny Garda Station. He said that they told him that he was going to confess to the death of the Late Richard Barron and that they knew that he had killed him. He said that he then started to say the Rosary to Our Lady. He said that while he did this, Sergeant White made comments to him to the effect that he should say a small prayer for the Late Richard Barron while he was praying. He said that this was said to him in an effort to provoke him. He said they repeated over and over again that they knew that he had killed the Late Richard Barron and that he was going to confess that day to that crime one way or the other. He said that this went on all the way to Letterkenny Garda Station.¹¹⁴⁷
- 7.461. Mr. O'Dowd and Mr. White both denied that there was any abuse of Frank McBrearty Junior on the way to Letterkenny Garda Station. They pointed out that he was not handcuffed during that car journey. Mr. White stated that he was the driver of the vehicle, with Frank McBrearty Junior and Garda O'Dowd sitting in the back seat. He said that it would be most foolish of them to try to provoke a volatile man like Frank McBrearty Junior. He stated that if Mr. McBrearty Junior had punched Garda John O'Dowd, he would have knocked him out cold, at which time he would then have been in a position to cause serious injury to Sergeant White, who was driving the vehicle. He said for this reason it would have been completely counter-productive and indeed dangerous, for them to

¹¹⁴⁶ Transcript, Day 595, pages 150-155.

¹¹⁴⁷ Transcript, Day 505, page 211; Transcript, Day 515, page 36.

provoke Frank McBrearty Junior in any way. They denied that any comments were made to him about the death of the Late Mr. Barron or any part that he may have played in it. They denied that any comment was made to him to the effect that Frank number one (Frank McBrearty Senior) was a murderer and Frank number two (Frank McBrearty Junior) was a murderer and would Frank number three be a murderer as well like his daddy. They stated that the arrest and subsequent trip to Letterkenny Garda Station passed off completely without incident. **The Tribunal rejects the evidence of Mr. McBrearty Junior that he was verbally or otherwise abused while on the journey from Raphoe to Letterkenny Garda Station.**

The Custody Record

7.462. The following is an outline of the main events of the detention of Mr. McBrearty Junior on the 4th of February 1997 as outlined by the Gardaí in the custody record:

Occurrence on the 4th of February 1997	Detail of Occurrence	Comment
12.52 hours	Arrested at Townparks, Raphoe.	Garda John O'Dowd.
13.12 hours	Arrival at Garda station.	
13.20 hours	Detained under Section 4 of the Criminal Justice Act, 1984 having been arrested in respect of an offence under Section 18 of the Offences Against the Person Act, 1861.	Garda James Healy.
13.30 hours	Notice of Rights read over to Mr. McBrearty Junior and request made by him to contact McMullin solicitors and Dr. McFeely.	
13.35 hours	Placed in a cell.	
13.45 hours	McMullin solicitors phoned but no reply.	
14.00 hours	Dr. McFeely's surgery contacted he was on a call.	
14.02 hours	McMullin solicitors contacted and informed that Mr. McBrearty was seeking a solicitor.	
14.05 hours	First interview commences with Sergeant John White and Garda John O'Dowd.	
14.10 hours	Prisoner checked and asked whether he was paying for the doctor whom he had requested and he confirmed that he was.	
14.20 hours	Mr. James Sweeney, solicitor phoned the Garda station.	

14.33 hours	Mr. James Sweeney, solicitor called to the station. He furnished a note to the Member in Charge from John Fahy & Co., solicitors to Edmund Moss indicating that Mr. Moss wished to withdraw his complaint in respect of the incident under investigation. Mr. Sweeney is recorded as objecting to the detention of Mr. McBrearty Junior.	
14.35 hours	Sergeant White left the interview room and Garda O'Dowd remained.	
14.40 hours	Mr. James Sweeney, solicitor consulted with Mr. McBrearty Junior in the absence of the Gardaí.	
15.10 hours	Solicitor's consultation ended.	
15.15 hours	Mr. Sweeney made a complaint to the Member in Charge that his client's detention was unlawful by reason of the fact that his personal liberty had been infringed. He requested that his client be released immediately. His client alleged that he was being questioned about matters other than the matter for which he was arrested. His client wished to see a doctor and was on medication for depression. He requested the keys of his client's car. Mr. Sweeney was informed by the Member in Charge that the car keys were in the possession of Sergeant Hannigan in Raphoe. The solicitor requested to see the superintendent.	During this consultation Mr. McBrearty Junior appeared to Mr. Sweeney to be in fear and terror of being interrogated in the light of his experiences on the 4th of December 1996, and threatened to assault himself.
15.15 hours	Garda O'Dowd entered the interview room.	
15.25 hours	Prisoner returned to cell. Garda O'Dowd brought to the Member in Charge's attention a threat that the prisoner made to him that he would cause injury to himself and accuse Gardaí of assaulting him.	
15.26 hours	This threat was brought to the attention of Mr. Sweeney who was present in the public office at the time.	
15.30 hours	Prisoner taken from cell to interview room by Sergeant White and Garda O'Dowd. Sergeant White then went to the toilet.	
15.31 hours	Garda Rouse told the Member in Charge to go to the interview room. Garda O'Dowd pointed out redness to prisoner's cheeks and forehead and indicated that they were self-inflicted.	

15.33 hours	Mr. Sweeney, solicitor was called to the interview room and the redness was pointed out to him. Mr. Sweeney consulted with Mr. McBrearty Junior.	During this consultation Mr. McBrearty Junior admitted that he had assaulted himself and requested his solicitor to make a complaint of assault against Garda O'Dowd.
15.45 hours	Prisoner placed in cell. The solicitor requested that the questioning immediately cease pending the arrival of a doctor. The interviewing Gardai agreed to suspend questioning temporarily. Solicitor required a meeting with a superintendent. Mr. Sweeney made a complaint on behalf of his client alleging assault by Garda O'Dowd which had occurred at 15.31 hours.	
15.50 hours	Mr. Sweeney met Superintendent Fitzgerald.	
15.55 hours	Prisoner was checked in the cell and was "ok".	
16.00 hours	Solicitor spoke to the doctor on his client's behalf and the doctor agreed to come to the station.	
16.16 hours	Dr. McFeely arrived at the station to examine Mr. McBrearty Junior.	
16.17 hours	Prisoner was taken from the cell to the interview room to be medically examined. Garda Rouse remained outside.	
16.30 hours	Doctor left the Garda station and did not make any comment to the Member in Charge.	
16.37 hours	Sergeant White entered the interview room and Garda Rouse remained outside in the hallway.	
16.38 hours	Prisoner walked out of the interview room. Garda Rouse shouted to the Member in Charge who went to the interview room and saw Mr. McBrearty who was refusing to answer or sit on a chair and alleged he was going to kill himself. He then lay down on the floor. Detective Sergeant Hugh Smith entered the interview room.	
16.40 hours	Detective Sergeant Smith and Sergeant White remained in the interview room. The prisoner was still lying on the floor with his face down.	
16.45 hours	Detective Sergeant Smith left the room. It is recorded that "Sergeant White operates video camera".	

17.25 hours	Prisoner physically taken to the cell.	Video indicates that Mr. McBrearty Junior was drawn along the floor of the station from the interview room to the cell.
17.40 hours	Dr. McColgan was contacted and requested to call to the station to examine Mr. McBrearty Junior on behalf of the Garda Síochána.	
18.00 hours	Prisoner lying on bed in cell.	
18.30 hours	Prisoner visited in the cell. Declined a meal.	
18.35 hours	Mr. Sweeney telephoned enquiring about his client.	
18.45 hours	Permission granted by Superintendent John Fitzgerald to permit the further detention of Mr. Frank McBrearty Junior for an additional six hours and to photograph and fingerprint Mr. McBrearty.	
18.47 hours	Mr. McBrearty Junior was informed of the decision to extend the period of detention and of the authority to photograph and fingerprint him. He was lying in the cell and did not respond and refused to answer.	
19.38 hours	Prisoner checked and ok. Photographed by Garda McHale.	
20.16 hours	Mr. James O'Donnell, solicitor consulted with Mr. McBrearty Junior in the cell.	
20.26 hours	Consultation terminated.	
20.28 hours	Mr. O'Donnell informed the Member in Charge that he had been instructed by his client that Sergeant White had assaulted him "kicks and slaps on floor and asked him to withdraw complaint against Garda O'Dowd". He indicated that he would cooperate with the Gardaí and "need not be forced".	
20.30 hours	Solicitor left the Garda station.	
20.35 hours	Prisoner in cell and ok.	
20.40 hours	Dr. McColgan arrived at the station.	
20.45 hours	Dr. McColgan examined Mr. McBrearty Junior in the cell.	

21.10 hours	Dr. McColgan left the Garda station.	
21.20 hours	Mrs. Rosalind McBrearty and Mrs. Patricia McBrearty attended at the station to visit Mr. Frank McBrearty Junior which they did in the interview room. The visit was supervised by Garda Rouse.	
21.38 hours	The visitors left the Garda station and the prisoner was returned to the cell.	
21.40 hours	Prisoner was taken from the cell to the interview room by Sergeant White and Garda John O'Dowd.	
22.00 hours	Prisoner was checked in the interview room while the interview was continuing with Sergeant White and Garda O'Dowd.	
22.13 hours	Prisoner was placed in the cell.	
22.18 hours	Mr. McBrearty Junior was taken to the day room and given his property and released from custody.	

7.463. Frank McBrearty Junior was recorded by the member in charge, Sergeant James Healy as arriving in Letterkenny Garda Station at 13.25 hours. He was processed in the normal way. When asked to sign the custody record he was recorded as indicating "I'm signing nothing until I see my lawyer". According to the custody record he was placed in a cell at 13.35 hours. An attempt was made by the member in charge to contact V.P. McMullin & Sons Solicitors at 13.45 hours, but there was no reply from the office. At 14.00 hours the member in charge contacted Dr. McFeely's surgery, but he was out on a call and the Garda was informed that he would be back later. At 14.02 hours the member in charge made contact with the offices of V.P. McMullin & Son, Solicitors and spoke to the secretary, informing her of Mr. McBrearty Junior's request to see a solicitor.

First Interview

7.464. At 14.05 hours, Mr. McBrearty Junior was taken from the cell to the interview room for the purpose of being questioned by Sergeant White and Garda O'Dowd. The interview itself is recorded as having commenced at 14.10 hours. This was to be a very short interview due to the arrival of Mr. McBrearty Junior's solicitor at the Garda station. He commenced his consultation with his client at 14.40 hours. During that interview, which was recorded as terminating at 14.32 hours, there are a total of ten questions recorded as having been put to Mr. McBrearty Junior concerning the complaint made by Mr. Moss. He did not make any answer to any of these questions. It is recorded that he declined to sign the

notes. They were signed by Sergeant White and Garda O'Dowd. They were also dated and timed.¹¹⁴⁸

- 7.465. Mr. McBrearty Junior had a number of complaints to make concerning the first period of interview. These he made to his solicitor at the consultation which commenced at 14.40 hours. It will be seen that immediately on the conclusion of that consultation, and while the solicitor was still in the building, a serious incident was reported by Mr. McBrearty Junior to have taken place, to the effect that he had been assaulted by Garda John O'Dowd. Some six years later, Mr. McBrearty Junior admitted that, at least in part, that was an entirely false accusation.

Consultations with the Solicitor

- 7.466. Mr. James Sweeney stated that his office received a call at about 14.00 hours from Mr. McBrearty Junior informing them that he had been arrested and was in Letterkenny Garda Station. At approximately 14.16 hours he telephoned Letterkenny Garda Station to ascertain what the position was. He was informed that Mr. McBrearty Junior had been arrested and was detained under section 4 of the Criminal Justice Act, 1984. He was informed that the matter under investigation was an alleged assault on Edmond Moss on the 30th of December 1996 in Frankie's Nightclub. At that point Mr. Sweeney asked the member in charge whether he was aware that that complaint had been withdrawn. The member in charge told him that he was not aware of any such withdrawal of the complaint. Mr. Sweeney then went to the Garda station, arriving at approximately 14.30 hours. He handed a copy of the letter dated the 16th of January 1997 from John Fahy & Co., Solicitors, to the member in charge. He said that he told the member in charge that he was of the opinion that Mr. McBrearty Junior's detention and interrogation were both unlawful. He said that the member in charge confirmed to him that he was only being questioned in relation to the Moss complaint and not in relation to any other matter.
- 7.467. Mr. Sweeney then had a conversation with Detective Sergeant White and asked him whether he had seen a copy of the solicitor's letter. He said that he had already seen it. The Sergeant indicated to him that notwithstanding that letter, they were continuing to carry out their investigation into the complaint. Mr. Sweeney stated that he then asked Sergeant White for sight of the custody record, which, he alleged, Sergeant White declined. In his evidence, Mr. White denied that he ever declined the solicitor access to the custody record. He said that that was simply not a matter for him as the custody record was kept at all times in the custody of the member in charge.

¹¹⁴⁸ Tribunal Documents, (Edward Moss Book of Evidence), pages 144-145.

- 7.468. While it is correct that the responsibility for the custody record rests with the member in charge, the Tribunal is satisfied that Sergeant White was not justified in declining to provide the solicitor with access to the custody record simply on the grounds that it was in the custody of the member in charge. The Tribunal's view is that the very least that could be expected of a member of An Garda Síochána in these circumstances would be that he would seek the consent of the member in charge and facilitate the solicitor in carrying out his obligation to ensure the welfare of his client.
- 7.469. It appears that Mr. Sweeney did, in fact, make a complaint to the member in charge because there is an entry in the custody record timed at 14.33 hours to the effect that Mr. Sweeney had called to the station and furnished a copy of the letter from John Fahy & Co., which was appended to the custody record. It was also noted that the member in charge had been asked to note Mr. Sweeney's objection to the detention. This objection was duly noted in the custody record.¹¹⁴⁹ A few minutes later, at 14.40 hours, Mr. Sweeney commenced his consultation with Frank McBrearty Junior. He said that the prisoner was calm at that time. He told the solicitor how he had gone to Raphoe Garda Station for the purpose of making a complaint about another matter and had been arrested by Garda John O'Dowd. Mr. Sweeney described this consultation as follows:

- A. *He told me that he in fact went into the Garda station on a different errand. He went in to make a complaint about another individual who had been stalking him is probably about the best word. Mr. McBrearty went to the Garda station to make this complaint and there he was arrested by Garda O'Dowd and Garda White who were waiting for him when he went into the station. He was immediately taken to Letterkenny Garda Station. His own car was left in Raphoe Barracks. He arrived at the Garda Station at approximately 1.00 o'clock. When in transit he was questioned repeatedly about the Richard Barron incident. When I met Mr. McBrearty that afternoon on the 4th December (sic) to start with certainly he was very calm. The next bit of the statement is in relation to something that has come up in the Tribunal in any event and I have spoken to Mr. McBrearty, so I don't mind carrying on with it. He said that, I mentioned that he was calm at the time, I spoke to him and he said that he intended to punch himself in the face and*

¹¹⁴⁹ Tribunal Documents, (Edward Moss Book of Evidence), page 468.

bang himself off the wall and then the injuries he had caused to himself he would blame on the Gardaí. I advised him, I advised him not to do this as I was aware that it was simply unlawful to do so and I advised him on this point. He said that he was on medication for tension and he had already asked for Dr. McFeely to call to see him. However, Dr. McFeely had not yet been called by the time I arrived. He also intended going to Dublin apparently on the 14th February, about ten days later for counselling.

I think he was under serious pressure, he was calm when I spoke to him, but I think it wouldn't have, even at that stage while he was calm, it wouldn't have taken a lot to lose his composure, if I can put it like that. It was a defence mechanism as he saw it, unwisely probably, but he ...

Chairman: Defence to what, Mr. Sweeney?

A: To being interrogated, I think, again. He was terrified of being interrogated in the same manner as he was on the previous occasion.

Chairman: Had he any current complaints at that time?

A: No, apart from what I had said there, that he was on medication for tension, but no physical, no he didn't.

Mr. McDermott: Did you understand from him that he was anticipating trouble, or what was the position?

A: Of a physical nature, physical threat you mean?

Q: In terms of interrogation or interview?

A: He was certainly concerned ... I have spoken to him on a number of occasions in the previous two months as I mentioned earlier about the manner of the previous interrogation. He was afraid of it happening again ... He was more concerned of the interrogation than any physical threat. He was terrified of the interrogation. It was the mental distress rather than the physical distress he was worried about ... I was concerned that

*he was going to go over the edge and I felt that it would have been better if he had received some medical treatment. He certainly would have required it if he had gone over the edge.*¹¹⁵⁰

- 7.470. At this point, Mr. Sweeney left the consultation and went to speak to the member in charge. He made a number of complaints, which were listed in the custody record. The solicitor complained that his client was being unlawfully held by reason of the fact that his personal liberty was being infringed. He demanded that his client be released immediately. He made a complaint that he was being questioned about a matter which was entirely different from that for which he had been arrested, i.e. he was being questioned about the Barron murder rather than the assault on Mr. Moss. The solicitor also demanded that his client be allowed to see a doctor immediately as he was suffering from depression and tension and was on medication. The solicitor also requested the keys of Mr. McBrearty Junior's car. These complaints were duly recorded by the member in charge in the custody record.¹¹⁵¹ Mr. Sweeney confirmed that at that stage there was no allegation of abuse being made by his client.¹¹⁵² Mr. Sweeney stated that while there was no allegation of abuse, he was concerned that due to his client's volatile nature, it would not have taken a lot for him to go over the edge. He was certainly concerned that that was a possibility.
- 7.471. While the solicitor was bringing his concerns to the attention of the member in charge, Garda O'Dowd had re-entered the interview room for the purpose of continuing with the interview. Garda O'Dowd stated that when he sat down, Frank McBrearty Junior said to him that he was going to bang his own head against the wall and was going to blame Garda O'Dowd. Garda O'Dowd stated that immediately he brought Mr. McBrearty Junior out of the interview room and returned him to the cell. He then went to the day room where the solicitor was still present, talking to the member in charge. He told the solicitor, Mr. Sweeney, that Mr. McBrearty Junior had made this threat and told him to note the fact that the threat had been made.¹¹⁵³ Mr. Sweeney confirmed that Garda O'Dowd did make such a report to him. He said that he was concerned about his client and asked to speak to Superintendent Fitzgerald.
- 7.472. **The Tribunal is satisfied that at this stage Mr. McBrearty Junior, who is a volatile character, was in an extremely distressed condition. He was overwrought and his condition was a matter of grave concern to Mr. Sweeney, his solicitor, who was in the process of taking active steps to ensure the welfare of his client. In these circumstances, the Tribunal is of**

¹¹⁵⁰ Transcript, Day 507, pages 108-111.

¹¹⁵¹ Tribunal Documents, (Edward Moss, Book of Evidence), page 469.

¹¹⁵² Transcript, Day 507, page 114.

¹¹⁵³ Transcript, Day 559, page 110.

the view that Garda O'Dowd should have refrained from interviewing Mr. McBrearty Junior until after the situation in the Garda station had stabilised. The Tribunal is of the view that the station party should have, but did not, pay sufficient attention and respect to the protestations and complaints of Mr. Sweeney. There was no urgency to continue the questioning of Mr. McBrearty Junior and no harm would have been caused to the investigation by delaying the questioning process sufficiently to allow it to proceed in an orderly way.

- 7.473. Garda O'Dowd gave the following account of what followed when they resumed the interview with Mr. McBrearty Junior:

So the next thing I think, shortly after this anyhow, we took him out of the cell again to resume the interview. Now that was myself and Sergeant White. Now we cautioned him, the usual again, and that we were proceeding with the interview and he said something, I'm going to bang myself. Now I didn't like the sound of this either, but then Sergeant White left the interview room. He had something private to do as far as I know. [Went to the washroom]. Okay. So with that as soon as he got out the door, up your man jumps, over to the wall, bang. He's heading the head, hitting the eyes, the maddest, craziest thing I had witnessed in my life, believe me. I got up off my seat and I opened the door while he was still banging away at his head, he was facing the wall. And I opened the door and John Rouse happened to be there. I don't know how he managed to be there, but he was there and thank God he was there. He seen your man knocking ... I just pointed and there was your man banging away at his own head. Banging away at his own head, that's what he was doing, you know ... O Jesus, it was so fast, he was pretty, you know, he was definitely a boxer. He was standing. Yes. I didn't see that before now or since. I never witnessed the like of it in my life.¹¹⁵⁴

- 7.474. Mr. O'Dowd described how upon seeing this incident, Garda Rouse ran to look for the member in charge. Shortly after that, Garda Leonard arrived at the interview room, closely followed by Mr. Sweeney. Garda O'Dowd stated that when he tried to explain what Mr. McBrearty Junior had done to himself, the prisoner jumped up immediately and said that Garda O'Dowd had hit him. He said that Mr. McBrearty Junior immediately blamed him for the injuries that he had received.

- 7.475. Mr. Sweeney gave the following account as to what occurred at that stage:

¹¹⁵⁴ Transcript, Day 559, pages 110-111.

I went down to the interrogating room, where Mr. McBrearty had obviously either hit himself around the face or had been hit around the face by someone else. He was marked around both eyes and on the side of his face and had a red mark and bump on his forehead. He was in some distress at this stage. Garda O'Dowd and Sergeant White were in the room. However, Frank said that it was Garda O'Dowd that assaulted him. I asked to see Frank on his own again. When we were on our own, Frank informed me that he had in fact hit himself and I advised him not, under any circumstances, to do this again. He said that he wanted to take whatever action he could against the Gardaí for assault, but I said he would have to consider this on another day.

He was very distressed at that point and I was more interested in trying to calm him down to consider what options were possible, although he was quite frank with me and told me what had occurred. I then went out of the interrogation room and as I was leaving, Garda O'Dowd and Sergeant White went in to continue their questioning. I demanded that the questioning cease until such time as Mr. McBrearty had seen a doctor. Sergeant White refused to let me do this. We had a heated discussion at that point and Garda O'Dowd ... whereby Garda O'Dowd refused and I insisted that he be seen by a doctor prior to the continuation of the interrogation. I said that Frank was in no fit mental state to be interrogated at that time. Sergeant White said that he noted my comments, however, under the Regulations he ... what he referred to as the Regulations I think, he wasn't prepared to accept that Mr. McBrearty was unable to proceed with the questioning.

I then demanded to see the Superintendent and Sergeant White agreed not to continue questioning Frank until such time as I had spoken to the Superintendent. Frank was taken down to the cell and questioning stopped at that point.

At that point it was ... for want of a better expression, all hell had broken loose, he had really gone over the edge. I was very concerned about him and I was very firmly of the view that he was in no fit state to be questioned any further. He had really gone over the edge. Everyone was getting quite agitated about the whole situation. It was very distressing for all concerned I think.

At that point I believe anyone would have recognised that he was

*in no fit state. That he was emotional, he was crying, he was shouting, his face was swollen, he had marks on his face. He was almost whimpering. He was certainly in no fit mental state to be questioned. He was extremely, he was as distressed as I had ever seen anyone. Quite simply he wasn't fit to be questioned. I'm not a doctor, but it didn't take a doctor to work that one out, that he shouldn't have been questioned any further.*¹¹⁵⁵

- 7.476. The Tribunal accepts the evidence given by Mr. Sweeney in relation to the conditions pertaining in Letterkenny Garda Station at that time. The Tribunal accepts that Mr. Sweeney's phrase "all hell had broken loose" was an accurate description of the conditions pertaining at that time. Mr. Sweeney has struck the Tribunal as a conscientious and fair-minded solicitor. In making his protestations to the member in charge about the continued questioning of his client, and in taking the steps that he did, the Tribunal is satisfied that Mr. Sweeney was acting in, what he perceived at the time to be, the best interests of his client. He was doing all that he could to prevent his client suffering what appeared to him likely to be a complete breakdown. Mr. Sweeney was placed in a difficult position. On the one hand, he had to try to calm down Mr. McBrearty Junior, who was in an extremely distressed condition. On the other hand, he had the Gardaí against whom a false accusation had been made and who were, understandably, very irate at this state of affairs. Mr. Sweeney did the best that he could in a most difficult situation.

The False Allegation Repeated

- 7.477. As we will see, for a long time, Mr. McBrearty Junior maintained that he had in fact been assaulted by Garda John O'Dowd. While he had told his solicitor that he had punched himself in the face, he told his solicitor to make a complaint to the member in charge that he had in fact been assaulted by Garda O'Dowd. Mr. Sweeney did make a complaint to that effect on behalf of his client and it was duly recorded in the custody record.¹¹⁵⁶ Mr. McBrearty Junior maintained this allegation for many years. In an interview with Mr. William Flynn in 1997, he indicated that Garda John O'Dowd banged his head against the desk and then gave him two punches in the face. He said that with that he stood up and started shouting "help, help, he's fucking beating me up, he's beating me up, get in here". He said that when the other Gardaí and the solicitor arrived into the room, they said that Mr. McBrearty Junior had banged his own head against the wall and had punched himself in the face. Frank McBrearty Junior told the interviewer that he did not assault himself.¹¹⁵⁷

¹¹⁵⁵ Transcript, Day 507, pages 119-122.

¹¹⁵⁶ Tribunal Documents, (Edward Moss, Book of Evidence), page 471.

¹¹⁵⁷ Tribunal Documents, page 421.

7.478. In his Statement of Claim issued on the 24th of September 1997, Frank McBrearty Junior made complaint in relation to his arrest on the 4th of February 1997. He said that while he was detained in relation to the alleged assault on Mr. Moss, he was actually questioned in relation to the death of the Late Mr. Richard Barron. He maintained that his detention was unlawful due to the fact that the assault complaint by Edmond Moss had been withdrawn prior to the time of his arrest. He alleged that in these circumstances the defendants, their servants or agents had acted wrongfully and in excess of jurisdiction. There was no mention of the alleged assault by Garda O'Dowd in that Statement of Claim.¹¹⁵⁸

7.479. Subsequently, in a statement made to Chief Superintendent Carey on the 9th of February 1998, Frank McBrearty Junior repeated the allegation that he had been assaulted by Garda O'Dowd:

After the solicitor left I was alone in the room with Garda O'Dowd. I was sitting with my head in my hands. Garda O'Dowd punched me in the face two or three times. I shouted for help. A number of Gardaí and my solicitor came into the room. Garda Leonard told the solicitor to "fuck off, your time is up". The solicitor was pushed out of the room by Garda Leonard. My solicitor had asked for a doctor. Doctor McFeely arrived then.¹¹⁵⁹

7.480. On the 6th of May 1999, when giving evidence at his trial before the Circuit Criminal Court, Mr. McBrearty Junior repeated the allegation that he had been assaulted by Garda John O'Dowd:

As far as I am concerned I should not be here the day (sic) because I was beat up in Letterkenny Barracks when I was arrested for this and Garda John O'Dowd should have been arrested and charged for assaulting me. I was assaulted in Letterkenny Garda Station and I have photographs and doctor's evidence to prove it.¹¹⁶⁰

7.481. It was not until Mr. McBrearty Junior was interviewed by Mr. Brian Garvie, one of the Tribunal's investigators, on the 11th of June 2003, that a different picture emerged. That was a detailed interview which dealt with both of his arrests. In relation to the arrest on the 4th of February 1997, it was put to Mr. McBrearty Junior that an allegation had been made that he threatened to bang his head against the wall or a filing cabinet. He said that that was not true. He was asked did that happen, to which he replied "No. That's not true". He was asked whether he had at any time demonstrated to the Gardaí whether in jest, or in distress, or for whatever reason, that he intended to assault himself. He replied that he never spoke at all during the day. He just stared at a fixed spot on the wall. He was asked, other than lying on the floor at one stage during the period

¹¹⁵⁸ Tribunal Document, pages 477-479.

¹¹⁵⁹ Tribunal Documents, page 330.

¹¹⁶⁰ Extract from Transcript of Trial, Tribunal Documents, page 432.

of detention, did he do anything else of a physical nature while he was being interviewed. He asked what did the interviewer mean by that question. He was then asked bluntly “Did you hit yourself? Did you demonstrate that you intended to hit yourself?” To this he replied “I don’t understand the questions. I don’t know what you mean”. He said that he was not prepared to deal with this aspect as he did not know that he was going to be questioned in relation to the second arrest. He said that he did nothing during that arrest except lie on the floor.

- 7.482. The initial part of the interview with Mr. Garvie concluded at 11.55 hours on the 11th of June 2003. During the interview he had been accompanied by his solicitor, Mr. David Walley. Some short time later on the same day, Mr. McBrearty Junior and his solicitor returned to speak to the Tribunal investigator. They indicated that Mr. McBrearty Junior wished to give further information to the Tribunal. He stated that in the weeks prior to his arrest on the 4th of February 1997 he had been under doctors’ care for about three weeks. This was in relation to stress, anxiety and depression. He said that he had suffered with these ailments as a result of his first arrest and as a result of the harassment which he felt that the Gardaí were giving him at the time. He went on to give the following description as to how he came to assault himself on that occasion:

Well I was left in a room with John O’Dowd on three different occasions and I was sitting with my head, with my hands on the desk like this here, my forehead down, my head like this. I couldn’t look at O’Dowd.

I couldn’t look at O’Dowd and O’Dowd kept getting up and slapping me on the back of the head. Slapping me on the side of the ears and that and I would look up every time he was slapping me and then I says to him, the next fucking time you slap me, that’s the exact words I says, you will see what’s going to happen in this room. I meant, like, I was going to fucking hit him back. Right, so a Garda O’Toole, O’Dowd went out of the room. Left me on my own and he came in with a Garda O’Toole who took me out of the room and took me down to the cell. Right. Then I was left in the room, I was taken back to the room again and Sergeant White and O’Dowd were in the room. Right. And the two of them were abusing me and O’Dowd was telling me that I was going to make a confession today if it was the last thing I was going to do. That I would confess to the death of Richie Barron and I never spoke, my head down like this and my hands over my ears, so I couldn’t hear them because I couldn’t look at them. So O’Dowd again, was the same thing again, slapping me, but then Sergeant White got up and left the room, so when Sergeant White left the room I says to O’Dowd, I says the next time now you fucking slap me I says you

will know all about it. So O’Dowd came over and banged my head into the desk, my forehead, and I had a mark on my forehead where my head was banged in to the desk so I was straight up and I punched myself exactly four times in the face and I started shouting and roaring that O’Dowd assaulted me and then when I started shouting and roaring a whole pile of guards came into the room and that’s exactly what happened.¹¹⁶¹

- 7.483. Later in the course of that same interview, Mr. McBrearty Junior stated that he never banged his head against the wall at any time during the detention. He said that that was a lie told by Garda O’Dowd. He said that it was also a lie that Garda Rouse came into the room and saw him hitting himself. He said that Garda O’Dowd told that lie to cover up for himself. He was adamant that Garda O’Dowd banged his head on the desk. He said that it was due to the fact that he could not defend himself and out of frustration that he punched himself in the face. Mr. McBrearty Junior stated that he told his solicitor that he had assaulted himself. He went on to state that the solicitor did make a complaint on his behalf that he had been assaulted by Garda O’Dowd, but that was correct due to the fact that Garda O’Dowd had banged his head on the desk.
- 7.484. Mr. McBrearty Junior maintained this allegation in his evidence before the Tribunal. He said that when he first saw his solicitor, he pleaded with him to get him released from custody. He said that his solicitor said that he could not do anything about his detention. At that point Mr. McBrearty Junior says that he told his solicitor “well if you don’t get me fucking out of here, I am going to either bang my head off that wall or I am going to fucking ... I am going to punch myself three or four times in the face”.¹¹⁶² He said that some time after the solicitor had left the room Garda O’Dowd came back into the interview room. Mr. McBrearty Junior stated that he had his hands over his head and his head resting against the top of the desk. He said that Garda O’Dowd pushed his head into the desk, at which point he got up as if to hit Garda O’Dowd, but instead punched himself in the face four times. He then started shouting and roaring that Garda O’Dowd had assaulted him. He said that at that stage a number of Gardaí entered the room from the corridor. He said that he took the action of punching himself in the face because he was desperate to get out of the Garda station. He said that he had told the truth to his solicitor from the very first day. He stated that he was desperate to get out of the place; if he had a knife he would have cut his wrists.¹¹⁶³
- 7.485. Mr. Sweeney was asked by counsel for the Tribunal whether he understood from his second period of consultation with his client that his client had been assaulted in any way by Garda O’Dowd over and above the injuries which Frank McBrearty

¹¹⁶¹ Tribunal Documents, (Edward Moss, Book of Evidence), pages 256-35; 256-36.

¹¹⁶² Transcript, Day 515, page 45.

¹¹⁶³ Transcript, Day 515, pages 45-46.

Junior had told him he had inflicted upon himself. Mr. Sweeney replied as follows:

A: *No. I think what you are saying is, did in my view Garda O'Dowd assault him at that time. I don't believe he did. If that's where your ... what you're getting at.*

Q: *It's really to understand?*

A: *Things were getting desperate at that stage. I was desperate to get the questioning stopped at that point and I felt I had to take ... and I was being told no, and I felt I had to take whatever action was appropriate.*

Chairman: *I am sorry to keep on interrupting like this. But what is it that the guards had done to him that had upset him so grievously?*

A: *It was ... I don't know specifically, I wasn't there in the room when it was triggered.*

Chairman: *I am talking about complaints now. Complaints that he had. I know that they were questioning him about the Mr. Barron thing when they had arrested him on something different, I know that. Was it that which was stirring him up?*

A: *It was the absolute fear of being interrogated and left in the room with the interrogating guards, but fear of further interrogation of the same nature as had happened on the 4th of December come about again. I don't know if it was any one thing that any guard said to him on the 4th of February that triggered it. But it certainly triggered ...*

Chairman: *More importantly, anything that they had done to him?*

A: *No. I don't believe they did anything to him of a physical nature. If that is what you are asking.¹¹⁶⁴*

7.486. Garda John Rouse stated that he was in the corridor adjacent to the interview room at approximately 15.30 hours. He saw Sergeant White leaving the interview room and then going into the men's toilet. He said that Garda O'Dowd nodded

¹¹⁶⁴ Transcript, Day 507, pages 123-124.

to him to come up as far as the interview room door which was ajar. Garda Rouse saw Frank McBrearty Junior standing in the opposite corner of the interview room. He had his back to Garda Rouse. Garda Rouse said that Mr. McBrearty Junior had his fist clenched and he was hitting himself on both sides of the forehead and face. He said this lasted for about a minute or a minute and a half. Frank McBrearty Junior turned around then and stopped when he saw Garda Rouse standing at the door. Garda Rouse went straightaway to the day room and informed the member in charge and Mr. Sweeney what had happened. Garda Rouse went on to state that some time later at approximately 16.30 hours when Dr. McFeely was examining Mr. McBrearty Junior and when he had left to speak to some of the Gardaí who were present in the station, he was left alone supervising Mr. McBrearty Junior. Mr. McBrearty Junior said to him that he would kill himself and would be taken out of the station in a black box. Garda Rouse said that he did not tell anybody about this latter remark at the time as he did not think very much about it, even in the light of the earlier incident.¹¹⁶⁵

Conclusions on the Assault Allegation

7.487. It is clear that Mr. McBrearty Junior became very agitated early on in his period of detention at Letterkenny Garda Station on the 4th of February 1997. The Tribunal accepts the evidence given by Mr. Sweeney to the effect that this state of agitation was not due to any abuse or mistreatment that had occurred to his client earlier on in the period of that detention. This would appear to be borne out by the independent evidence insofar as the video of the arrest shows that this occurred in a calm manner. I have already found that the short car journey from Raphoe to Letterkenny Garda Station was uneventful. There had only been a short period of questioning of Mr. McBrearty Junior by Sergeant White and Garda O'Dowd prior to the arrival of the solicitor at the station and his first consultation with his client. The solicitor stated that there was no complaint of abuse or mistreatment at that time. Notwithstanding this state of affairs, Mr. McBrearty Junior indicated to his solicitor that he intended to inflict injury upon himself. He was advised not to do so by his solicitor. It appears that Mr. McBrearty Junior then indicated the same thing to Garda O'Dowd, who brought it to the attention of the member in charge and to the attention of the solicitor. He then repeated this assertion in the presence of Garda O'Dowd and Sergeant White, prior to Sergeant White leaving the room for the purpose of going to the toilet. He then proceeded to carry out his threat and punch himself a number of times in the face.

¹¹⁶⁵ Transcript, Day 560, pages 195-196

- 7.488. The Tribunal accepts the evidence given by Mr. Sweeney that Mr. McBrearty Junior probably took this course of action due to the fact that he was literally terrified of being interrogated by the Gardaí on that occasion. It appears that this terror arose as a result of his previous experience in the Garda station on the 4th of December 1996. The Tribunal accepts this as the only logical explanation for the actions that he took on this occasion.
- 7.489. The Tribunal accepts the evidence given by Mr. John O’Dowd that he did not assault Mr. McBrearty Junior in any way prior to the time that Mr. McBrearty Junior admits that he inflicted injuries upon himself. This assertion is supported by the evidence of Mr. Sweeney, who stated that when he spoke to Mr. McBrearty Junior immediately after the incident, he did not get the impression that Mr. McBrearty Junior had actually been physically assaulted by Garda O’Dowd, or by any other Garda. I note also that in his evidence, Mr. McBrearty Junior, when recounting this incident, stated that prior to the time of the incident, he had actually threatened to strike his head against the wall. I find that the version of events as given by Garda O’Dowd is correct. Mr. McBrearty Junior did stand up and strike his head against the wall and then proceeded to punch himself a number of times in the face. These were clearly the actions of a desperate man. I accept the evidence given by Mr. Sweeney that Mr. McBrearty Junior had very much “gone over the edge” at that time. I am entirely satisfied that this was not due to any conduct on the part of the Gardaí on the 4th of February 1997. As already noted, it appeared to be related to a fear that Mr. McBrearty Junior had arising from his previous detention in Letterkenny Garda Station.
- 7.490. While one might perhaps understand the reasons why Mr. McBrearty Junior may have made the false allegation that he did on the 4th of February 1997, it was very wrong of him to continue with those false allegations when he gave his interview to Mr. William Flynn in 1997 and when he made his statement to the Garda Complaints Board in 1998. His complaint to that effect also was recorded in the custody record. He repeated the false allegations in his evidence before the Circuit Criminal Court in 1999. It was very wrong of him to allow these false allegations to remain in the public arena for so many years. It was not until June 2003 that Mr. McBrearty Junior chose to tell the truth on this aspect. Indeed, even then he continued to make the false allegation that he had been assaulted by Garda O’Dowd. He continued with that allegation even into his evidence in 2007. I reject that evidence and the allegation contained therein.

Subsequent Events on the 4th of February 1997

- 7.491. Subsequent to this incident, Mr. Sweeney requested of the member in charge that questioning of his client should cease. This request was not immediately granted. However, the solicitor was allowed to meet Superintendent Fitzgerald. The Superintendent then directed that the request should be granted and that the prisoner should be allowed to wait in his cell until the doctor arrived to examine him. Mr. McBrearty Junior was then placed in the cell to await the arrival of the doctor. He arrived at 16.16 hours.
- 7.492. Dr. John McFeely stated that he had been telephoned by Mr. Sweeney and asked to examine his client. He could not recall that there was any suggestion made at that time by the solicitor that the examination was due to the fact that Mr. McBrearty Junior had been ill-treated or assaulted. He examined Mr. McBrearty Junior in the interview room. He found Mr. McBrearty Junior quite agitated. Mr. McBrearty Junior claimed that his head had been banged off a table and that he had been punched several times in the face. He did not have anything recorded in his notes to suggest who had done this to the prisoner. He said that Mr. McBrearty Junior was distressed and was understandably rather agitated about the situation. He said that he could not take much more of this treatment. On examination the doctor found swelling of the forehead, swelling around both eyes and a fast heart rate. However, blood pressure was normal. The swelling on the forehead was described as a raised red area about the size of a pound coin. It was consistent with early bruising. The areas around both eyes were red, similar to the forehead. This was also consistent with early bruising. He did not find evidence of any other bruising on his body. The doctor did not form the opinion that he was unfit to continue with the interviews. Dr. McFeely confirmed that Mr. McBrearty Junior had continued on medication up to the time of that detention. He felt that his situation was probably exacerbated by being in the Garda Station that day. However, he did not form the opinion that Mr. McBrearty Junior required any psychiatric intervention at that time.
- 7.493. Dr. McFeely stated that he did not find any atmosphere of hostility towards him in the Garda station that day. He stated that he was a fairly regular visitor to the Garda station. He also knew a lot of the Gardaí as his patients.¹¹⁶⁶
- 7.494. When the doctor had completed his examination and left the station, Sergeant White entered the interview room, while Garda Rouse remained in the corridor. According to Garda Rouse, approximately a minute later Mr. McBrearty Junior got up and walked out of the interview room. Garda Rouse shouted to Garda Leonard, the member in charge, and with that Mr. McBrearty Junior walked back into the interview room and lay down on the floor. Garda Martin Leonard made

¹¹⁶⁶ Transcript, Day 517, page 61.

an entry in the custody record to the effect that when he got to the room he saw Mr. McBrearty Junior lying on the floor. He refused to move or to sit on a chair. Mr. McBrearty Junior stated that he was going to kill himself. At this stage Detective Sergeant Hugh Smith entered the interview room. Garda Leonard left the room with Mr. McBrearty Junior still lying on the floor. Sergeant White and Detective Sergeant Smith were in the interview room at that time.

7.495. Detective Sergeant Hugh Smith had limited interaction with Mr. Frank McBrearty Junior that day. He was in the interview room from 16.38 hours to 16.55 hours. He explained that he had been upstairs working in his office when he was informed by Sergeant White that they had Frank McBrearty Junior in custody and that he was being difficult. He was told that Mr. McBrearty Junior had banged his head against the wall or had punched himself or had injured himself in some way while Garda O'Dowd was alone in the interview room with him. Sergeant White told him that Garda O'Dowd had left the interview room and asked if Detective Sergeant Smith would accompany him to the interview room. He said that as he approached the interview room he could hear Frank McBrearty Junior shouting. As he arrived at the door, he saw the prisoner getting down on his hands and knees and proceeding to lie on the floor. He said that as well as hearing Frank McBrearty Junior's voice, there had been other raised voices at the time. He was not able to identify who was speaking other than Mr. McBrearty Junior. He said that Garda Rouse, Garda Leonard and Sergeant White were also present at that time. He thought that they were trying to persuade Mr. McBrearty Junior to calm down and to go back into the interview room. He said that these Gardaí were standing at the doorway at the time. He thought that Mr. McBrearty Junior was displaying some intention to leave the room at that time. He was not able to remember what was said, but he recalled that there were raised voices.

7.496. Mr. Smith went on to outline how for the remainder of the period that he was in the interview room, Mr. McBrearty Junior lay on the floor. He never moved from that position. At one stage Mr. Smith tried to encourage him to get up. He and Garda Rouse tried to lift Mr. McBrearty Junior off the floor, but were unsuccessful in their attempt. He was lying close to the door of the interview room, which was spring-loaded, and at one stage Mr. Smith could recall putting an obstacle in front of the door to stop it coming over against his legs. Mr. Smith thought that at the time that they tried to lift him from the floor, he may have struck Mr. McBrearty Junior's head against a chair that was nearby. He said that this chair was a small plastic chair. He said that only a very slight contact between his head and the seat had occurred when they were trying to lift him and his head came to the level of the seat. He said that he did not realise that there had been any contact between the prisoner's head and the chair until he viewed the video

subsequently. This was a video which Sergeant White had taken of that interview. This was taken with the same camera that he had used to video the arrest. Mr. White stated that he had decided to use this video again due to the fact that Mr. McBrearty Junior had made an unfounded allegation against Garda O'Dowd earlier in the day. He decided to use the video recorder for his own self-protection, in case Mr. McBrearty Junior might make an unfounded allegation against him.

- 7.497. There are a number of disquieting features of the comments made and questions put to Frank McBrearty Junior during the course of this interview when he was lying on the ground whilst alone with Sergeant White. On the video Mr. McBrearty Junior threatened to kill himself and stated that he was under the doctor's care. Sergeant White told him that he was behaving like a spoilt child and, while putting certain questions to him about the assault on Edmond Moss, also said the following:

What about poor Eddie Moss. What caused you to go over the top so much in relation to physical violence? You can talk to me, there's nobody else here, look around and see. Just the two of us. It's just that I'm fed up talking to you. I'll not go away. Will I? Sure I won't, Frank, I will see you and your family for an awful lot longer, ok. Try to make sure that you don't break the law and you're very used to doing that. You gave an awful beating to Eddie Moss ... and that, Frank, is what's going to get you in the long run. But you know that, don't you. I think it would suit you because your father paid over the money that the whole thing is forgotten about. Would that be right, Mr. McBrearty ...

- 7.498. Sergeant White then put questions about the assault on Edmond Moss and the false allegation made against Garda O'Dowd to Frank McBrearty Junior. He then says:

You're a very sad looking article lying there. A tough heavy from Raphoe, lying on the ground there like a spoilt child. But of course that's what you are, is a spoilt child, isn't it? You've had everything all your life ... by Daddy. I hear he was very disappointed in you. Would that be true? There's nobody else to take over the business, Frank, is there? You are too hot-headed or so they say. Would that be correct? ... Not alone are you a spoilt child, but you are a silly spoilt child ... Did your Dad pay £15,000 Sterling in Mulryan's office in Ballybofey? To have the case dropped, Frank? Do you realise Mr. Moss intends going to court against you, to give evidence against

*you, Frank? Do you realise that your time has come? That the whole thing is all over. That we have several witnesses who saw you beating Mr. Moss and on this occasion Daddy can't do anything about it. Do you want to tell me, Frank, what happened that night?*¹¹⁶⁷

- 7.499. The above excerpt from the video tape indicates an animus towards Mr. McBrearty Junior and his father that is entirely unprofessional, certainly not indicative of the open-minded approach which the Tribunal has been informed by An Garda Síochána and other foreign experts is the hallmark of a properly conducted interview. Particularly, the threat to Mr. McBrearty Junior that his family would be seeing a lot more of Sergeant White and that his father would not be able to do anything for him in the face of the evidence mounting against him is quite disturbing, in the light of the background against which this incident was investigated. It is clear that although the letter of the law was applied in respect of the investigation of the Moss complaint, it is also clear that the prosecution of Frank McBrearty Junior in respect of this matter gave a profound personal satisfaction to Sergeant White above and beyond the normal professional satisfaction of a job well done.
- 7.500. In the course of his evidence to the Tribunal, Mr. Smith stated that at one stage he used foul language towards Mr. McBrearty Junior. He regretted this language and apologised for using it. He had called Mr. McBrearty Junior a "soft old shite", or words to that effect. Mr. Smith said that he was able to strike up some form of conversation with Frank McBrearty Junior. He said that he asked Mr. McBrearty Junior why Garda O'Dowd would assault him in the way he alleged. Mr. McBrearty Junior said that Garda O'Dowd had assaulted him so as to get a confession out of him. When asked why he would want to do that, Mr. McBrearty Junior said that the Dublin lads had done it to him before. At a later stage Mr. McBrearty Junior said that the guards were after the wrong people. He suggested that they should go and interview another person from Raphoe. Mr. Smith was not able to recollect what name had been suggested by Mr. McBrearty Junior. He said that he thought that by chatting to Mr. McBrearty Junior he might be able to get him to sit on the chair, so that they could have a proper interview. Mr. Smith stated that due to the fact that he had never had any prior dealings with Mr. McBrearty Junior, he thought that if Sergeant White left the room they might be able to have a one to one conversation on a civil basis. However, he said that that did not happen. He said that Sergeant White did leave the room for a few moments, but that he was not able to persuade Mr. McBrearty Junior to move from the floor. He said that it was only at that stage that he realised that the interview was being videoed. He left the room shortly after that.

¹¹⁶⁷ Extract from video of interview with Frank McBrearty Junior by Sergeant White, 4th February, 1997.

- 7.501. Mr. Smith also stated in evidence that it had been alleged by Frank McBrearty Junior that he had been kicked on the leg by Sergeant Smith. He said that that was not correct. He said that it was clearly shown on the video that at one stage there was movement of Mr. McBrearty Junior's body, but he stated that that was caused by the spring-loading action of the door being closed against Mr. McBrearty Junior's legs as Sergeant Smith was leaving the room. He denied that he kicked Mr. McBrearty Junior at all. He said that he was aware by that time that the interview was being videoed and he would not have kicked the prisoner knowing that the proceedings were being recorded.¹¹⁶⁸
- 7.502. Between 16.55 hours and 17.25 hours Mr. McBrearty Junior was in the interview room with Detective Sergeant White. This portion of the proceedings was videoed by Sergeant White. The fact that he used the video camera was recorded in the custody record. There was no meaningful interview during this period. Mr. McBrearty Junior lay on the floor and refused to answer any questions or to engage in any conversation with Sergeant White. At 17.25 hours he was removed from the interview room to the cell by Garda Rouse and Garda Leonard. **Mr. McBrearty Junior was asked to get off the ground and walk to the cell. He ignored this request. When he did not move, Garda Rouse and Garda Leonard pulled him by the arms and shoulders from the interview room to the cell. This was recorded by Sergeant White on his video camera. This video was made available to the Tribunal. The spectacle presented was extraordinary.**
- 7.503. Mr. McBrearty Junior also alleged that he had been assaulted in a number of ways by Sergeant White. He alleged that Sergeant White had on occasion stood on his back and, at another time, had blown cigarette smoke into his face and dropped hot ash onto the back of his neck. As Mr. McBrearty Junior did not allow himself to be cross-examined by any of the people against whom he had made allegations concerning his arrest and detention on the 4th of February 1996, Mr. White was not obliged to make any response to these allegations. However, he was invited to comment on them if he so wished. He did avail of that opportunity:

I do, Chairman. I didn't drop any ash on him of any kind. And I most certainly didn't stand on top of him. Because if I did, all he had to do was make one sudden movement and I was on my back on the floor and I was on my own then with a violent boxer, you know. I have great respect for Mr. McBrearty's abilities to inflict harm if he wished to do so. That didn't happen.¹¹⁶⁹

¹¹⁶⁸ Transcript, Day 562, pages 105-109.

¹¹⁶⁹ Transcript, Day 595, pages 194-195.

- 7.504. Mr. McBrearty Junior also alleged that during the time that he was lying on the floor of the interview room, some water was poured over him by the member in charge, Garda Martin Leonard. He stated that evidence of this was visible in the video recording, in the form of a wet patch on the front of his jumper. This allegation was categorically denied by Mr. Leonard. **Having viewed the video carefully, I am not of the view that there is any wet patch evident on Mr. McBrearty Junior's clothing as alleged by him. I do not accept this allegation made against Garda Leonard.**
- 7.505. At 18.00 hours the prisoner was checked in the cell by the member in charge. He was lying on the bed in the cell. At 18.30 hours he was asked whether he wanted a meal and he was recorded as stating that he did not want anything to eat.

Extension of Period of Detention

- 7.506. Mr. Fitzgerald recalled that at some time prior to 18.45 hours he had a discussion with Sergeant White. He was told that Frank McBrearty Junior was not cooperating with the investigation in any way. As a result of that no progress was being made in the investigation up to that time. In these circumstances he gave an authorisation to extend the period of detention for a further period of six hours. He gave the authorisation at 18.45 hours. At 18.47 hours the prisoner was informed by the member in charge that the Superintendent had authorised the extension of the period of detention and had also given authority to photograph and fingerprint the prisoner. Garda Leonard noted that at that time Mr. McBrearty Junior was lying in the cell. He did not make any response when given this information. The custody record notes that at 19.38 hours the prisoner was checked and was okay.

A Consultation with the Solicitor

- 7.507. Mr. James O'Donnell, who at that time was a solicitor in the firm of V.P. McMullen & Son, visited Frank McBrearty Junior at 20.16 hours. Unfortunately, by the time Mr. O'Donnell came to give evidence before the Tribunal, he had no actual recollection of what had taken place during his consultation with Mr. McBrearty Junior that evening. However, he had made a detailed memorandum of what they had discussed. He stated that that memorandum would, in all probability, have been made shortly after the consultation on the basis of rough notes that he took during the consultation itself. He would have dictated the more formal memorandum when he returned to the office within a short period. He thought this would have happened within a couple of hours of the consultation. His note of the consultation was in the following terms:

Attendance on Frank McBrearty Junior at 8.20 p.m. at Letterkenny Garda Station.

The member in charge asked me whether or not I wanted to see my client Frank McBrearty Junior. They said that they would have to remove him by force if necessary from the cell to the interrogating room as he was not co-operating with them and he was lying down on his face. I went in and spoke with Frank McBrearty Junior. Frank McBrearty showed me black marks on both of his eyes. He told me that he had just been photographed. He told me that Garda O'Dowd had banged his head against the floor. He told me that Dr. McFeely had examined him but he didn't know what time this had happened at. He told me that the keys of his car had been taken at Raphoe Barracks. He asked me what time the detention had been renewed at. He said that he had a bad headache and that his head was busting. He told me that Sergeant White had kicked him a couple of times and slapped him a couple of times while he was lying on the floor. He said that Sergeant White had asked him to withdraw the complaint against Garda O'Dowd.

After the interview with the client, I asked the member in charge to note in the custody record that the client had instructed me that he had been assaulted by Sergeant White. The member in charge appeared to enter this into the custody record. The member in charge informed me that Frank McBrearty's detention had been renewed by Superintendent Fitzgerald at approximately 6.45 p.m.¹¹⁷⁰

- 7.508. It was pointed out to Mr. O'Donnell that Mr. McBrearty Junior was making the case that his head had been banged against a desk by Garda O'Dowd. That was his evidence before the Tribunal. Mr. O'Donnell's note said something different to the effect that he had been told by Mr. McBrearty Junior that Garda O'Dowd had banged his head against the floor. Mr. O'Donnell stated that he would have tried to make an accurate note of the consultation. He was satisfied that he had been told by Mr. McBrearty Junior that his head had been banged against the floor by Garda O'Dowd. He said that during the consultation he did his best to take down what the client was saying to him. However, he said that it was not possible to take down every word verbatim and one would have to do the best one could to get the main points of the complaints that the client was making at that time. Mr. O'Donnell stated that had Mr. McBrearty Junior said anything about a cigarette or the blowing of cigarette ash onto him prior to that time he would probably have noted that point as a significant complaint. He said that he had no recollection of whether Mr. McBrearty Junior's clothes were wet or dry at the time

¹¹⁷⁰ Tribunal Documents, page 822.

that he spoke to him that evening. However, if any complaint had been made that water had been poured on him, he felt that he would have noted that and had regard to the state of his clothes. He said that he did his best to note down all the serious complaints made to him by Frank McBrearty Junior in the course of that consultation.¹¹⁷¹

- 7.509. The consultation with Mr. O'Donnell concluded at 20.26 hours. It was recorded in the custody record that Mr. O'Donnell made a complaint on behalf of his client that Sergeant White had assaulted his client by kicking and slapping him on the floor and had asked him to withdraw his complaint against Garda O'Dowd. Mr. O'Donnell also indicated that his client would co-operate with the Gardaí and need not be forced. Presumably this refers to being forced to leave the cell. The solicitor left the station at 20.30 hours.

A Further Medical Examination

- 7.510. At 20.45 hours Mr. McBrearty Junior was examined by Dr. Brian McColgan at the request of the Gardaí. Dr. McColgan stated that he examined Frank McBrearty Junior in the cell in Letterkenny Garda Station. Mr. McBrearty Junior complained of headaches and back pain and alleged that he had been assaulted by a Garda. As far as the doctor could recall, Mr. McBrearty Junior did not give any details as to the specific mechanism of injury. He did not have any note as to how the assault was alleged to have taken place. On examination, he found that Mr. McBrearty Junior had a right periorbital haematoma together with bruising and a raised area on the left side of the forehead. Mr. McBrearty Junior told him that the back pain had been long standing for about three years. The doctor said that due to the complaint of assault, he inferred that the right black eye and the injury to the forehead had been caused as a result of the alleged assault. The doctor gave him two Paramol tablets for pain relief.¹¹⁷²
- 7.511. Dr. McColgan was asked for his opinion in relation to two specific areas. Firstly, in relation to the injury to the forehead, he was asked whether he was of opinion that that injury was caused as part of a self-inflicted injury by punching in the face or was more likely to have been caused by the forehead coming into contact with an object such as a desk. He stated that that was very difficult to tell. However, he could say that it would have taken a significant force to produce the bruising and the raised area on the forehead. In the course of cross-examination by the solicitor acting on behalf of Mr. O'Dowd, it was pointed out that Mr. McBrearty Junior had initially alleged that his head had been banged against the desk, but that in evidence he had somewhat watered that down to an allegation that his head had been pushed into the desk by Garda O'Dowd. It was also pointed out that it was Mr. O'Dowd's case that in fact the forehead injury had been caused

¹¹⁷¹ Transcript, Day 551, pages 128-137: see paragraphs 7.507 and 7.508.

¹¹⁷² Transcript, Day 517, pages 22-26.

by Mr. McBrearty Junior banging his own head against the wall. The doctor stated that he could only say that the injury was consistent with being struck against an object such as a desk or the wall. He said that Mr. McBrearty Junior did not inform him as to how the forehead injury had been sustained, because he had no note of that. He thought that if he had been told how the injury occurred, he would have made a note of that information.¹¹⁷³

7.512. Dr. McColgan was also asked whether Mr. McBrearty Junior appeared to him to be particularly distressed and agitated at the time that he carried out his examination. He stated that when examining prisoners who were in custody in Garda stations, there was normally a greater degree of agitation and tension than would be found when examining people in his surgery. He could not remember Mr. McBrearty Junior being particularly distressed at the time that he examined him. He did not recall him being extremely depressed or agitated at that time. He had not recorded anything to that effect in his notes. Finally, Dr. McColgan confirmed that he had been told by Garda Rouse that Mr. McBrearty Junior's injuries had been self-inflicted. He could not recall whether he was given this information before or after the time that he carried out the examination.¹¹⁷⁴

7.513. At the conclusion of the medical examination, Frank McBrearty Junior received a visit from his mother and his wife. This visit was supervised by Garda Rouse and lasted from 21.20 hours to 21.38 hours.

The Final Interview

7.514. At 21.40 hours Frank McBrearty Junior was taken from the cell to the interview room for a final interview with Sergeant White and Garda O'Dowd. At this interview, Frank McBrearty Junior sat in the chair, but refused to answer any of the questions put to him. He was asked a number of questions about the alleged assault on Mr. Moss. These were recorded in the notes of interview and the interview itself was also recorded by means of the video recording camera owned by Sergeant White. As well as refusing to answer any questions put to him, Mr. McBrearty Junior also declined to sign the notes of interview. They were countersigned by Sergeant White and Garda O'Dowd at the conclusion of the interview at 21.59 hours.

7.515. Mr. McBrearty Junior was checked by the member in charge at the conclusion of the last interview at 22.00 hours. At 22.13 hours he was back in the cell. He was taken from the cell and released at 22.18 hours. He did not sign the custody record on his release.

7.516. There was a sting in the tail for Mr. McBrearty Junior on this occasion. Just as he was being released, he was served with two documents by the Gardaí. These

¹¹⁷³ Transcript, Day 517, pages 36-40.

¹¹⁷⁴ Transcript, Day 517, page 27.

were Notices of Intention to Prosecute in respect of two complaints of dangerous driving which had been made by Mr. Darcy Connolly to Garda John O'Dowd against Mr. McBrearty Junior in respect of incidents which were alleged to have occurred some short time previously, at the end of January 1997. Mr. McBrearty Junior alleged that as he was going out the door he was handed the two documents by Garda John O'Dowd who said "there's a wee present for you". Mr. O'Dowd in his evidence, accepted that two documents were indeed served on Mr. McBrearty Junior as he was leaving the station. However, he denied that it was he who had served the documents. He stated that once the complaint had been received by him from Mr. Darcy Connolly, he was obliged to serve these notices within a period of fourteen days. He stated that that period had almost expired. He stated that as the prosecuting Garda, he was not entitled to serve the notices on Mr. McBrearty Junior. It was for this reason, he said, that he asked Sergeant White to serve the documents on Mr. McBrearty Junior. Mr. O'Dowd denied that the act of serving the notices at that time was done out of any spiteful motive, to give Mr. McBrearty Junior a final "prod" at the end of a very stressful period of detention. He stated that it was the only opportunity that they had to serve the documents within the prescribed fourteen day period.¹¹⁷⁵

- 7.517. **The Tribunal is of the opinion that the service of the notices on Mr. McBrearty Junior at that time was a mean and vindictive act towards a prisoner who was leaving in a clearly distressed state. The fact that he had made an unfounded allegation against a member of An Garda Síochána in the course of that detention did not excuse their conduct in serving the documents at that time.**

Conclusions on the Detention of Frank McBrearty Junior on the 4th of February 1997

- 7.518. As already stated, Frank McBrearty Junior did not allow himself to be cross-examined by those against whom he had made allegations concerning his arrest and detention on the 4th of February 1997. This was in breach of their constitutional rights to have fair procedures applied to them before the Tribunal. Notwithstanding this violation of their rights, Mr. O'Dowd and Mr. White gave evidence on their own behalf and also answered questions concerning the allegations that had been levelled against them. They were not cross-examined by Frank McBrearty Junior. However, they were prepared to take questions from him if he so wished. He did not avail of that opportunity. In these circumstances, the Tribunal is prevented from making any findings adverse to Mr. White, Mr. O'Dowd or Mr. Leonard based solely on the limited testimony of Frank McBrearty Junior. **However, having considered all of the evidence carefully and having reviewed the documentation and the video tape evidence, I have**

¹¹⁷⁵ Transcript, Day 560, pages 30-36.

come to the conclusion that this violation of their constitutional rights does not inhibit the Tribunal from going on to make findings in respect of these allegations. This is due to the fact that I am entirely satisfied on the evidence before me, including the testimony given by Mr. McBrearty Junior on which he did not allow himself to be cross-examined, that there is no substance to his allegations arising out of his detention at Letterkenny Garda Station on the 4th of February 1997. Accordingly, the Tribunal is in a position to make final conclusions in relation to the allegations arising out of this period of detention.

7.519. Having considered all of the evidence, both oral and documentary, including the video tape evidence, I have reached the following conclusions concerning the arrest and detention of Frank McBrearty Junior on the 4th of February 1997.

1. Neither Mr. Moss, nor any of the persons who gave statements concerning the alleged assault at the nightclub premises on the 30th of December 1996, withdrew any of their statements made to the Gardaí. Given the content of those statements and given the direction given by the Superintendent to Sergeant White to continue with the investigation, I am of the opinion that Sergeant White and Garda O'Dowd did nothing wrong when they continued to investigate the complaint of assault which had been made by Mr. Moss culminating in the arrest of Mr. Frank McBrearty Junior on the 4th of February 1997. In the circumstances, I am satisfied that on that date Garda O'Dowd had reasonable grounds for holding the suspicion that Frank McBrearty Junior had committed the assault as complained of by Mr. Moss. In these circumstances, his arrest on that day was a lawful arrest.
2. I accept the evidence given by Mr. White that the reason that he used the video camera to record the arrest of Mr. McBrearty Junior outside Raphoe Garda Station was the fact that he feared that Mr. McBrearty Junior could react violently when the arrest was effected. There was no effort made to conceal the use of the video camera at that time. I am satisfied that while it was an unusual step to take, it was a reasonable step having regard to the fraught nature of the relations between the Gardaí and Mr. McBrearty Junior at that time.
3. I accept the evidence given by Mr. White, Mr. O'Dowd and Sergeant Hannigan, and as recorded on the video tape, that the arrest itself was carried out in a calm and dignified manner. I note that Mr. McBrearty Junior did not react aggressively when he was arrested. He

appeared somewhat subdued. He was not handcuffed when placed into the patrol car. I reject the evidence given by Mr. McBrearty Junior to the effect that he was verbally abused in the car on the way to Letterkenny Garda Station. It seems to me that with a man of Mr. McBrearty Junior's size and known boxing ability, it would have been highly unwise of the Gardaí to provoke him when there was only one Garda sitting on the back seat with him and at a time when he was not handcuffed. While I cannot rule out the possibility that a barbed comment or jibe was made to Frank McBrearty Junior during that journey, I am satisfied that he was not verbally abused in any meaningful way during the journey.

4. Mr. McBrearty Junior was only questioned for a very short period of time prior to receiving a visit from his solicitor. While he was agitated at the time that he saw his solicitor, he did not complain to him that his condition was due to any ill treatment or abuse received from the Gardaí prior to that time. I accept the evidence given by Mr. Sweeney to the effect that Mr. McBrearty Junior was literally terrified at the time that he saw him. This state of terror appeared to Mr. Sweeney to emanate not from anything that had been done to Mr. McBrearty Junior that day, but rather from a fear that whatever had happened to him on the previous occasion in Letterkenny Garda Station on the 4th of December 1996, would happen to him again. I accept that evidence and find that Mr. McBrearty Junior's state of agitation and distress at the time that he first saw his solicitor that day was not due to any ill treatment at the hands of the Gardaí earlier that same day.
5. The Tribunal is satisfied that when Mr. Sweeney arrived to interview his client, he found him in an advanced state of emotion and terror. In these circumstances, the Tribunal is satisfied that Mr. Sweeney attempted to address the problem by consulting with the station party. However, he got an unsatisfactory response from them. It should have been obvious to everybody present that Mr. McBrearty Junior's condition called for steps to be taken to control the situation. Mr. Sweeney got no co-operation in this regard. He is to be commended for his efforts. What followed later is, in the Tribunal's view, a consequence of the lack of co-operation shown by the station party towards Mr. Sweeney.
6. As already stated earlier in this chapter, I find that the injuries suffered by Frank McBrearty Junior on the 4th of February 1997 were

entirely self-inflicted. This conclusion is supported by the evidence of Mr. O'Dowd, Garda Rouse and Mr. James Sweeney. While Mr. McBrearty Junior did subsequently make a partial admission in respect of punching himself in the face, I have already found that his continuing allegation to the effect that Garda O'Dowd assaulted him, is unfounded.

7. The Tribunal accepts the evidence that was given by Mr. Hugh Smith. Having viewed the video tape recording of the afternoon period, when Mr. McBrearty Junior was lying on the floor of the interview room, I am satisfied that Mr. McBrearty Junior was not kicked by Mr. Smith as alleged, or at all. I also reject the contention that at some point during that interview, at a period not shown on the video, Mr. White stood on Mr. McBrearty Junior's back or that he blew cigarette smoke into his face or dropped hot ash onto his neck. The Tribunal prefers the evidence given by Mr. White to the effect that no such abuse took place.
8. In relation to the questioning of Mr. McBrearty Junior that day, I do not accept Mr. McBrearty Junior's allegation that he was questioned almost entirely about the death of the Late Mr. Richard Barron and that it was only at the end of the day that a small number of questions were directed to him in relation to the complaint by Mr. Moss. This is not borne out by the evidence of the interviewing Gardaí, nor by their notes of interview, nor by the content of the video recording. I also accept the point made by Mr. White to the effect that the Gardaí had at that stage a confession from Mr. McBrearty Junior in relation to the death of the Late Mr. Barron. It could have been counter-productive for them to have attempted to better their hand in that investigation by attempting to extract further corroboration in respect of that confession. To have done so might have exposed the Gardaí to the allegation that the second arrest was not a bona fide arrest, but was a stratagem designed to further the investigation into the death of Mr. Barron. As such, it could well have had a significant and adverse affect on any prosecution that may have arisen in respect of the Barron investigation. I find that Mr. McBrearty Junior was not questioned in respect of the Barron investigation in the course of this detention. Insofar as it may have arisen at all, it was purely in passing and was not the main subject of the interview, or even a significant part of any interview.

9. In short, Mr. McBrearty Junior adopted a number of different strategies designed to avoid answering any questions in the course of the investigation into the complaint made by Mr. Moss. To that extent, his strategies were successful. He did not in fact answer any questions on that matter. He has gone on to make various allegations concerning his treatment during that detention. I am satisfied that the allegations made in respect of that detention were entirely without foundation.
10. The silence of Mr. Frank McBrearty Junior in the last video-taped interview which to me indicates a withdrawn demeanour, together with the extraordinary events recorded earlier in the day are very disturbing to the viewer of the tape. The comments made to the prisoner, and his own unusual behaviour and reaction, clearly indicate that the day was an extremely fraught one for Mr. McBrearty Junior and the Gardaí. It was a scenario totally at variance with what should occur in a Garda station.
11. There was no regulatory basis for the use of the video camera by Sergeant White at the time of the arrest or during the detention. During the initial interviewing, following the false allegations made by Mr. McBrearty Junior of assault, the camera was used and hidden from the detainee and initially from other Gardaí: however, its use was later recorded in the custody record. The use of the camera was an extraordinary development and the events recorded indicate a deteriorating situation with a detainee. The video clearly demonstrated to the Tribunal that Mr. Sweeney's sensible call for steps to be taken to calm the situation went largely unheeded. In addition, Mr. McBrearty Junior also behaved badly. In the unusual circumstances existing in the Garda station that day, I do not criticise Sergeant White for using the camera as a common sense method of protecting himself and other Gardaí from false allegations. After all, that is partly what the electronic recording regulations are calculated to achieve nowadays. What is disturbing is that Sergeant White used the camera at the time of the arrest and in the interviews without seeking any sanction or permission from a superior officer. At the time it was necessary to obtain the permission of a superintendent before a photograph could be taken of a person following his detention. Sergeant White took it upon himself to fill what was a gap in the regulatory provisions by assuming the entitlement to video tape the events. His superior officers became aware of this shortly after the

events and though there was some exchange of views between officers as to the propriety of the use of the camera, it went largely uncriticised as did the extraordinary events recorded. As will be seen in Chapter 16, the Tribunal recommends that the use of such surveillance techniques of persons in custody should be fully regulated so that a scenario such as this never arises again inside or outside an interview room at any Garda station.

12. While the Tribunal accepts that it is necessary for Gardaí to avail of whatever opportunity may be available to them to serve a Notice of Intention to Prosecute upon an accused, nevertheless the Tribunal is satisfied that having regard to Mr. McBrearty Junior's upset and the unusual events that had transpired in the Garda station during that day, it was inappropriate and ill-advised to have proceeded to serve Mr. McBrearty Junior with these documents at that time. The Tribunal does not accept that it would have represented any hardship on the Gardaí to have served them on him at a later time in Raphoe in more tranquil circumstances. The serving of the documents on him at that time was, in the Tribunal's view, calculated by the Gardaí to enflame an already difficult situation and it was at least provocative insofar as Mr. McBrearty Junior was concerned.
13. Certain aspects of the questioning of Frank McBrearty Junior were unwarranted and unprofessional. Sergeant White should not have subjected him to ridicule while he was lying on the floor by calling him names or questioning his relationship with his father or by threatening that he and his family would be seen by Sergeant White for an "awful lot longer" in the future. This approach was clearly indicative of an animus towards the McBreartys, father and son, that had no place in any interview or criminal investigation. It was also calculated to inflame an already difficult situation. The Tribunal has found that the complaint of Edmond Moss was properly the subject of a Garda investigation and prosecution. Nevertheless, questioning of this kind is indicative of an inappropriate zeal, that is entirely at variance with a reasonable and professional approach to the interviewing of suspects.

CHAPTER 8

THE ARREST AND DETENTION OF MARK QUINN

Background

8.01. Mark Quinn was the seventh person to be arrested in the series of arrests carried out on the 4th of December 1996. In October 1996 Mark and Donna Quinn resided at the Town and Country Pub (otherwise known as Quinn's Bar) in Raphoe. Their second child was born on the 9th of October 1996 and Mrs. Quinn had just returned home from hospital. They were enjoying their first few days with their newborn child when the events of the 13th and 14th of October 1996 occurred. At the early stages of the investigation into the death of the Late Mr. Richard Barron, Mark Quinn furnished a voluntary statement to Garda Philip Collins on the 16th of October 1996. In this statement he gave Garda Collins an account of his movements on the 13th of October 1996. He outlined how he and his wife lived above the bar and that he was working in the bar most of the day. He described how Martin Quigley, a barman, took over work at the bar at approximately 19.00 hours. For the following three hours Mr. Quinn remained for the most part upstairs in the company of his wife and baby. At approximately 22.00 hours he met the Late Mr. Richard Barron in the bar. He described an incident some time later between the Late Mr. Barron and Mark McConnell. He deduced from the way they were looking at each other that there was "something up" and he told Mark McConnell to go to the pool room. The Late Mr. Barron left the premises at 23.20 hours. In his statement Mr. Quinn said:

Most of the people in the bar left the premises at about half twelve. The barman, Martin Quigley, left at about a quarter to one. There was myself and Gerard and Kay Quinn, Irene and Frankie Dolan and Laura Dolan and the boyfriend Jimmy (Deery), left in the bar at this time. We were in the pool room. There was nobody in the bar. We had one more drink and they all left then, shortly after 1.00 a.m. We tidied up and went to bed at about 2.00 a.m.

8.02. This statement did not include Mark and Róisín McConnell amongst the patrons who were left in the bar at about 00.45 hours. This had a relevance to the Garda investigation because it was the Garda view, on the basis of other statements in their possession, that Mark and Róisín McConnell had left the Town & Country a short time before 00.30 hours. As will be seen, it was put to Mark Quinn in the course of his detention that he had been engaged in an attempt to cover up the movements of Mark McConnell and/or Michael Peoples in the early hours of the morning of the 14th of October 1996 and was hiding information about the

movements of these two men. **The Tribunal is satisfied that this is not so. Had Mr. Quinn been minded to assist Mark McConnell and/or Michael Peoples by way of some form of cover up concerning their movements that had been hatched in his pub in the early hours of the morning of the 14th of October 1996, he would have taken the opportunity in his statement of the 16th of October 1996 to do so. He did not. In fact, the times contained in his statement and in that of his barman, Martin Quigley, showed no support for Mark and Róisín McConnell's story that they left the Town & Country at some time after 01.00 hours.** The Tribunal has already considered the evidence and statements of Mark Quinn and Martin Quigley in terms of the times furnished in this regard, as well as the Garda evidence which acknowledged that times contained in their statements were furnished against the background that they may have been put back somewhat in order to avoid an issue in relation to the licensing laws. This is unfortunate. The Tribunal, as indicated in its second report, is satisfied that the times given by Mark Quinn and Martin Quigley were not treated as being in serious conflict with the times given by Mark and Róisín McConnell for their departure from the premises as they were not treated as accurate by the investigation team.¹¹⁷⁶

8.03. On the 27th of October 1996 Mr. Martin Laird, a next door neighbour of Mark McConnell, made a statement in which he informed Garda John O'Dowd that he had seen Mark McConnell come out of the Town & Country at 08.20 hours on the morning of the 14th of October 1996. Garda suspicion was thereby heightened in respect of Mark McConnell's movements in that Mr. Laird was contradicting Mr. McConnell's account that he had stayed the entire night in the Brolly household and left it between 10.00 hours and 10.30 hours on the morning of the 14th of October 1996. Mrs. Donna Quinn made a statement to Detective Gardaí Harkin and P.J. Keating on the 7th of November 1996 in which this matter appears to have been raised with her. At the conclusion of her statement she said that she had retired to bed at approximately 23.00 hours to 23.30 hours and was up again at approximately 01.00 hours or sometime later. She recalled that nothing unusual happened and that she, her husband and their baby were in the house alone that night.¹¹⁷⁷

8.04. The investigation team was also concerned that Mark Quinn was underplaying the nature of the altercation which had occurred between Mark McConnell and the Late Mr. Barron in the pub earlier in the evening. It was this matter, together with the suggested sighting by Mr. Laird of Mr. McConnell coming out of the Town & Country, which led to the arrest of Mark Quinn on the 4th of December 1996. Prior to the arrest nobody returned to either Mark Quinn or Donna Quinn to seek further information from them in relation to the events of the 13th/14th

¹¹⁷⁶ Report of the Tribunal of Enquiry – Term of Reference (B), paragraphs 3.298-3.302 and Transcript, Day 47, pages 181-193 and Day 317, pages 108-135.

¹¹⁷⁷ Tribunal Documents, pages 69-70 and page 125.

of October 1996, or to query or challenge anything contained in their respective statements of the 16th of October and the 7th of November 1996.

- 8.05. The Tribunal is not in a position on the evidence to establish exactly by whom and how it was decided that Mark Quinn should be arrested on the 4th of December 1996. Initially, the evidence presented to the Tribunal by Mr. Keating was that he carried out the arrest of Mark Quinn following a conference held at Letterkenny Garda Station on the 3rd of December 1996 at which the case was discussed. He said that a decision was made on the basis of material presented that Mark Quinn should be arrested along with other persons and that he should carry out Mark Quinn's arrest. He presumed that he was told to carry out this arrest by one of the officers present at the conference.¹¹⁷⁸
- 8.06. Mr. Keating also stated that, in addition to the direction given, he had sufficient information in his possession, because of his involvement in the investigation, to form the opinion necessary to carry out the arrest. He gave three reasons for the arrest of Mark Quinn. The first reason was the altercation which took place in Mark Quinn's pub on the night of the Late Mr. Barron's death. The second was the statement of Robert Noel McBride (now known to be false) in which he had described Mark McConnell and Frank McBrearty Junior coming down the car park on the night of Richard Barron's death. The third, and main reason, was the statement of Martin Laird, which has already been referred to. Detective Garda Keating said:

*The third one and on which I based my reasons for the arrest, was Martin Laird's statement. Martin Laird, he is an independent witness who saw Mark McConnell coming out of Mark Quinn's pub at 8.20 a.m. that morning. The reasons, basically, were that possibly Mark McConnell was getting his story right with Mark Quinn, or they might have been talking about the actual altercation that took place the night before. But, for whatever reason, this witness said that he saw Mark McConnell coming out of the pub. So, it was the main reason I decided or I formed the opinion or I had reasonable suspicions that Mark McConnell was involved in the cover up of this murder and I truly believe that this was, that there was, some sort of a cover up. So, basically they are the three reasons, but the main one was the statement of Martin Laird.*¹¹⁷⁹

In fact, his possession of this statement from Mr. Laird was given as the only reason for arresting Mr. Quinn in his original statement in this matter.¹¹⁸⁰

¹¹⁷⁸ Transcript, Day 317, Q.1-81.

¹¹⁷⁹ Transcript, Day 317, Q.3.

¹¹⁸⁰ Tribunal Documents, page 1.

- 8.07. Subsequently, Sergeant Joseph Hannigan, who accompanied Detective Garda Keating on the arrest of Mark Quinn, made a statement to the Tribunal in which he said:

... Later on the evening of the 4th of December 1996 I returned to Letterkenny Garda Station where I met with Detective Garda P.J. Keating. We then travelled to Raphoe where D/Garda Keating arrested Mark Quinn at St. Eunan's Terrace on suspicion of being an accomplice in the murder of Richard Barron on the 4.12.96. Prior to going to Raphoe to arrest Mark Quinn I recall that we had a short conversation with Inspector John McGinley in the corridor regarding the arrest. It was the belief at the time that Mark Quinn was not being totally forthcoming in relation to the events that had occurred in his licensed premises on the night that Richard Barron had died. It was believed that he had sought to minimise the extent of the row involving the deceased and Mark McConnell. In addition, Mark McConnell was seen going into Mr. Quinn's premises at 8.00 a.m. on the morning of the 14.10.96 by a witness namely Martin Laird and this was denied by him. (Mark Quinn)¹¹⁸¹

- 8.08. In further evidence to the Tribunal on the 25th of April 2006, Mr. Keating changed his previous account. He said:

*In fact it was on the way out to Raphoe, I was with Sergeant Hannigan and he had asked me to do the arrest apparently and the reason being that he had already arrested somebody earlier on in the day and he didn't want to have two people to deal with so I was fully aware of the case and the details; so I said I would do the arrest.*¹¹⁸²

He now said that he had not been assigned to arrest Mark Quinn at the conferences held on the 2nd and 3rd of December 1996. He now believed that Mark Quinn was not originally down on the list compiled at the conference of the 3rd of December. He said he was not quite sure how he came to be instructed to arrest Mark Quinn:

*I have a recollection of meeting or seeing Detective Inspector McGinley speaking to Joe Hannigan earlier on. It was downstairs in the corridor. Now Sergeant Hannigan recollects that it was upstairs in the corridor that he spoke to Detective McGinley ... I wasn't there when that happened, we are getting two different times.*¹¹⁸³

- 8.09. He did not believe he was present when Inspector McGinley had this conversation with Sergeant Hannigan. Sergeant Hannigan asked him would he accompany

¹¹⁸¹ Tribunal Documents, pages 12.11 – 12.12.

¹¹⁸² Transcript, Day 440, Q.610-612.

¹¹⁸³ Transcript, Day 440, Q.612-619.

him out to Raphoe and he agreed as he had possession of an unmarked Detective Branch car. On the way, Sergeant Hannigan asked him to effect the arrest as he had already arrested one person that day. Sergeant Hannigan told him that Inspector McGinley had decided that Mark Quinn should be arrested. It was only on the way out to Raphoe that he was requested to carry out the arrest by Sergeant Hannigan. He now said that he had no knowledge and did not know anything at all about Mark Quinn apart from the fact that Mr. McConnell had apparently been seen coming out of his premises on the morning of the 14th of October 1996. He also knew that a row had taken place in the pub the night before the death of the Late Mr. Barron. He now maintained that he had not reviewed Mr. Quinn's statement before going out to assist Sergeant Hannigan.¹¹⁸⁴

8.10. Sergeant Hannigan in evidence to the Tribunal said:

My recollection is that in the evening time [I was in] the hallway of Letterkenny Garda Station, along with Detective Garda Keating ... we met then Detective Inspector McGinley, who either directed or asked us, or asked me, to go to Raphoe and arrest Mark Quinn. My only recollection of that conversation is that it was a brief conversation and based on that conversation Mr. Chairman, along with Detective Garda Keating, I went to Raphoe ... My abiding recollection ... was that it was a very brief conversation. So I would speculate and say that it wasn't a decision-making conversation or a decision-making process ... I am given to believe that we were directed or asked to go to Raphoe to arrest Mark Quinn ... The end result of [the brief conversation] ... was that we went to Raphoe to arrest ... Mark Quinn.¹¹⁸⁵

He said that he was directed to make the arrest and was not involved in any discussion whereby it was decided to arrest Mr. Quinn.¹¹⁸⁶ Sergeant Hannigan also noted that Mark Quinn's name had not been included on the original list of eight proposed arrestees which was typed up and made available at the conference on the 3rd of December 1996. Nevertheless, his evidence was that his discussion with Inspector McGinley was not a decision-making process. He agreed that it was simply the implementation of a decision previously made to arrest Mark Quinn. This would imply that a decision had been made at the previous conference to arrest Mark Quinn. Indeed, this was the evidence given to the Tribunal by Superintendent Fitzgerald and Sergeant Moylan who attended the conference and played prominent roles in it.¹¹⁸⁷

¹¹⁸⁴ Transcript, Day 440, Q.654-666.

¹¹⁸⁵ Transcript, Day 444, Q.29-56.

¹¹⁸⁶ Transcript, Day 444, Q.40-44.

¹¹⁸⁷ Tribunal Documents, Arrest and Detention, Vol. I, page 255; Transcript, Day 445, Q.479-500 and Q.631-645.

- 8.11. Superintendent Fitzgerald expressed the view that he was not surprised that Mark Quinn was arrested having regard to the discussions that took place at the conference, though he denied that he gave the direction to arrest him. Mr. Moylan accepts that the decision was made at the conference. Mr. McGinley made a statement on the 19th of April 2006 to the Tribunal in which he said that he had no recollection of any conversation with Sergeant Hannigan and/or Detective Garda Keating on the 4th of December 1996. He said:

I have no recollection of being involved in any way in the decision to arrest Mark Quinn. Such a decision was more than likely made in the incident room in consultation with the District Officer of the staff of the incident room and based on the information then available. I had been involved in the interviewing of Róisín and Mark McConnell during the afternoon of the 4th of December 1996 and was absent from the incident room and consultation process for a considerable time – 2.45 p.m. to 3.55 p.m.; and 4.45 p.m. to 6.00 p.m. while engaged in the aforementioned interviews. As stated, I have no recollection of any such conversation and I do not believe that such a decision would be made during a conversation in the corridor.¹¹⁸⁸

- 8.12. Although the records in relation to the conferences of the 2nd and the 3rd of December 1996 are hopelessly inadequate, Garda Tina Fowley was requested to produce a typed document setting out the names of eight detainees in eight separate boxes, seven of which contained the details of the Gardaí who were nominated and directed to arrest and interview a particular person. Mark Quinn's name does not appear in this typed document. However, Mr. Quinn's name, together with the names of Sergeant Hannigan, Detective Garda Keating, Sergeant Moylan and Garda John O'Dowd appears on the reverse side of two typed sheets prepared by Garda Fowley in longhand.
- 8.13. This is yet another example of the entirely inadequate records kept in the course of the investigation into the death of the Late Richard Barron. Detective Superintendent Shelly, Superintendent Fitzgerald and Inspector McGinley were the senior officers at the conferences at which the decision was made to arrest various people. They may have sought the views of other members of the investigation team as to whether or not an arrest was appropriate at a particular stage of the investigation. They may even have accepted such views. Nevertheless, by reason of their rank, the responsibility for the leadership of and direction in which this investigation moved was theirs. When serious operational decisions are made in the course of a criminal investigation, they should be recorded accurately. Once again, this was not done. The evidence given to the

¹¹⁸⁸ Tribunal Documents, page 164.

Tribunal and available in the documents renders it impossible to isolate with precision how and why Mark Quinn was arrested and by whom the direction was given. Rather than lift during the course of these hearings, the fog, which initially obscured what should be a relatively simple process, became thicker and more impenetrable. It is worrying that the testimony given by Mr. Keating on the matter, that appeared to be crystal clear on Day 317 of the Tribunal hearings, changed completely when he returned to give evidence on Day 440.

- 8.14. The Tribunal has already noted in its second report that it is satisfied that this arrest, like the others, was unlawful: no lawful arrest can occur where the agency effecting the arrest is responsible for manufacturing the evidence on which the grounding suspicion is allegedly based namely the evidence of Robert Noel McBride. In addition, in common with a number of other arrests, Detective Garda Keating proceeded on the basis that one can arrest a suspect on reasonable suspicion of being an accessory after the fact to a murder when that person has not committed any act in support of the principal. In this instance it was thought that Mark Quinn was withholding information about the movements of Mark McConnell in the early hours of the morning of the 14th of October 1996. Detective Garda Keating believed that this justified his arresting Mark Quinn on reasonable suspicion of his being an accessory after the fact to the murder of the Late Richard Barron. In this he was legally incorrect. There was no basis in fact or law to justify his arrest as an accessory after the fact to murder.

Mark Quinn's Account

- 8.15. The arrest of Mark Quinn is described by Mr. Keating as having taken place at 17.05 hours on the 4th of December 1996. Mark Quinn said that he had earlier heard that Michael Peoples had been arrested and went to the Peoples' home at St. Eunan's Terrace to visit his wife Charlotte. She was not at home and he spoke to her mother. He said that he was returning to the Town & Country pub in his car when having driven to the end of St. Eunan's Terrace, and turned right down towards Raphoe village, he was approached from behind by a Garda patrol car with a flashing blue light. He pulled into the side of the road on Meetinghouse Street. He had his seatbelt on. He was then approached by Detective Garda Keating who opened the door and started to pull him out of the car. Mark Quinn described what happened in this way:

I couldn't get out because the seatbelt was still on. It was caught around my neck. I eventually got the seatbelt released and I was

*dragged out of the car and pushed over the bonnet of my car. He says "I am arresting you for the murder of Richie Barron". Sergeant Hannigan came across and he said "You are being arrested for after the fact" and then Garda Keating tried to handcuff me, he was putting my hands up to my back and Sergeant Hannigan says "No, you have no call to handcuff that man". Then I was put into the back of the patrol car and proceeded for Letterkenny.*¹¹⁸⁹

- 8.16. Mr. Quinn described this encounter as being very physical and said that he was not offering any resistance. He maintained that there was no reason to push him across the bonnet of the car. He was then placed in the back of the patrol car on his own and the car drove off to Letterkenny. In the course of this journey he said that Sergeant Hannigan told him that:

*The Murder Squad was waiting for me in Letterkenny, and they were going to get Frank McBrearty for what he done to [a retired Garda sergeant] and to tell us now what you know before the murder squad gets here. They are waiting for you in Letterkenny".*¹¹⁹⁰

- 8.17. The journey took some twenty to twenty-five minutes and Mr. Quinn is recorded in the custody record as having arrived at Letterkenny Garda Station at 17.25 hours.¹¹⁹¹

The Garda Account

- 8.18. Both Sergeant Hannigan and Detective Garda Keating denied the allegations made by Mark Quinn as to the manner of his arrest and what was said to him on the way to the station. Sergeant Hannigan described how he and Detective Garda Keating drove into Raphoe past the Town and Country. Mr. Quinn's car was not there. They toured the town and encountered Mr. Quinn's car at the junction of St. Eunan's Terrace and Meetinghouse Street. Sergeant Hannigan's only recollection of the ensuing events was that the arrest that they carried out was non-confrontational, following which Mr. Quinn sat into the back of the patrol car. He denied the account given by Mr. Quinn of being removed from the driver's seat of his car by Detective Garda Keating and being thrown across the bonnet of his car. There was no attempt made by Detective Garda Keating to use handcuffs, nor had he, Sergeant Hannigan, intervened to prevent their use by him. Mr. Quinn did not ask them to secure or move his car nor did they offer to do so. He maintained that had there been violence in the manner described, Mr. Quinn would not have been left alone in the back of the Garda car on the journey to Letterkenny, as he would have been deemed to pose a potential risk of

¹¹⁸⁹ Transcript, Day 439, Q. 82.

¹¹⁹⁰ Transcript, Day 439, Q.82.

¹¹⁹¹ Tribunal Documents, page 73.

violence to the two Gardaí by reason of the violence used at the time of the arrest. Such a person would have been handcuffed for the journey and accompanied in the back seat. This did not happen.¹¹⁹²

- 8.19. Mr. Keating gave a similar account of the arrest to that of Sergeant Hannigan. He said:

*Well I know one thing for sure ... for certain, that it wasn't a dragging and a pulling out of a person out of a car and throwing him over the bonnet or whatever and twisting his arms up around his back. Because if you start doing things like that with a person you are going to interview and look for help, you get no help by doing something like that. You're setting up barriers immediately.*¹¹⁹³

He also accepted that no effort was made to have the car driven back to Mr. Quinn's home.

- 8.20. Mr. Keating's evidence as to how Mr. Quinn came to be arrested is clearly self-contradictory. Sergeant Hannigan's statement of the 26th of June 2003 described how he was initially requested or directed to carry out the arrest by Detective Inspector McGinley in a corridor in Letterkenny Garda Station immediately prior to the arrest. This was contrary to the first sworn account given by Mr. Keating to the Tribunal.¹¹⁹⁴ As already noted, Mr. Keating radically changed his account in his subsequent sworn testimony to the Tribunal in a manner which tended then to support Sergeant Hannigan's statement of the 26th of June 2003 and which Sergeant Hannigan subsequently substantially confirmed in evidence. The change in Mr. Keating's sworn testimony has not been explained to the Tribunal: perhaps it cannot be. **I am not satisfied that Mr. Keating's and Sergeant Hannigan's testimony as to how and why the decision was made to arrest Mr. Quinn is credible. Consequently, it is difficult to accept fully their testimony in respect of events as to how this arrest was effected.**

- 8.21. I am unable to reconcile the fact that Mr. Quinn's car was left on the side of the road at the site of the arrest with the description which I have been given of a non-confrontational arrest. If the event had been conducted in the tranquil atmosphere which Mr. Keating describes, I consider that thought would have been given to the fact that the car would remain on the roadside unavailable to members of Mr. Quinn's family for the entire day. At least the ignition keys and the information as to its whereabouts would have been passed to his family. The fact that it was abandoned on the side of the road suggests that the arrest was conducted in a confrontational way as described by Mr. Quinn.

¹¹⁹² Transcript, Day 444, Q.55-87 and Transcript, Day 440, Q.774-804.

¹¹⁹³ Transcript, Day 440, Q.702-704 and Q.730-736.

¹¹⁹⁴ Tribunal Documents, pages 12-11 to 12-12.

- 8.22. Mr. Quinn has given an account, which he also gave to his wife, albeit a number of months or years after the event, in which he described being manhandled in the way he also described to me in evidence. I am satisfied that he was manhandled at the time of his arrest and placed in the back of the patrol car by Detective Garda Keating. No handcuffs were used and I am satisfied that this was because of Sergeant Hannigan's intervention. Mr. Quinn was not a violent or truculent individual and consequently was not a threat to either of the Gardaí who were both of strong and large stature. By the time Mr. Quinn was placed in the car, I am satisfied that he was sufficiently shocked at the fact and swiftness of his changed circumstances that he did not pose any threat to the two Gardaí on the drive to Letterkenny. On the contrary, I am satisfied he was in a very subdued state. Nevertheless, it is important not to exaggerate the matter. I am satisfied that Mark Quinn's account of the arrest is exaggerated and that the truth of what happened lies somewhere between the two opposing accounts. The approach adopted by Detective Garda Keating was sufficient to cow Mark Quinn and show that the two Gardaí were "in charge" but was in the circumstances unnecessarily robust. It is clear that a non-confrontational approach would have worked just as well but, for whatever reason, it was not adopted by Detective Garda Keating. It should have been his preferred option. It set the scene, but not intentionally, for the deeply unpleasant events which later took place.

Journey to Letterkenny Garda Station

- 8.23. Mark Quinn alleged that on the car journey to Letterkenny Station a number of things were said to him, which might be regarded as inappropriate or calculated to intimidate him. He said:

On the way down, Sergeant Hannigan said that the Murder Squad was waiting for me in Letterkenny, and that they were going to get Frank McBrearty for what he had done to [a retired Garda sergeant] and, "tell us now what you know before the Murder Squad gets here. They are waiting for you in Letterkenny" ... it meant absolutely nothing to me ... It frightened me what he said, but I couldn't understand what he meant by it ... [name redacted] used to be a sergeant and I thought they must have had a fall out or something like that. That was a reference towards that I think ... He said that we would get Frank McBrearty for what he done to [the retired sergeant]... It didn't mean anything to me like ... I was very frightened. I didn't really know what was going on. I was confused, I didn't really know what was happening.¹¹⁹⁵

¹¹⁹⁵ Transcript, Day 439, Q.81-102.

- 8.24. The sergeant allegedly referred to was known to Mr. Frank McBrearty Senior in the 1980s. The Tribunal is aware from papers submitted to it that the sergeant was accused of a number of matters by Mr. Frank McBrearty Senior and that these were investigated by the Garda Síochána. This included an allegation that he had been paid money, apparently designated by Mr. McBrearty Senior as a loan or loans, over a period of years, as a result of which he is supposed to have refrained from carrying out inspections upon Mr. McBrearty Senior's licensed premises. The money, according to this accusation, was never paid back, nor was it expected by Mr. McBrearty Senior that it would be. Mr. McBrearty Senior made a detailed statement to the Garda Síochána about this on the 9th of February 1988. The Garda investigation in respect of the matter suggested, on the basis of the various statements available, that if this were true then offences were possibly committed by both men and that the payments made to [the sergeant] could be regarded as corrupt payments or bribes. A file in respect of both men was submitted to the Director of Public Prosecutions who directed that no prosecution be brought against either of them. Mr. Quinn, in his evidence to the Tribunal, maintained that he knew nothing of these matters and that reference made by Sergeant Hannigan to the retired sergeant matter meant nothing to him.¹¹⁹⁶
- 8.25. Mr. Keating said that he did not hear any remark passed by Sergeant Hannigan about the Murder Squad being in Letterkenny or about the Gardaí getting their own back on Mr. Frank McBrearty Senior for the alleged damage done to the retired sergeant. As far as he was concerned, the retired sergeant "was responsible for his own problems" and the remark was not made.¹¹⁹⁷
- 8.26. For his part, Sergeant Hannigan denied making any remark about the retired sergeant to Mr. Quinn. He said:

I did not make that reference. I came to Raphoe in October 1991. [Name redacted] had been retired at that stage. I didn't know [name redacted] when I went to Raphoe. I never worked with [name redacted] when I went to Raphoe. I met him a few times after I went to Raphoe and this allegation in relation to [name redacted] was made, to my recollection, by the McBrearty family in relation to their pub inspections. [Name redacted] and his demise played absolutely no role in any members' involvement in the investigation into the death of Mr. Barron. I am not aware of [the retired sergeant's] name ever having been mentioned by me or by anybody else during the course of the Barron investigation. And to suggest that I had been in Raphoe since October 1991 until the unfortunate events of the 14th of October 1996 and the other

¹¹⁹⁶ Transcript, Day 439, Q.95-99 and Q.749-777.

¹¹⁹⁷ Transcript, Day 440, Q.778-792.

unfortunate events and arrests of the 4th of December and that in that five year period should I want to go down the line of exacting any form of retribution for what Mr. McBrearty allegedly did to [name redacted] is nonsense. I had five years there where I enjoyed absolutely perfect relations and good relations with Mark Quinn and with the McBrearty family and at no time did my perception or anybody else's perception of what occurred to [name redacted], of which I was never told in so many words, come into my method of policing, absolutely not ... I wouldn't use the job for that. Whatever happened to [name redacted] and whatever sympathies I might have for him, I am certainly very much of the opinion that Detective Garda Keating held that he may have been the author of most of his own misfortune. And to suggest that after five years where I policed the town and got on well with all these people, including Mark Quinn, that I was using the unfortunate Mr. Barron to exact some form of retribution: absolutely and utterly not.¹¹⁹⁸

- 8.27. There is no evidence to suggest that the issue of the retired sergeant's alleged wrongdoing constituted a significant theme or motivating factor in the investigation of the death of Richard Barron. This is a relatively isolated reference to that issue. *I am not satisfied, given the remoteness of that affair from the Barron investigation and the evidence of Sergeant Hannigan, that this remark was made at all. It is the type of evidence that can all too easily come about by reason of contamination of a person's memory over time by the theory of others as to how and why things may have happened. It was for a time a theme adopted by Mr. Frank McBrearty Senior.*
- 8.28. *As far as the second element of the conversation in the car to Letterkenny is concerned, I am satisfied that some reference was made to the fact that Dublin detectives were in Letterkenny and that it would be better to tell Sergeant Hannigan and Detective Garda Keating the truth before they got to Letterkenny. The suggestion was implicit that these experienced interrogators would otherwise be waiting there to interview him. These detectives from Dublin may or may not have been described as members of the "Murder Squad", but I am satisfied that a reference was made to their presence in Letterkenny.*
- 8.29. Mr. Keating told the Tribunal that he knew at the time of Mr. Quinn's arrest that members of the National Bureau of Criminal Investigation (NBCI) were in Letterkenny. They had a lot of experience in the investigation of serious crime. He acknowledged that he could conceive of circumstances in which their presence might be used as a device to get a person to tell the truth on the basis that a

¹¹⁹⁸ Transcript, Day 444, Q.107-109.

failure to comply would result in their being questioned by members of the NBCI. Nevertheless, he denied that this device was used with Mr. Quinn on the way to Letterkenny Garda Station. I am satisfied that it was. It was calculated to impress on Mr. Quinn that he ought to tell them all he knew in respect of the 13th/14th of October 1996. Otherwise, he would be questioned by the detectives from Dublin.

8.30. Sergeant Hannigan also denied that there had been any mention of the “Murder Squad” from Dublin, or of their reputation as interviewers, on the car journey to Letterkenny. He said that the “Murder Squad” had been disbanded in October of 1984, following which the section operated as the Central Detective Unit. There was no suggestion that Dublin Gardaí would be used to interview Mark Quinn. He had no knowledge of any role that they might have with Mark Quinn. There was not much conversation on the way to Letterkenny Station save that Sergeant Hannigan agreed that Mr. Quinn was told there were several matters about which they wished to speak with him; other than that the journey was quiet enough.¹¹⁹⁹

8.31. I do not accept that the actual arrest was non-confrontational, as suggested by Mr. Keating and Sergeant Hannigan. I am satisfied that the Gardaí adopted what could be described as the normal robust approach to this arrest, which would have involved assisting Mr. Quinn from his car. These efforts probably were obstructed by his seatbelt, all of which promoted the impression of “manhandling” in Mr. Quinn’s mind. I am not satisfied that Mr. Quinn was “thrown across the bonnet of the car”. This is an exaggeration. No doubt he was positioned against the car while preliminary preparations were made to handcuff him. This idea was dropped at Sergeant Hannigan’s intervention. Undoubtedly, it came as a shock to Mr. Quinn that he was arrested and, from his perspective, the entire procedure was unpleasant and fraught. It is likely that the initial tensions occasioned by the drama of the event gave rise to a confrontation between Mr. Quinn and Detective Garda Keating and Sergeant Hannigan, which was quickly dissipated, as is evident by the placing of Mr. Quinn in the Garda car without the necessity for handcuffs to restrain him and without the necessity that he be accompanied by a Garda in the rear seat.

8.32. The Tribunal is satisfied that the journey to Letterkenny Station was uneventful. It is not satisfied that any reference was made to the case of the retired Garda sergeant by Sergeant Hannigan. Nonetheless, it is satisfied and considers it likely that there was a conversation on the way to Letterkenny Station in which information was demanded of Mark Quinn. In this context, I am satisfied that there was some mention of the

¹¹⁹⁹ Transcript, Day 444, Q.86-106.

presence of detective Gardaí in Letterkenny Station from Dublin (whether they were referred to as the “Murder Squad” or otherwise) and that Mr. Quinn might have to answer to them in Letterkenny Station. This was calculated to impress upon Mr. Quinn that he would be better off telling his story to Detective Garda Keating and Sergeant Hannigan than being questioned by the detectives from Dublin. The implication of this was that to be questioned by the Dublin Gardaí would be a deeply unpleasant experience. Both Gardaí believed their dealings with Mr. Quinn were normal. The passage of time may have blunted memories of what they considered to be an unremarkable event for them still further.

At Letterkenny Garda Station

8.33. The time of Mark Quinn’s arrival at Letterkenny Garda Station is noted in the custody record as 17.25 hours. The member in charge was Garda Martin Leonard who, it is accepted by the Tribunal, completed the initial formalities in respect of Mark Quinn’s detention. Garda Leonard authorised the detention of Mark Quinn under section 4 of the Criminal Justice Act, 1984 for an initial period of six hours and informed him of his rights. Mark Quinn signed an acknowledgement of this in the custody record. Mark Quinn’s property was retained. Garda Leonard was requested to contact his wife, Donna Quinn, at 18.00 hours. Mr. Leonard’s evidence concerning how he processed Mark Quinn and the entries made in the custody record about it up to 17.40 hours are accepted as correct by Mark Quinn. This is of some importance because Mark Quinn, in his account to the Tribunal of various events which he says occurred, acknowledged that he could only recall “bits and pieces” of what happened. He was not in a position to be accurate in respect of time or the sequence of events. He said that when he arrived at the station he was: “frightened. I didn’t really know what was going on. I was confused and didn’t really know what was happening.” For example, though he did not recall being dealt with by Garda Leonard, he did not disagree with the entries in the custody record concerning that encounter. Similarly, he was happy to accept that he signed notes which were produced to him in the course of evidence and was not in a position to disagree with the contents of those notes.¹²⁰⁰

Mark Quinn’s Testimony

8.34. The Tribunal is satisfied that though Mark Quinn gave a truthful account of some of the happenings during his detention, his memory in respect of other alleged events is not wholly reliable and on other occasions he has given some evidence that must be regarded as exaggerated or untrue. Nonetheless, some of the allegations which he made and which were

¹²⁰⁰ Transcript, Day 439, Q.100-113.

consistently denied over the years by Gardaí, in particular the showing of photographs of the post-mortem of the Late Richard Barron to him during the course of an interview, were clearly true. His story in that regard was fully vindicated insofar as the two Gardaí concerned, Sergeant Moylan and Garda John O’Dowd, eventually admitted that such an incident occurred. In addition, it must be said that the Tribunal’s task in trying to ascertain the truth in these matters has not been assisted by the manner in which Gardaí who carried out interviews with Mark Quinn disregarded their obligations to make and maintain proper notes of the interviews.

The Interviews

8.35. During the course of his detention Mark Quinn was interviewed by three teams of Gardaí. These were Detective Garda P.J. Keating and Sergeant Joseph Hannigan; Sergeant Martin Moylan and Garda John O’Dowd; and Detective Garda Padraic Scanlon and Sergeant Joseph Hannigan. A number of sets of notes were made available to the Tribunal in respect of these interviews. Synopses of the main events and features of Mr. Quinn’s detention and his complaints during his detention are set out in tabular form:

Occurrence on the 4th of December, 1996	Details of Occurrence	Comment
17.05 hours	Arrest of Mark Quinn in Raphoe.	Mark Quinn alleged that he was manhandled by Detective Garda Keating.
17.25 hours	Detective Garda Keating arrived at Letterkenny Garda Station with Sergeant Hannigan and Mark Quinn. Mark Quinn was processed by the member in charge, Garda Martin Leonard.	
17.40 hours	Mark Quinn was interviewed by Detective Garda Keating and Sergeant Hannigan.	He alleged that he was “dragged” to the interview room by Detective Garda Keating.
18.00 hours	Mark Quinn was checked in the interview room by Garda Leonard and was “ok”. He requested that his wife, Mrs. Donna Quinn, be notified of his detention.	
19.50 hours	The interview by Detective Garda Keating and Sergeant Hannigan ended and Sergeant Moylan and Garda O’Dowd commenced to interview Mr. Quinn.	Post-mortem photographs were shown to Mark Quinn by Sergeant Moylan. Mark Quinn alleged he was assaulted by Garda John O’Dowd.

20.00 hours	Mr. Quinn was checked by Garda Leonard and told that his wife had been notified of his detention.	
21.00 hours	Mr. Quinn was checked and noted to be “ok”.	
21.10 hours	Permission to fingerprint and photograph Mr. Quinn was granted by Superintendent John Fitzgerald.	
21.25 hours	Mr. Quinn was informed by Garda Leonard of the authorisation given by Supt. Fitzgerald to fingerprint, palm print and photograph him. He is recorded as understanding this and asking for 20 Silk Cut, money for which was to be taken from his property.	
21.35 hours	Mr. Quinn was taken from the interview room to the cell for a rest period.	
21.55 hours	It was recorded that Mr. Quinn was provided with a meal and cigarettes had been obtained.	Mark Quinn alleged that he was given this meal in the interview room and that inappropriate comments were made that he should think of the post-mortem photograph(s) when eating it. He alleged similar comments were made when he was taken to the cell after this interview.
22.00 hours	Garda Leonard introduced Garda Tom Kilcoyne as the new member in charge to Mr. Quinn.	
22.20 hours	Mr. Quinn was taken to the interview room for fingerprinting and photographing by Gardaí Coady and Murphy.	
22.45 hours	During the preceding period Mr. Quinn had been fingerprinted and photographed by Gardaí Coady and Murphy, who then left the interview room. Detective Garda Keating and Sergeant Hannigan are then recorded as returning to the interview room.	Mark Quinn alleged that he was assaulted by Detective Garda Keating and intimidated by the production of bullets by Detective Garda Keating and the production of a gun in the interview room.
22.55 hours	The further detention of Mark Quinn for a period of six hours was authorised by Superintendent Fitzgerald. Garda Kilcoyne informed Mr. Quinn of this authorisation.	

23.15 hours	Garda Kilcoyne visited Mr. Quinn and he was recorded as being “ok no complaints”.	
23.40 hours	Mr. Quinn received a visit from his wife Donna Quinn. Detective Garda Keating and Sergeant Hannigan left the interview room for the duration of the visit.	
23.58 hours	Garda Kilcoyne recorded that he “entered the interview room and informed Mark Quinn of his right to suspend questioning at 12 midnight under the provisions of section 4 of the Criminal Justice Act 1984; he declined to avail of that right at 12 midnight.”	
Occurrence on the 5th of December, 1996	Details of Occurrence	Comment
00.08 hours	Mrs. Donna Quinn left the interview room at the conclusion of her visit. Detective Garda Scanlon and Sergeant Hannigan entered the interview room.	Mark Quinn alleged that inappropriate remarks were made to him by Detective Garda Scanlon before his release. This is the only recorded encounter between the two men during the detention.
00.40 hours	Garda Kilcoyne recorded that he visited the interview room and noted “all in order no complaints”.	
01.10 hours	Garda Kilcoyne again visited the interview room and recorded “no complaints.”	
01.50 hours	Detective Garda Scanlon left the interview room and was replaced by Detective Garda Keating.	
02.30 hours	Garda Kilcoyne records that he visited the interview room and noted “all in order and prisoner taken from interview room for rest period.	
03.30 hours	Mr. Quinn was taken to the interview room to be interviewed by Sergeant Hannigan and Detective Garda Keating.	
04.10 hours	Garda Kilcoyne noted that the “prisoner released from custody, property returned no complaints” which entry in the custody record is accompanied by Mr. Quinn’s signature, acknowledged to have been made at the time.	Mark Quinn alleges that when driving home he and his business were verbally threatened by Sergeant Hannigan if he did not co-operate.

First Interview

8.36. This interview was conducted by Detective Garda Keating and Sergeant Hannigan between 17.40 hours and 19.50 hours. Notes were made of this interview by Detective Garda Keating which consist of a caution followed by nineteen questions and answers over a period of two hours and ten minutes. They are signed by Mark Quinn and witnessed by Detective Garda Keating and Sergeant Hannigan. Initially, Mr. Quinn was questioned about the fact that Mark McConnell had been seen coming from his public house, the Town & Country, at 08.30 hours approximately on the 14th of October 1996. Then he was questioned in respect of two important matters. Firstly, it was suggested to him that he was trivialising the row which had occurred earlier in the evening of the 13th of October 1996 between Mark McConnell and the Late Mr. Barron in the bar of the Town & Country. It was suggested to him that Mr. Barron "...was murdered. It started in your pub". Secondly, he was asked:

Q. Did Mark McConnell come to you and ask could he wash and clean himself up? You did not want to get involved so you gave him a key and told him to go in and clean up and then go. You did not want to get involved?

A. You are quite welcome to go to my place and do your forensic testing or whatever you want.

This offer was never taken up. No search of the Town & Country bar was ever carried out with a view to obtaining forensic or any other evidence. This is surprising if the interviewers believed that there was any substance underlying the question which they had posed. At the conclusion of the interview the notes were read over to Mark Quinn who agreed that they were a true account of the interview and signed them.¹²⁰¹

8.37. Mr. Quinn, in evidence, said that he recalled signing notes "... any notes that was given to me I just signed". He did not disagree with the suggestion that these notes were read over to him and signed by him.¹²⁰²

8.38. In his evidence to the Tribunal, Sergeant Hannigan said that there may have been questions asked other than those recorded in the notes. Mark Quinn was asked about whether he had been in contact with the McBreartys or was afraid of people in Raphoe and was holding back information for that reason. He denied this.¹²⁰³ Otherwise the notes were an accurate reflection of what he said according to Sergeant Hannigan.

8.39. Mr. Keating also acknowledged to the Tribunal that the nineteen questions recorded did not reflect the full extent of the questioning carried out during this

¹²⁰¹ Tribunal Documents, pages 79-81.

¹²⁰² Transcript, Day 439, Q.159-180

¹²⁰³ Transcript, Day 444, Q.136-146.

period. He accepted that there was a considerable repetition of questions put to Mark Quinn. There were questions which laid the ground for some of the questions which were recorded. These did not appear in the notes.¹²⁰⁴ **The Tribunal is satisfied that there are omissions from the notes and that the notes also reflect that the interviewers did not believe what Mr. Quinn had said in the past or was then telling them. This was not a relaxed or comfortable interview for Mark Quinn though this is not necessarily a matter for criticism. There may be confrontation in a controlled way during Garda interrogations.**

- 8.40. Both interviewers accepted that these notes should have been timed in accordance with Regulation 12 (11)(a) and (b), of the Custody Regulations. Mr. Keating said that the failure to do so was simply an omission on his part. It was, nevertheless, a breach of the custody regulations which should not occur and is not excusable, especially on the part of experienced officers. If controversy arises in respect of who interviewed the detainee, or when, it is important to be able to examine whether the times contemporaneously recorded by the interviewers correlate with the times entered in the custody record by the member in charge. This was designed as an important safeguard and aid to accurate record keeping in the course of detention, which ultimately assists an independent authority, whether court or tribunal, in ascertaining what happened. Experienced personnel who comply with the regulation know that it can be a useful evidential device in that regard. In the later interviews (the fifth and sixth) conducted with Mr. Quinn by the same two Gardaí the serious problem presented by the failure to record the times at which they commenced and concluded in the interview notes is again highlighted with perhaps more serious implications.

Second Interview

- 8.41. This second interview was conducted by Sergeant Moylan and Garda John O'Dowd between 19.51 hours and 21.25 hours. This interview was punctuated by checks made on Mr. Quinn by Garda Leonard at 20.00 hours and 21.00 hours. It ended at 21.24 hours according to the custody record. The custody record also indicates that Mark Quinn was then informed of the authorisation granted by Superintendent Fitzgerald to fingerprint, palm print and photograph him and made a request for twenty cigarettes, the money for which was to be taken from his property. He was then taken to the cell for a rest period at 21.35 hours, ten minutes after the conclusion of the interview. It is then recorded that at 21.55 hours Mr. Quinn was provided with a meal and that cigarettes had been obtained for him.
- 8.42. The notes of this interview were recorded by Sergeant Martin Moylan. These

¹²⁰⁴ Transcript, Day 440, Q.912-947.

notes indicate that Mark Quinn was questioned about the times at which various parties, including the Dolan family, the Late Mr. Richard Barron, Mark and Róisín McConnell and Michael Peoples left his licensed premises. In addition, it was put to him that the events that night in his pub were discussed at length as part of a cover up in his pub afterwards. This was denied by Mr. Quinn. He disagreed with the suggestion that other people were using him. These notes are signed by Mr. Quinn and witnessed by Sergeant Moylan and Garda John O’Dowd, both of whom asked him questions during the course of the interview.¹²⁰⁵ In his initial statement Sergeant Moylan noted that the interview itself concluded at 21.35 hours notwithstanding the interruption of the interview at 21.25 hours by Garda Leonard.¹²⁰⁶ Mark Quinn accepted that he signed these notes, but does not have a specific recollection of doing so.¹²⁰⁷

- 8.43. Mr. Moylan accepted in evidence that he prepared for the interview with Mark Quinn by gathering together statements relevant to his alleged involvement in the night’s events. This included his original statement made on the 16th of October 1996. He said that Garda O’Dowd questioned Mark Quinn before the notes of interview were taken. The questions and answers noted by him were taken down in writing towards the end of the interview period. The notes themselves contained fifteen questions. The interview lasted for one hour and thirty-four minutes, of which approximately one hour and fifteen minutes consisted of an interview period during which no notes at all were taken of the questions asked and answers given.¹²⁰⁸
- 8.44. Mr. O’Dowd, in evidence, also accepted that the notes did not reflect all of the questions asked. He said, “... the noted questions would be the pointer questions, let’s say bullet-point questions and you would ask questions around those questions.” He disagreed with the suggestion that notes were taken only at the end of the interview in the latter twenty minutes or so.¹²⁰⁹
- 8.45. **I am satisfied that much of what passed between Mark Quinn and Sergeant Moylan and Garda John O’Dowd, particularly concerning the showing to Mark Quinn of post-mortem photographs of the Late Richard Barron, was deliberately omitted from the notes of interview.**

Third Interview

- 8.46. This interview was conducted by Detective Garda P.J. Keating and Sergeant Joseph Hannigan between 22.45 hours and 23.40 hours. There was a change of duty at 22.00 hours when Garda Tom Kilcoyne replaced Garda Leonard as the

¹²⁰⁵ Transcript, Day 439, Q.285.

¹²⁰⁶ Tribunal Documents, pages 16-18.

¹²⁰⁷ Transcript, Day 439, Q.291-293.

¹²⁰⁸ Transcript, Day 446, Q.36-61.

¹²⁰⁹ Transcript, Day 443, Q.38-66.

new member in charge and was introduced to Mark Quinn. At 22.20 hours Mark Quinn was taken to the interview room where he was fingerprinted and photographed by Gardaí Coady and Murphy. They are recorded as having left the interview room at 22.45 hours. Detective Garda Keating and Sergeant Hannigan then returned to the interview room and recommenced the interrogation of Mark Quinn. This interrogation continued until 23.40 hours when it was interrupted for a visit by Mrs. Donna Quinn. In the meantime, at 22.55 hours, it is recorded that Garda Kilcoyne informed Mark Quinn that his period of detention had been extended for a further six hours by Superintendent Fitzgerald. Also at 23.15 hours Garda Kilcoyne recorded that he visited Mr. Quinn whom, he noted, was “ok, no complaints”. The visit with his wife effectively ended this interview. The visit continued until 00.08 hours on the 5th of December 1996 when Mrs. Quinn left the interview room at which stage Detective Garda Padraic Scanlon and Sergeant Joseph Hannigan commenced an interview with Mark Quinn. It is important to note that at this stage notes which had been taken during the course of the interview period up to 23.40 hours by Detective Garda Keating were not read over to Mark Quinn. Indeed, such notes as are available in respect of this and the subsequent two interviews carried out by Detective Garda Keating and Sergeant Hannigan contain three and a half pages of typescript which set out twenty questions, one of which was whether Mr. Quinn understood the caution. According to Mr. Keating and Sergeant Hannigan these notes are an amalgam of the questions and answers covered with Mr. Quinn over three distinct periods (i) 22.45 hours to 23.40 hours, (ii) 01.50 hours to 02.30 hours (the fifth period of interview) and (iii) 03.30 hours to 04.10 hours (the sixth period of interview). These notes are signed by Mark Quinn and witnessed by Detective Garda Keating only. Sergeant Hannigan did not witness the notes though they are stated to have been read over to the prisoner and it is said that he agreed that they were correct. The notes, yet again, are not timed.

- 8.47.** The third question in the notes is in fact simply a statement to the effect that Garda Kilcoyne, the member in charge, entered the interview room at “11.00 p.m.” and informed Mr. Quinn that his detention had been extended for a further period of six hours. Given the controversy that subsequently erupted in relation to how Mr. Quinn was treated whilst in custody, it was especially important that the Tribunal be placed in a position by reference to the timing of these notes to understand at which point in time the notes were taken and when they were read back. These notes cannot be regarded as a helpful record of what transpired between Mark Quinn and the interrogators during the three respective periods that they are said to cover.¹²¹⁰ In this regard, Mark Quinn said in evidence, that he had no recollection of the presence of Sergeant Hannigan during the

¹²¹⁰ Tribunal Documents, pages 82-85.

course of the questions set out in the notes though he had some recall of the questions themselves. He said, in respect of signing the notes, that he signed anything that was put in front of him because he just wanted to get it over and get out of the Garda Station.¹²¹¹ Sergeant Hannigan could not offer any explanation as to why he did not countersign the notes of interview, but maintained they were an accurate reflection of the “type of questions that were put during the interviews”. He maintained that more questions were put than appear in the notes, but that all the questions were of a similar type. He maintained that he was present for all of the interviews that were mentioned in the custody record with Detective Garda Keating and his colleague Detective Garda Scanlon (during the fourth period of interview from 00.08 hours to 01.50 hours).¹²¹² The failure of Sergeant Hannigan to countersign the notes is not a breach of the custody regulations though it is a clear departure from normal practice. Regulation 12(11) provides that a note of interview should include “particulars of the time the interview began and ended, and any breaks in it and should be made while the interview is in progress or otherwise as soon as practicable afterwards”. These matters were not properly recorded in the notes in accordance with Regulation 12(11). The two later periods that the notes are supposed to cover, are not identified nor are the breaks which gave rise to the interruptions of the interviews.

- 8.48. The notes themselves indicate that a strong challenge was made to Mark Quinn in respect of his account of events. It was suggested that a murder was “hatched” in his pub and that there was a conspiracy to hide the truth. It was suggested to him that:

There was an argument of sufficient intensity that Mark McConnell went out after Richard Barron and murdered him callously and brutally. You came along and made a statement of fifteen or sixteen lines trivialising this argument.

It was also suggested to him that he and his barman were coached as to what to say and that he had some reason to fear the McBreartys or hide something on their behalf. Mr. Quinn denied all of these propositions.¹²¹³ It should be noted that these notes are supposed to cover a period of two hours and fifteen minutes when the three periods of interview are taken together. On its face it would seem that an extraordinarily limited number of questions were put for such a period of time.

- 8.49. I am satisfied that having regard to the chronology of the events of Mark Quinn’s detention that these three separate periods of interview by

¹²¹¹ Transcript, Day 439, Q.385-394.

¹²¹² Transcript Day, 444, Q.240-243.

¹²¹³ Tribunal Documents, pages 82-85.

Sergeant Hannigan and Detective Garda Keating constitute three separate interviews, not one punctuated by “breaks”, and should have been treated as such.

Fourth Interview

- 8.50. This interview was conducted by Detective Garda Padraic Scanlon and Sergeant Joseph Hannigan between 00.08 hours and 01.50 hours. Following the visit by Mrs. Donna Quinn to her husband, which concluded at 00.08 hours, Detective Garda Scanlon and Sergeant Hannigan entered the interview room. It was recorded in the custody record by the member in charge Garda Kilcoyne that he visited the interview room on three occasions during this period, at 00.40 hours, 01.10 hours and 01.40 hours, that things were “in order” and that Mr. Quinn had no complaints. The interview concluded according to the custody record at 01.50 hours when Detective Garda Scanlon left the interview room and was replaced by Detective Garda Keating. No notes exist in respect of this period of interview.
- 8.51. Detective Garda Scanlon’s first account of this interview is contained in his initial statement made during the course of the Barron investigation, probably in 1997. He said:

At 12.08 a.m. on the 5th of December 1996 Sergeant Joe Hannigan and myself went to an interview room in Letterkenny Garda Station where Mark Quinn was present after having received a visit from his wife Donna Quinn. I cautioned Mark Quinn ... Sergeant Hannigan and myself proceeded to interview Mark Quinn in relation to the offence for which he was arrested, i.e. accessory to the murder of Richie Barron. It was put to him that Mark McConnell was seen leaving his pub on the morning of the 14th of October 1996. He stated that this was not true. We further interviewed the prisoner Mark Quinn in relation to the presence of Richie Barron and Mark McConnell on his premises on the night of Sunday, the 13th of October 1996 and also in relation to a row which developed between Richie Barron and Mark McConnell. He stated that he did not witness any row between the two men. Mark Quinn denied having been involved in any way in the murder of Richie Barron.¹²¹⁴

- 8.52. In this statement there is no reference to the taking of any notes or the fact that they were read over and signed by Mark Quinn. No notes from this interview were made available to Superintendent Lennon’s team for inclusion in the report submitted to the Director of Public Prosecutions in 1998.

¹²¹⁴ Tribunal Documents, pages 14-15.

- 8.53. Subsequently, in a statement to the Tribunal dated the 20th of April 2006, Detective Sergeant Scanlon said in relation to these notes:

I took notes during the course of the interview with Mark Quinn which continued until 1.50 a.m. These notes were later handed in by me to the incident room at Letterkenny Garda Station and apparently now cannot be located. At 1.50 a.m. I was replaced by D. Garda P.J. Keating in the interview room. I had no further dealings with Mark Quinn after 1.50 a.m. and as far as I can recall I left the Garda Station and went home.¹²¹⁵

- 8.54. In his testimony to the Tribunal, Detective Garda Scanlon said that he had no recollection of taking notes of the interview at all. He said:

The point I want to make about the notes is: when I got notification of coming up here I did look for notes from various people and I rang Joe Hannigan and asked him did he have actual notes and he said he didn't. So I made several enquiries then with members then in Letterkenny and Monaghan, where there was a copy of the file and in fact the office ... Nobody could find notes but the reason I say in the statement that I took notes is because it is totally habitual for me to take notes. I would be very very surprised if I didn't take notes in this case ... I don't know if I took notes here or not and there is no point in my saying I did. That's the reason I made that [statement of the 20th of April 2006] and said that today.¹²¹⁶

- 8.55. Sergeant Joseph Hannigan, in his initial statement made during the course of the investigation into the death of the Late Mr. Barron in 1997, said that Mark Quinn was questioned relating to the Late Mr. Barron's murder and subsequent events and denied any knowledge or part in the murder.¹²¹⁷ Sergeant Hannigan also made no reference to notes or the fact that they were read back or signed by Mark Quinn at the conclusion of this interviewing period.

- 8.56. In subsequent evidence to the Tribunal, Sergeant Hannigan said that he did not take any notes during the course of the interview, but could not understand how no notes existed. He did not have a recollection of Detective Garda Scanlon taking notes, but thought it would be very strange if notes were not taken. Nothing out of the ordinary occurred during the interview. He also acknowledged that since notes were not mentioned in his statement, "it may be the case that notes were not made". He said that in the days prior to giving evidence to the Tribunal he was contacted by Detective Sergeant Scanlon and told that he, Sergeant Hannigan, had the interview notes for this period. He did not. There is

¹²¹⁵ Tribunal Documents, page 153.

¹²¹⁶ Transcript, Day 444, Q.740-757.

¹²¹⁷ Tribunal Documents, pages 9-10.

no record of notes of Mark Quinn's interview having been handed into the incident room at the conclusion of the interview or of his detention.¹²¹⁸

8.57. Detective Sergeant Scanlon and Sergeant Hannigan cannot now say whether notes were taken during this interview. Detective Sergeant Scanlon thinks that it is probable that he did take notes, but only because it was normal practice. The notes are now lost, if they were taken at all. Neither Garda can recall this matter very well. Nevertheless, there is no reference in their initial statements submitted in the course of the initial investigation into the death of the Late Mr. Barron to the fact that notes were taken, read back, said to be incorrect or correct by the interviewee, or signed or not by Mark Quinn. Given the procedures in place at the time, it would seem unlikely that notes, or copies of notes, taken would not have been available to both Gardaí when they were preparing these statements. Both Gardaí were able to set out in these statements what they said they recorded at the interview. There is no record of any notes of interview handed into the incident room in the log book of statements or memoranda received. This is not conclusive of the matter because the logs and other paperwork during the course of the investigation were not always well kept. **Nevertheless, on the evidence available it is not open to conclude as a matter of probability that any notes were made of this interview. This was a breach of Regulation 12 of the Custody Regulations.**

8.58. Even if a note was taken, it would have become clear to the two Gardaí from an early stage that such note was not available. That is the reason that there is no reference in their respective statements to the taking of the notes or any of the normal procedural steps taken in respect of same. It must also have been clear to those preparing the Lennon report and those in the incident room that the notes were missing. They were not included in the Lennon report because they were not available. No one in authority made any inquiry about this or sought to make either of the two interviewers accountable in respect of the non-taking of notes or, if they were taken, the loss of these notes for which they may have been culpable or for which members of the incident room staff may have been culpable. This was a further systems and management failure on the part of those leading the investigation. The absence of notes may also be viewed in a more sinister way in the light of allegations made by Mark Quinn in respect of the events which occurred in the course of his detention. **The Tribunal does not, however, in this instance, go so far as to attribute a sinister or malicious motive to Detective Sergeant Scanlon or Sergeant Hannigan in respect of the absence of these notes.**

¹²¹⁸ Transcript, Day 44, Q.219-225, 230-231 and 600-607.

Fifth and Sixth Interviews

- 8.59. These interviews occurred between 01.50 hours and 03.30 hours and 04.10 hours. At 01.50 hours the custody record indicates that Detective Garda Scanlon left the interview room and was replaced by Detective Garda Keating. This interview continued until 02.30 hours, following which Mr. Quinn was taken from the interview room for a rest period to the cell. At 03.30 hours Mr. Quinn was again taken to the interview room from the cell and interviewed by Detective Garda Keating and Sergeant Hannigan until 04.10 hours. The notes for this period of interview are said by Detective Garda Keating and Sergeant Hannigan to be contained in the notes containing twenty questions signed by Mark Quinn and Detective Garda Keating to which reference has already been made.
- 8.60. In his original statement made in 1997 Sergeant Hannigan indicated that these notes were read over by Detective Garda Keating at 03.30 hours on the morning of the 5th of December 1996 to Mark Quinn, who agreed that they were correct and signed them. He said that they then had a general conversation.¹²¹⁹ Detective Garda Keating also said that at 03.30 hours he and Sergeant Hannigan recommenced the interview of Mark Quinn. He said:

At the end of the interview I read over all the notes to the prisoner Mark Quinn. He agreed they were correct. He signed them in our presence. Sergeant Hannigan and I also signed them.¹²²⁰

- 8.61. In a subsequent statement made on the 14th of April 2006 Mr. Keating said that during this last period:

Mark Quinn stated that he told us everything and he could not tell us any more than he had already. There were no other members in the room during this interview. I read over the interview notes I had made with Mark Quinn during the other two interviews. He agreed they were correct and he signed them. We talked generally for a while and he was released at 4.10 a.m. ...¹²²¹

- 8.62. There is no reasonable explanation as to why the note, which purports to straddle three periods, covering interviews three, five and six, only contains one reference to an interruption of the interview which occurred in the early stages at "11.00 pm". There are only twenty questions recorded for the entirety of the three periods which extended for 2 hours and 15 minutes. It is also disquieting that the notes for the fourth interview, which also involved Sergeant Hannigan, have not been available since in or about 1997 or 1998 (if they were ever made). The visit by Mrs. Donna Quinn to her husband between 23.40 hours and 00.08 hours and the subsequent fourth period of interview conducted by Sergeant Hannigan and

¹²¹⁹ Tribunal Documents, page 10.

¹²²⁰ Tribunal Documents, page 3.

¹²²¹ Tribunal Documents, page 161.

Detective Garda Scanlon from 00.08 hours to 01.50 hours are presented to the Tribunal as an “interruption of their interview” by Sergeant Hannigan and Detective Garda Keating. The fourth interview was clearly a new interview conducted at the conclusion of Mrs. Quinn’s visit. It was not recorded as an “interruption” of an interview in the note prepared by Detective Garda Keating of the third, fifth and sixth sessions. In my view, this was because the fourth interview was not and could not have been viewed as a mere “interruption” of the interview between Mark Quinn and Sergeant Hannigan and Detective Garda Keating: clearly the third interview had concluded. This must have been clear to Sergeant Hannigan, who was a participant in the fourth interview with Detective Garda Scanlon. In addition, the fifth interview came to a conclusion when Mr. Quinn was brought to the cell for a rest period between 02.30 hours and 03.30 hours, following which he was brought back for a further interview to the interview room between 03.30 hours and 04.10 hours. No effort was made to record this event as an “interruption”. It is my view that this also should have been regarded as a separate interview and not a mere “interruption”. It was suggested that it was in some way in ease of Mark Quinn that the notes should not be read over to him as to do so might have eaten into the time which he would have for a visit with his wife. It is also suggested that the reading over of notes of the fifth interview would have taken up time during which he was to rest in the cell and that the non-reading of the notes was once again to be regarded as in ease of him.

- 8.63.** The significance of this matter lies in the fact that the note is signed by Detective Garda Keating but is not witnessed by Sergeant Hannigan. It is not timed. Mr. Quinn was of the view that he dealt for the most part with Detective Garda Keating and did not recall the presence of Sergeant Hannigan when he was interviewed by Detective Garda Keating. A straightforward compliance with note taking procedures and regulations by Sergeant Hannigan, Detective Garda Scanlon and Detective Garda Keating would have removed much of the mystery surrounding their interviews with Mr. Quinn and helped the Tribunal to understand who was present and what occurred during the relevant periods of interview. The absence of notes for the fourth interview and the completely unreliable and inadequate history of note taking in respect of the third, fifth and sixth interviews has resulted in a wholly deficient record of events from 22.45 hours on the 4th of December 1996 until Mr. Quinn’s release at 04.10 hours on the 5th of December 1996. This is the fault of An Garda Síochána, to whom any judicial authority must look for the sole record of what happens when a citizen is deprived of his liberty. I find this shocking. As in a number of other cases heard by the Tribunal, the rudimentary information and record required to assure the Tribunal or any other judicial authority that all was well and all was done properly

in accordance with the custody regulations, is missing from the story. It is entirely unfair to look to the detainee to bridge this gap of knowledge. Those in whose custody Mark Quinn was detained had power over him and the responsibility to exercise it in accordance with law, including the custody regulations. The failure on their part to do so must always require a clear, prompt and adequate explanation. When this is absent or deficient the Tribunal must consider why this is so. It may be that it is due to sloth, indifference, incompetence, negligence or a general disregard of the regulations. It may be that matters became more fraught between the detainee and the interviewers and that like Sergeant Moylan and Garda O'Dowd they did not make notes of certain matters because they wished to hide what had happened from any subsequent independent scrutiny. It may have been because they were tired. These matters become more troubling when, as in the case of Mark Quinn, allegations are made by the detainee of Garda misconduct in the course of these interviews.

- 8.64.** The Tribunal is slow to ascribe malice to the note takers in this case. Nevertheless, for whatever reason, there was a lapse of legal duty on their part. This failure to fulfil their duty under the custody regulations is a hallmark of a number of these detentions. It suggests a culture of indifference to the proper application of the custody regulations, which can only exist if it has been allowed to develop by those in leadership roles from the rank of sergeant to chief superintendent locally and further up the ranks of An Garda Síochána. This attitude may be due in part to the virtual complete absence of sanction for a breach of these regulations within An Garda Síochána or in the course of the administration of justice. It is recognised under section 7 subsection 4 of the Criminal Justice Act, 1984 that:

A failure on the part of any member of the Garda Síochána to observe any provision of the regulations shall render him liable to disciplinary proceedings.

However, the Tribunal is not aware of any disciplinary proceedings having been taken against any Garda in these cases for a failure to observe any provision of the regulations. Breaches of the regulations appear to be regarded within An Garda Síochána as matters of little importance. In addition, the legislation provides that if the regulations, which constitute the law governing the treatment of persons in custody, are not observed by a Garda, it has minimal if any consequences for that Garda. Section 7 subsection 3 of the Criminal Justice Act, 1984 provides that:

A failure on the part of any member of the Garda Síochána to observe any provision of the regulations shall not of itself render that person liable to any criminal or civil proceedings or of itself affect the lawfulness of the

custody of the detained person or the admissibility in evidence of any statement made by him.

Section 7 of the Act does little to engender a culture of observance of these regulations by Gardaí and probably militates against close compliance.¹²²²

Mark Quinn's Complaints

8.65. Mark Quinn makes a number of complaints about his treatment whilst in Garda custody between the time of his processing by Garda Leonard, which took place at 17.25 hours, and his release at 04.10 hours on the 5th of December 1996. The main complaints which he made were:

- (1) His shoes were taken from him and he was left in his stockinged feet throughout the period of his detention;
- (2) He was "dragged" by Detective Garda Keating from a cell in which he was lodged to an interview room for his first interview, where he was confronted by Garda O'Dowd and a number of other uniformed Gardaí who shouted at him and abused him verbally;
- (3) He was shown photographs of the post-mortem of the Late Richard Barron during his second interview in an effort to pressurise him and was shouted at by interviewing Gardaí during this interview;
- (4) He was assaulted during the course of the second interview by Garda John O'Dowd who grabbed him by the lapels and pulled him off his seat and shouted at him;
- (5) He was later assaulted by Detective Garda P.J. Keating in the presence of two or more uniformed Gardaí in that he was grabbed by the lapels by Detective Garda Keating who pulled him out of his seat and shouted at him: at the same time, Detective Garda Keating had a handful of bullets in his left hand and a uniformed Garda sat at a nearby table toying with a gun which was on one occasion pointed in the direction of Mark Quinn;
- (6) Sergeant Hannigan brought him into the presence of Detective Garda Padraic Scanlon shortly before his release and he was verbally abused by Detective Garda Scanlon.

Donna Quinn's Visit

8.66. Mark Quinn's wife, Donna Quinn, attended at Letterkenny Garda Station and was afforded a visit with her husband between 23.40 and 00.08 hours. She attended

¹²²² There is very limited scope for the judicial scrutiny of such alleged breaches; see Evidence, McGrath (2005) pages 358 to 360.

the station with Eunan Brolly and other members of the family. This is described in Chapter 9 of this report dealing with the detention of Katrina Brolly.

- 8.67. She received a phone call at approximately 18.30 hours from Garda Martin Leonard who informed her that her husband had been arrested. His arrest and the arrest of others came as a complete shock to her. She was joined in her home by some relations and then later made her way to Letterkenny Garda Station to try and obtain a visit with her husband. She waited in a public area until she was informed that she could see her husband by a uniformed Garda. She was brought from a public area a short distance to the room where she saw him. As she walked down the corridor there were a number of uniformed Gardaí by the wall. She had no recollection of being brought upstairs but could not be sure about that. She was left alone with her husband.

He was quite obviously shaken when I seen him. He was very nervous and he was obviously shook from his experience. Well I did ask him what's going on, you know, why have they arrested you? He was just I don't know, I can't believe it. He didn't say anything about any questions he had been asked. I just said why were you arrested? Because obviously we knew nothing, we had nothing ... Mark had nothing to do with it. I can't remember any other questions. But he was obviously shaken ... he was trembling as well. ... He was very quiet. I suppose I probably did more of the talking than he did.¹²²³

- 8.68. During the course of this visit, the member in charge entered the interview room and informed Mark Quinn that he was entitled to have his questioning suspended at midnight. If he consented to the suspension, he would be returned to the cell where he could remain until the following morning. He did not seem to her to look well and he just wanted to get it over with. Mrs. Quinn thought the best option was just to continue with the questioning straight through the night and do what he had to and leave.¹²²⁴

- 8.69. Mark Quinn recalled this visit. His recollection was that he went for a smoke in a room to which his wife was brought. He did not recall whether he was able to tell her what was going on but he recalled that he wanted to get out. He was alone for perhaps fifteen minutes after his wife left.¹²²⁵ He made no complaint to his wife about any alleged ill treatment.¹²²⁶ The point is made against Mark Quinn that his failure to complain to his wife is because his allegations are untrue. In this instance, this proposition is less persuasive than it might otherwise be because it is accepted, for example, that prior to his wife's visit he was shown the post-

¹²²³ Transcript, Day 440, Q.340-374.

¹²²⁴ Transcript, Day 440, Q.375-380.

¹²²⁵ Transcript, Day 439, Q.188-199.

¹²²⁶ Transcript, Day 439, Q.551-553 and Q.672.

mortem photographs about which he told the Tribunal and his wife at a later stage. That he did not inform his wife of this does not change the reality that it occurred and tends to support his evidence that he did not wish to further worry her, or it may simply be that he was somewhat traumatised by the preceding events.¹²²⁷

The Making of a Complaint

8.70. In addition, it is clear from Mark Quinn's evidence that he made no complaint to the member in charge of his treatment in custody or to any other Garda whilst detained. He made no complaint to any senior Garda officer in the days that followed his release from custody. He did not seek a solicitor whilst detained in custody though he was entitled to do so and knew of his rights in this regard. He did not seek or obtain the advice of a solicitor in the days or weeks that followed his detention. It is repeatedly said against him that all of this indicates that he had no complaints to make and that nothing had happened to him in custody. Of course, the Tribunal is aware, in the light of the admissions made by Mr. Moylan and Mr. O'Dowd, that he had something to complain of and the fact that he did not complain to these authorities is of little assistance in this case in determining whether all his allegations are true. His evidence has been that he was shocked and traumatised by his arrest and treatment in custody and did not wish to attract further Garda attention on his young family and his business as a publican. This is quite understandable in the circumstances.

8.71. Donna Quinn waited up for her husband in the early hours of the morning of the 5th of December. She described his arrival home:

He looked very upset. Just very drawn. I gave him a hug and a kiss when he came in and he was just very withdrawn and I suggested that he have a cup of tea and a piece of toast and sat down and I suppose started asking questions then about what had happened and he just got up, went to the bathroom, and he said he was going to bed. That was it. He had thrown up his tea and toast and he went to his bed.¹²²⁸

She tried to talk to him about his experiences in the days that followed, without success. He did not wish to talk about it. She said that since that time he has never wanted to talk about it "he has bottled everything up, has never really dealt with it, only maybe through alcohol."¹²²⁹ At this point in her evidence Mrs. Quinn became emotional and after a break in her testimony described how he came to tell her about his experiences in detention over time.

¹²²⁷ Transcript, Day 439, Q.495-502.

¹²²⁸ Transcript, Day 440, Q.443-444.

¹²²⁹ Transcript, Day 440, Q.447.

- 8.72. She described how following his arrest Mark Quinn became “very withdrawn in himself”, to the extent that he became less and less able to attend in the bar in order to run it. He would not talk to her about the detail of what happened initially. She had to sit him down to discuss it. She was aware that other people who had been arrested had sought legal advice and made official complaints whereas Mr. Quinn was not dealing with it at all. He had nightmares about his experiences. He started to drink a lot to block out the nightmares. She asked him to see a doctor. She encouraged him to seek counselling. It caused a big strain on their marriage and business and social lives. She tried over time to get him to sit down and talk through his experiences. He did so. She took notes of what he said. She said that she completed these notes (as is clear from the originals) on various occasions, some one to two years after the event. Her motivation in doing so was twofold: to have a record of events if he wished to make a complaint or take legal advice and because the process itself might be regarded as having a “therapeutic” value in getting him to talk about it. She gave these notes to her solicitor, Mr. Smyth, in or about 2002, who then initiated proceedings on behalf of Mark Quinn in reliance upon them as his client’s account of his arrest and detention. In her evidence to the Tribunal, Mrs. Quinn gave as clear and honest an account of these events as possible. I have no doubt that she was operating in difficult domestic and social circumstances, without professional advice or assistance, in trying to deal with the consequences of her husband’s arrest and detention whilst at the same time trying to maintain the stability of their business and their family life. Some ten years after the event she is still left with the consequences of the damage done to her husband and to her own life by the manner in which he was treated by An Garda Síochána.¹²³⁰
- 8.73. Mrs. Quinn also chronicled in these notes a number of events which occurred in the years following Mark Quinn’s arrest which they believe constituted harassment by the Gardaí of their business and family, but these matters will be considered in the harassment module of the Tribunal’s work under Term of Reference (c).
- 8.74. Mrs. Quinn’s recollection was that the showing of the post-mortem photographs to her husband was one of the main problems that he had:

He had nightmares about the photographs and still that continues. So that was ... I suppose I would probably have spoken to him then after he’d had the nightmares about what he had been up ... and why and then would have said about the photographs he’d been shown. I think mainly that it was when we were ... when I was writing it down was really when I got the bulk of everything that

¹²³⁰ Transcript, Day 440, Q.448-531

*actually happened. He really bottled everything up until ... I really didn't know everything up until that point that I have written it down for him.*¹²³¹

It was at the time of the writing of the notes that she first heard about the gun.¹²³² Up to that point his emphasis was, she said, on the showing of the photographs. These notes are referred to in the following section of the report. They were not made contemporaneous to the events in issue. They were not taken by a solicitor, but they were made in good faith by Mrs. Quinn in the circumstances which she has described.

Removal of Shoes

- 8.75. Mark Quinn said that having been processed upon his arrival at Letterkenny Garda Station he was placed in a cell, prior to which he was obliged to remove his shoes. He alleged that he was in his socks for the remainder of his detention until his release at 04.10 hours the following morning. His hosiery, however, was not removed. He felt it was particularly cold when he was in the cell as the heating was turned off, which he felt was a deliberate act calculated to cause him discomfort. Very cold air was blowing into the cell, which he believed was coming from some sort of air conditioning/heating system.¹²³³ Garda Martin Leonard, who was the member in charge from the time of Mark Quinn's initial detention until 22.00 hours, told the Tribunal that Mark Quinn's shoes were not taken from him and that having been processed he was taken to an interview room. If his shoes had been taken from him in those circumstances, it would have been entered in the custody record. The practice was that if a prisoner was placed in a cell his shoes were removed from him but on exiting the cell he would have his shoes returned before being taken to an interview room.¹²³⁴
- 8.76. The custody record indicates that Mr. Quinn was detained in a cell on two occasions: the first from 21.35 hours until 22.20 hours when he was removed for fingerprinting and photographing to the interview room and the second when he was returned to the cell at 02.30 hours following the fifth interview.
- 8.77. Garda Tom Kilcoyne was the member in charge from 22.00 hours until the release of Mark Quinn at 04.10 hours. He told the Tribunal that he dealt with Mark Quinn on a number of occasions during the course of the evening and early hours of the morning. He could not recall whether Mark Quinn had his shoes on or off whilst in the cell, but he assumed that they were off and left outside the cell door. This was the best practice. Occasionally, prisoners might be allowed to wear shoes without laces if they complained of being cold but the normal practice was that shoes were left outside the door. He could not recall whether

¹²³¹ Transcript, Day 440, Q.481.

¹²³² Transcript, Day 440, Q.497-520.

¹²³³ Transcript, Day 439, Q.416-424.

¹²³⁴ Transcript, Day 441, Q.812-919.

Mark Quinn was without his shoes when brought to the interview room or anywhere outside the cell within the station, but he believed it was unlikely to have happened. There was no reason not to allow him to wear his shoes outside the cell and Garda Kilcoyne got no direction that Mr. Quinn should not be given his shoes.¹²³⁵ It would appear that there was some sort of convection heating and cooling system in operation within the cells, which were windowless. Controls for this were outside the cell. Garda Kilcoyne did not activate any cooling system in order to unsettle or discomfort Mark Quinn. He accepted that the cell was cold and that people have complained of the cold in the cells in the station. Normally this is remedied by giving people extra blankets.¹²³⁶

- 8.78. A number of the interviewing Gardaí said that it would be normal for the interviewee to have his shoes on when not in the cell and that they had no recollection of Mr. Quinn being without his shoes when being interviewed.¹²³⁷
- 8.79. **The Tribunal is satisfied that Mark Quinn's shoes were removed from him whenever he was placed in the cell and that given the vagaries of the heating system in Letterkenny Station, the usual condition of the cell and the time of the year, it is likely that it was uncomfortably cold. The Tribunal does not believe that there was a deliberate attempt to ensure that he was cold in the cell. The Tribunal accepts that it is likely that he was interviewed at some stage without his shoes on, which would have added to a feeling of discomfort and humiliation on the part of Mr. Quinn. Clearly, this should not have happened. The Tribunal is not satisfied, however, that this was intended or part of an overall ploy to undermine his will.**

The “Dragging” Incident

- 8.80. Mark Quinn complained to his wife, Donna Quinn, some time well after his release, that:

Arriving at Letterkenny I was thrown into a cell, after they removed my shoes. The plain clothes detective and Hannigan then returned and took me upstairs to an interview room there, waiting in this room was John O’Dowd and three other uniformed Garda. “Who was in the bar when the vicious violent row broke out between Richie Barron and Mark McConnell broke out” was shouted at me and various Garda came in and out of the room shouting verbal abuse.”¹²³⁸

- 8.81. In evidence to the Tribunal, Mark Quinn said that he was left in a cell initially for

¹²³⁵ Transcript, Day 445, Q. 200-215.

¹²³⁶ Transcript, Day 445, Q.216-227.

¹²³⁷ Mr. Keating, Transcript, Day 440, Q.836-841 and Day 441, Q.290-295; Sergeant Hannigan, Transcript, Day 444, Q.122-128 and Q.420-440; and Mr. O’Dowd, Transcript, Day 443, Q.240-246.

¹²³⁸ Tribunal Documents, pages 98-99 and page 136.

a period of approximately twenty minutes and was then taken upstairs to an interview room. He said:

... There was a good few steps going up into it and when I went into the room there was ... Garda O'Dowd was there, I knew him because he was stationed in Raphoe, and there was three other uniformed Gardaí there. I was taken in and questioned about ... I think at that stage it was a vicious violent row they were saying that took place in my bar at that time. It was just everyone seemed to be shouting at one time like. ... [Garda Keating brought me to the room] I recall that because I had no footwear on at the time and it was him that dragged me up the staircase with no footwear, I had no footwear on me at that stage.¹²³⁹

When asked to explain what he meant by “dragged” he said that Detective Garda Keating had “pulled me up by the [right hand] shoulder of my coat”.¹²⁴⁰ When asked whether he felt he was being manhandled or firmly escorted into the room, he said:

I was physically brought to that room ... I was put on a seat behind a table and I was asked a lot of questions about a vicious violent row that occurred between Richie Barron and Mark McConnell. They just kept going over and over and over, it was a vicious violent row. They seemed to be making the point that there was a very bad fight in my bar between Mark McConnell and Richie Barron ... I just told them, like, when I came into the bar that night Mark and Richie were staring at them and they insisted that it was a vicious violent row. ... It wasn't. That's what I just kept saying, no. ... They didn't seem to be too satisfied with it ... they were still on about Frank McBrearty [Senior] ... about how much did he pay you to keep your mouth closed and ... there was Guards at the table like, you know, and they were shouting and I was very confused and they were thumping the table, and when one stopped saying something ... John O'Dowd, to my recollection, was there and there was other uniformed Guards there ... I can recall. There was Gardaí coming in and out and they were constantly coming and going like ... I didn't know a lot of the uniformed Gardaí. I think they were just going in and out and maybe talking on the doorway a lot of the time ... The main people that dealt with me was, which I thought at the time, was John O'Dowd and Garda Keating. I didn't really know any of the other Gardaí.¹²⁴¹

¹²³⁹ Transcript, Day 439, Q. 129-137.

¹²⁴⁰ Transcript, Day 439, Q.138-142.

¹²⁴¹ Transcript, Day 439, Q.144-164

8.82. Though the notes of interview indicate that Sergeant Hannigan was present and a witness to his signature on the notes, nevertheless Mark Quinn could not recall Sergeant Hannigan being present. He could not disagree with the fact that both Detective Garda Keating and Sergeant Hannigan had signed these notes and that he had acknowledged them as correct and signed them. However, he insisted that he could not recall any period during his interviews when he was alone with two interviewers only, other than towards the end of his detention.¹²⁴² The custody records indicate that Mark Quinn was interviewed by Detective Garda Keating and Sergeant Hannigan from 17.40 hours until 19.50 hours.

8.83. Mr. Keating in evidence to the Tribunal denied that he in any way “dragged” or manhandled Mark Quinn in bringing him to the interview room for the first interview. He could not recall whether he took him from the public area or from a cell to that interview room. He said it was not the way that he treated prisoners:

*He was treated the way I treat all prisoners, with a bit of respect and courtesy. He was never manhandled or mistreated by me or by anybody else while in my presence.*¹²⁴³

He maintained that to treat him in the way alleged would have put up a barrier between them immediately and would not have helped in relation to the interview or the investigation.

8.84. Sergeant Hannigan in evidence said that Mark Quinn was brought from the public area up the stairs by him and Detective Garda Keating. He could not say whether they went two or three abreast or in single file and he denied that Mark Quinn was pulled up the steps in an aggressive manner by Detective Garda Keating by holding onto the shoulder of his jacket. He said:

*He walked up the steps. I knew the man, I got on well with him. I wouldn't have had Detective Garda Keating abuse him or pull him up the steps. He walked up. ... I am absolutely saying that that absolutely did not happen.*¹²⁴⁴

Sergeant Hannigan accepted that he was in Garda uniform that day and that Detective Garda Keating was in plain clothes. He denied that any other Garda was present in the course of the interview which he and Detective Garda Keating conducted with Mark Quinn except perhaps at a changeover or when the member in charge visited.¹²⁴⁵

8.85. Detective Garda Keating also denied that there were other Gardaí present during the course of the interview.¹²⁴⁶ He agreed that the interview took place in the traffic corps room upstairs on the first floor.

¹²⁴² Transcript, Day 439, Q.164-185.

¹²⁴³ Transcript, Day 440, Q.836-848.

¹²⁴⁴ Transcript, Day 439, Q. 129-133.

¹²⁴⁵ Transcript, Day 444, Q.136-163.

¹²⁴⁶ Transcript, Day 440, Q.885-893.

- 8.86. I am not satisfied that Mark Quinn's recollection of these events is entirely accurate or reliable. He has acknowledged as much in evidence to the Tribunal. It may be that there was some slight physical contact between him and Detective Garda Keating on the way up the stairs to the traffic corps room prior to the first interview, but if there was, it is my belief that this has become greatly exaggerated in his own mind and taken on proportions much greater than what might be justified. Mark Quinn is not in a position to take issue with the fact that he signed the notes of the first interview which were read over to him and which he agreed were correct. They are clearly signed by Sergeant Hannigan whose presence he does not recollect. In all the circumstances, I do not accept Mark Quinn's account that he was assaulted by Detective Garda Keating as he alleged.

The Post-Mortem Photographs

- 8.87. Mark Quinn told the Tribunal in evidence that the worst thing that happened to him in the course of his detention was that he was shown photographs of the post-mortem of the Late Richard Barron. He said:

... I was shown photographs of the post-mortem done on Richie Barron, photographs of him on, I think, a slab or table. That seemed to be the worst like, you know. It was a big one for me ... There were just some uniform guard, a Garda came in with photographs and put them out on the table and they were photographs of the deceased Richard Barron, different photographs of different parts of his body. ... [There] could have been maybe between seven and ten [photographs] I'm not quite sure. There could have been more ... It was a plain ... or a uniformed Guard that put them down, put them out on the table and Garda O'Dowd was there at that time. There was quite a few of them around. I think from what I can recall I think there were six, six Gardaí there at that time. ... I think they were all in uniform at that stage ... I was at the table and they were laid out in front of me and the shouting and banging of the table started again and you know what happened to this man, just went on like that. Then ... I think at that stage ... someone came in and said something about a meal break or something I think, and I said I didn't want nothing to eat I just wanted a cup of tea. Some uniform Garda suggested I ordered chicken and chips or a chicken box or something like that. The questioning then again about what happened to the murder of Richie Barron went on for a while then a chicken box came in and that was put on the table

*and put on the table and the photographs was still on the table and they said to me ... think of white brains when you're eating your chicken and some Gardaí stuck or pushed a photograph up to my face. I am not a hundred per cent sure but I think it was John O'Dowd that pushed it into my face, I can't say that because there was quite a few of them around the table. I was taken to the cell and they said to me to think of what I had seen in the interview room while I was eating the chicken ...*¹²⁴⁷

- 8.88. At this point in giving evidence Mr. Quinn became very emotional but having composed himself resumed his evidence. He said that he recalled asking for cigarettes and remembered receiving them but could not give a precise time since he did not have a watch. He thought these photographs presented to him were separate but "they could have been in a booklet and taken out." He described how the photograph was picked up and pushed up towards his face. He said:

*It was just picked up and pushed up towards my face here, up towards my eyes. It was on my face here ... To what I recall it was just done the once to me.*¹²⁴⁸

He was asked to clarify what was said to him in respect of the photograph and he said:

*They said to me when you're eating your chicken think of the white brains, which I seen them on the photographs ...*¹²⁴⁹

He said he could not recall exactly which photograph was put to him though he described it in this way:

*There was a photograph on the table sort of like a bone cut in two. I think it might have been one of them. Like an oval shaped bone or whatever I think. I think it might have been one of them. There was one of them lying on his back with his hands like this, you could see his face. Then there were other ones of the back of his head and just different parts of his body.*¹²⁵⁰

He added that the photograph which he was asked to think about when having his dinner was a close-up of the Late Mr. Barron's head.¹²⁵¹

- 8.89. In the months and years after his release, Mark Quinn told his wife, Donna Quinn, some of the details of what happened in respect of the showing of photographs

¹²⁴⁷ Transcript, Day 439, Q.200-206.

¹²⁴⁸ Transcript, Day 439, Q.212-216.

¹²⁴⁹ Transcript, Day 439, Q.221-223.

¹²⁵⁰ Transcript, Day 439, Q.225-226.

¹²⁵¹ Transcript, Day 439, Q.227.

to him. The account which she recorded substantially coincides with the account which he gave in evidence of the event.¹²⁵²

- 8.90.** The first indication that Mark Quinn's complaint about the post-mortem photographs was true came from Garda John O'Dowd when he was interviewed by Chief Superintendent Brian Garvie RCMP, the Tribunal Investigator, on the 25th of March 2003 when he accepted that during the course of the interview with Mark Quinn, Sergeant Martin Moylan showed Mr. Quinn seven or eight photographs of the post-mortem of the Late Richard Barron. He said that there was nobody else in the room other than himself, Sergeant Moylan and Mr. Quinn at the time. When asked what the purpose of showing these photographs to Mr. Quinn was, he replied, "You will have to ask Martin Moylan that." For his part, or so he asserted, he did not think there was much point in showing Mark Quinn the photographs.¹²⁵³
- 8.91.** This allegation, together with the account given by Garda O'Dowd, was put to Sergeant Moylan by the Tribunal investigators on the 14th of May 2003. He denied showing any autopsy photographs of the Late Richard Barron to Mark Quinn. He said he was shocked that a colleague had stated that he had shown such pictures to Mark Quinn. He said it had definitely not happened.¹²⁵⁴ This was a lie.
- 8.92.** A statement was submitted to the Tribunal dated the 22nd of April 2006 by Mr. Moylan in which he said:

At no stage during the course of my interview with Mark Quinn did I show post mortem photographs of Richie Barron to Mark Quinn and I note that he does not make this allegation against me. This allegation has been made against me by Garda John O'Dowd and denied by me during a recorded interview with the Tribunal investigators on the 14th May, 2003. I would like to make it clear that I did not see Garda John O'Dowd bring into the interview room post mortem photographs nor did he show any such photographs to Mark Quinn in my presence. Regrettably contrary to the best practice and the custody record entries it is highly likely that I was not present in the interview room with Mark Quinn and Garda O'Dowd during the entire period recorded in the custody record. The reason being that at that time I was a chain smoker and my habit was to take a short break(s) to smoke. The interview is recorded as having lasted one hour, forty four minutes and I am quite definite that there is no way that I would have been able to remain in the room without a break to smoke. This being the case I am not in a position to fully account as to what occurred during the entirety of the time recorded for this interview.¹²⁵⁵

¹²⁵² Tribunal Documents, pages 99-100 and page 138.

¹²⁵³ Tribunal Documents, pages 24-55 to 24-57.

¹²⁵⁴ Tribunal Documents, pages 122-124.

¹²⁵⁵ Tribunal Documents, pages 162-163.

In this statement Mr. Moylan not only denied the showing of post-mortem photographs to Mark Quinn, but seemed to imply that the occasion for the showing of photographs by Garda O'Dowd may have arisen when he stepped outside the interview room in order to smoke a cigarette. This was a lie.

8.93. Subsequently, on the 28th of April 2006, two days after Mark Quinn had commenced his evidence to the Tribunal, the Tribunal received a statement from Mr. Moylan's solicitor, Mr. Michael Hegarty, in which he indicated that his client had instructed him to inform the Tribunal that Mr. Moylan admitted that during the course of this interview, he brought post-mortem photographs of the Late Mr. Barron into the interview room, that he had laid them out on the table and had shown them to Mark Quinn. He also admitted that he pushed one particular photograph of the deceased in front of Mark Quinn's face. He wished to make it clear to the Tribunal, on behalf of his client, that Garda O'Dowd had no involvement in the decision to bring post-mortem photographs of the deceased into the interview room or to show them to Mr. Quinn. He was also instructed to apologise on Mr. Moylan's behalf to Mr. Quinn and to Garda O'Dowd.¹²⁵⁶

8.94. Then on the 2nd of May 2006 Mr. Moylan submitted a further statement in the following terms:

We started to put specific questions to Mark Quinn. He answered all of our questions and I found him to be very cooperative. We differed on a number of points such as when Mark McConnell left Mark Quinn's pub. I put it to him that he had been seen leaving at 8.30 a.m. on the morning of the 14th of October 1996. He gave the impression to me that he didn't care when Mark McConnell had left. I got annoyed with him because I felt he was being flippant. My belief was that he had to know who was in his pub at all times and I didn't believe his response. It was around that time that I opened the bound album of photographs and showed them to him. In particular I showed him a picture of Richie Barron deceased and his head injury was obvious from the photograph. This action on my part affected his composure but not his responses which remained consistent. I did this out of frustration as I believed he was not giving a true account of what had happened. My intention was to emphasise the seriousness of the matter to him by focussing his attention on the death of Richie Barron. I can't remember how Garda O'Dowd reacted when I produced the photographs.¹²⁵⁷

8.95. He gave the following explanation as to why he had not previously told the truth:

¹²⁵⁶ Tribunal Documents, pages 168-169.

¹²⁵⁷ Tribunal Documents, pages 176-177.

Over time my stated mental health has deteriorated and under the advice of my doctors and wife I have been trying to disassociate my thoughts from the Tribunal. Because of this I believe I suppressed the truth of what actually happened during the course of the interview with Mark Quinn. My denial in my most recent statement was a continuation of this thinking. Last Tuesday, 24th April I attended at the Tribunal and listened to some of the evidence given by Mark Quinn and his wife Donna Quinn. This made me re-focus and confront what actually happened. It was clear to me that he has obviously suffered as a result of the arrest and the trauma he suffered with serious knock-on consequences for his wife and family. I felt very sorry for him. I also listened to the cross examination of Mr. Quinn by Garda O'Dowd's solicitor which contained a number of references to Mr. Barron's post mortem photographs. That evening I went back to my hotel on my own. My mind was very disturbed and was full of thoughts relating to the interview. My general form deteriorated and I felt I was going to have a breakdown ... my thoughts were consumed with flashes of what had happened on the 4th of December and the photographs kept coming into my mind. This bothered me a lot. I told my wife and she thought that I was reacting to what I had heard at the Tribunal on Tuesday. The next morning ... I told [my solicitor] that I had shown the photographs to Mark Quinn and in particular had pushed one photograph in front of Mark Quinn's face. I would like to take this opportunity to sincerely apologise to Mark Quinn for what I done and the fact that it has taken me so long to own up to conduct which was clearly unacceptable. Further, I would like to apologise to Garda John O'Dowd.¹²⁵⁸

- 8.96. In evidence to the Tribunal, Mr. Moylan said that he brought a number of statements and photographs into the interview with Mark Quinn. The photographs were of the post-mortem of the Late Mr. Barron, a couple of photographs of Raphoe town and the scene where the Late Mr. Barron was killed. He brought one plastic ring bound album of photographs into the room. He did not leave the interview room in order to get the photographs. He thought that they might be of assistance in his interview and that he might show them to Mark Quinn. He wanted to impress upon him the seriousness of the case, the horrible death the man had suffered and that it was important that he tell the Gardaí the truth as to what happened in his pub. He said that in the course of the interview, he and Garda O'Dowd were happy enough with Mark Quinn's description of the row between Mark McConnell and the Late Mr. Barron and the times at which he said people left the pub on the evening of the 13th/14th October 1996:

¹²⁵⁸ Tribunal Documents, pages 177-178.

Then we got to the issue about Mark McConnell leaving the next morning and he sort of said something like you know I wasn't up, you know I didn't get up until about 10 o'clock. Kind of saying nothing to do with me, you know ... And I kind of pressed him on it I think. You know, you must know, you have to know, you are living upstairs, you have to know who's in your pub or who is in your house. He kind of ... I thought at the time ... he was being flippant about it and I don't know, impulse, I got the photograph of the one of Richard Barron with injury to his head and put it up to his face ... I think he definitely got a shock alright ... when he looked at it ... I don't know exactly what I said ... something like ... look at what happened to this man here, poor Richie Barron he got a horrible death you know, things happened in your place, come on tell us. Something like that ... it shocked him ... there was kind of a pause, or there was a silence or there was something ... some sort of a break ... I don't know did I go out for a smoke or did I start doing notes, but it's in my head that I changed the subject or something ... or moved away from it or ... as you say maybe Garda O'Dowd started talking to him or something.¹²⁵⁹

- 8.97. Mr. Moylan also accepted that during the course of this interview and when showing the photographs to Mr. Quinn, he was shouting at him. The photographs were put to Mark Quinn before the notes were taken of the interview. He denied that there was any shouting at Mr. Quinn at any time during the interview other than the occasion upon which the photographs were put to him. It appears in the custody record that Mr. Quinn asked for twenty Silk Cut brand cigarettes; Mr. Moylan had no recollection of this. He denied that any food was brought to the interview room during the course of this interview. No remark was passed, according to Mr. Moylan, about the likeness of the contents of the chicken box meal to the photograph he had seen of the internal injury done to Mr. Barron.¹²⁶⁰
- 8.98. Mr. Moylan denied that there was a general view amongst interviewing Gardaí that photographs of the post-mortem of the Late Mr. Barron would be used in the interviewing of suspects or that any direction was given by senior officers to the interviewing Gardaí to use these photographs. He said that it was his decision to bring the photographs into the interview room and to use them and that this arose largely out of his frustration with Mark Quinn.¹²⁶¹ He had no knowledge of the fact that other interviewing Gardaí had used photographs in the same way with Róisín McConnell and Katrina Brolly or others.

¹²⁵⁹ Transcript, Day 44, Q.664-793.

¹²⁶⁰ Transcript, Day 446, Q.843-852; Transcript, Day 446, Q.1 (in relation to the meal); Transcript, Day 446, Q.5 and 67-80 (regarding the shouting); and Transcript, Day 446, Q.82-86 (regarding the cigarettes).

¹²⁶¹ Transcript, Day 445, Q. 804-827.

- 8.99. In his statements, and in evidence to the Tribunal, Mr. Moylan stated that Garda John O'Dowd did not join in the putting of photographs to Mr. Quinn. Mr. Moylan said that he only brought in one set of photographs. He had a recollection of Garda O'Dowd looking at the book of photographs and he assumed it was the same book. It was on the table. Garda O'Dowd did not object to the production of the photographs or say anything about it either in the course of the interview or afterwards.¹²⁶²
- 8.100. Mr. O'Dowd claimed before the Tribunal that he was not aware that photographs would be produced to Mark Quinn. He described how it happened:

*Sergeant Moylan stepped out of the room. Now at this stage I said I'd talk to Mark and ask him some questions myself, you see, because I was getting on fine with him like, you know. So I did ask him that question. I said "Mark, between me and you and the wall there, what do you think happened." He says to me, he says, "right, I think Snodgrass had something to do with it." That's as much as I had asked him because that sticks in my mind. Then Sergeant Moylan came in and he came to my right there and he had two bundles of photographs and he gave me one and he had the other one and he put it down on the table and flicked over the pages and showed them to Mark Quinn ... I didn't know it was to be shown ... he says look at those ... see what happened that man. I know that Mark didn't like them because I remember the look on his face ... I can't say that there was any shouting at all. In actual fact I was getting on quite well with him and I felt that when those photographs were shown that it ended my possibility of speaking to him in the same friendly, civil fashion I was speaking to him in ... I don't remember anything leading up to it at all. I was as surprised to see them as he was.*¹²⁶³

He thought the photographs were shown late on in the interview.¹²⁶⁴ He said that he closed a book of photographs that Sergeant Moylan had given to him. He had opened the album to see what the photographs were and when he saw them he did not like them. When Mark Quinn saw the photographs, "he sort of turned his face ... you could see the reaction on his face". He said that Mark Quinn was visibly upset by them. Both of them knew that it should not have happened. Mr. O'Dowd accepted that this was the likely reason that the putting of the photographs to Mark Quinn did not appear in the notes of interview.¹²⁶⁵ However, he also said that the notes as taken were correct insofar as they contained notes

¹²⁶² Transcript, Day 445, Q.828-839; Transcript, Day 446, Q.5-12; and Transcript, Day 446, Q.550-559 (in answer to Mr. Connelly, solicitor to Mr. John O'Dowd).

¹²⁶³ Transcript, Day 443, Q. 50-55.

¹²⁶⁴ Transcript, Day 443, Q.56.

¹²⁶⁵ Transcript, Day 443, Q.89-90.

of questions that were asked and answered.¹²⁶⁶ **It is clear to the Tribunal that Garda O’Dowd was happy for these notes to be accepted by all and sundry as an accurate record of the interview until his statement to the Tribunal investigators in 2003. Similarly, Sergeant Moylan, who took the notes, was fully aware that he was excluding the use of the photographs from the record of the interview because he knew that it was wrong of him to present the photographs of the post-mortem to Mr. Quinn.**¹²⁶⁷

- 8.101.** Mr. O’Dowd had no recollection of the request made by Mr. Quinn for cigarettes or the furnishing to him of twenty cigarettes. He also said that no meal was served to Mr. Quinn in the interview room. He had never seen any chicken box meal in the interview room and no comments such as those alleged by Mr. Quinn concerning the texture of the chicken meat and the gruesome photographs of the deceased, were made to Mark Quinn in the course of the interview.¹²⁶⁸ Mr. O’Dowd said that he had no recollection of Sergeant Moylan becoming somewhat frustrated during the course of the interview as a result of which Sergeant Moylan pushed the photograph towards Mr. Quinn’s face, notwithstanding the fact that both Mr. Quinn and Mr. Moylan recalled the event. He could not understand why he could not recollect such a dramatic incident. He also thought the notes of interview were written as they went along. He said “I can’t imagine for the life of me that he just decided at the end of the interview to write down questions”.¹²⁶⁹
- 8.102.** For his part, Mr. Moylan disagrees with Mr. O’Dowd’s assertion that he gave him a second album of photographs or that he excused himself from the room during the course of the interview in order to obtain the photographs.¹²⁷⁰
- 8.103.** This is of importance because it is during this period that Mr. O’Dowd said that he had a short conversation with Mark Quinn which he says indicates how well he was getting on with him. He said:

*So I did ask him that question. “I said Mark, between me and you and the wall there, what do you think happened. He says to me, he says right, I think Snodgrass had something to do with it.”*¹²⁷¹

The reference to “Snodgrass” was to Mark McConnell. Mr. Quinn could not recall making that comment to Mr. O’Dowd.¹²⁷²

¹²⁶⁶ Transcript, Day 443, Q.104.

¹²⁶⁷ Transcript, Day 446, Q.100-103.

¹²⁶⁸ Transcript, Day 447, Q.126-146.

¹²⁶⁹ Transcript, Day 447, Q.55-56.

¹²⁷⁰ Transcript, Day 445, Q.828-852.

¹²⁷¹ Transcript, Day 443, Q.51.

¹²⁷² Transcript, Day 439, Q.231-233. In support of his testimony Garda O’Dowd pointed to the fact that a similar remark would be attributed to Mark Quinn by Stephen Barron which was said to have been made in the presence of Paddy Quinn to Mr. Barron at the Wake House on the evening of the 14th of October, 1996 – see statement of Stephen Barron, 30th of May 1997, Transcript, Day 214, Q.1-274. This was also denied by Mark Quinn – Transcript, Day 47, pages 195-6. This is not of particular assistance given that Mr. Moylan contradicts the evidence of Mr. O’Dowd that he left the interview room in order to obtain the photographs.

- 8.104. Mrs. Donna Quinn records in her notes that her husband told her that during the course of his detention an interview was interrupted in the following way:

Duty Sergeant came in, "This man is due for a break, would you like something to eat?"

"No just a cup of tea," I said.

A Garda suggested chicken and chips from the café, another Garda came in with a chicken box and left it on the table, he placed the photos of Richie Barron's body, head and brain beside me and said, "Think of the white of that brain as you eat your chicken." I was trailed back to a cell and ignorantly threw into a cell, along with the chicken box. "Now think about what you're going to eat and what you've seen."¹²⁷³

- 8.105. In evidence to the Tribunal, as is clear from the transcript already quoted, Mark Quinn said that "Someone" came into the interview and offered him a meal break but he indicated that he just wanted a cup of tea. He said, "Some uniform Guard" suggested that he order chicken and chips or a chicken box. He said he was then questioned again about the murder of the Late Mr. Barron and the interview was interrupted again by somebody who brought in a "chicken box" which was put on the table where the photographs of the Late Mr. Barron lay. He said that, "They said to me ... think of white brains when you're eating your chicken and some Gardaí stuck or pushed a photograph up to my face". He said that he was then taken to a cell but he did not recall who took him there.¹²⁷⁴ He later said that the chicken box was presented to him in the interview room and that after the interview another Garda took him back to the cell; the chicken box was brought down to the cell, and this Garda also told him to think about what he had seen when he was eating the chicken which was a further reference to the photographs by that Garda.¹²⁷⁵ He never identified this Garda in evidence.

- 8.106. Garda Martin Leonard was the member in charge during this period of interview but had no actual memory of the events other than by reference to the entries which he confirmed to the Tribunal he had made in the custody record. He asserted that he would not have made the entries if they were not accurate. During the course of the second interview between Mark Quinn and Sergeant Moylan and Garda John O'Dowd, Mr. Leonard confirmed that he made entries in the custody record which indicated that he visited the prisoner at 20.00 hours, and informed him that his wife had been notified of his detention. He again visited him at 21.00 hours when he noted Mark Quinn to be "ok". Garda

¹²⁷³ Tribunal Documents, Mark Quinn, page 100 and page 138.

¹²⁷⁴ Transcript, Day 439, Q.206-208

¹²⁷⁵ Transcript, Day 439, Q.900-905.

Leonard noted also that at 21.10 hours Superintendent Fitzgerald had granted permission to fingerprint, photograph and palm print Mark Quinn, and that he attended the interview room to inform Mark Quinn of this fact at 21.25 hours. He noted at this stage that Mark Quinn asked for twenty Silk Cut brand cigarettes to be purchased with money which was to be taken from his property. He then noted that at 21.35 hours Mark Quinn was taken from the interview room to the cell for a rest period and that at 21.55 hours he was provided with a meal and the cigarettes. Garda Leonard concluded his tour of duty that evening at 22.00 hours, at which point he introduced Mark Quinn to the new member in charge who was relieving him, Garda Tom Kilcoyne.¹²⁷⁶

8.107. In evidence, Mr. Leonard confirmed that the onus was on him, as member in charge, to ensure that Mark Quinn received a meal. Had Mark Quinn asked only for a cup of tea that would have relieved him of the necessity to send out for a meal and he would not have done so. He thereby cast doubt on Mr. Quinn's evidence about asking for a cup of tea at that point. He accepted that a takeaway meal was obtained. Once the meal arrived it would have been given directly to the prisoner. He could not say who brought Mr. Quinn to the cell. He said the interviewing officers would have brought him down to the area in which Garda Leonard was working; he would not necessarily have brought him to the cells. The important fact from his point of view was that Mr. Quinn got a rest period. The meal was provided to him, according to the custody record, twenty minutes later. It could have been ordered earlier but when it came it was given to Mr. Quinn. He could not recall whether he brought the meal to the cell with the cigarettes at 21.55 hours. He said, "It could have been me or [Garda] Willie Cannon that actually gave it to him but it would come down to me, yes." He denied any knowledge of photographs and the account given by Mark Quinn.¹²⁷⁷

8.108. Mr. Leonard insisted that he was to a large extent reliant upon information supplied by others when he filled out the custody record. Mr. William Cannon, a retired Garda, gave evidence that he assisted Garda Leonard in carrying out his duties under the custody regulations on the 4th of December 1996. He told the Tribunal that he had absolutely no dealings with Mark Quinn during his detention.¹²⁷⁸ From this evidence I am satisfied that it was Garda Leonard who ordered the takeaway meal and supplied it to Mark Quinn. Though the argument is made by Mr. Leonard and on the part of others that the meal was not provided until 21.55 hours as recorded in the custody record, I am not satisfied that the record is accurate as to the time or location at which the meal was supplied. **I am satisfied the meal was supplied in the interview room by Garda Leonard and that comments of the type complained of by Mark Quinn were made**

¹²⁷⁶ Tribunal Documents, pages 73-74.

¹²⁷⁷ Transcript, Day 441, Q.864-919 and Q.1129-1154.

¹²⁷⁸ Transcript, Day 441, Q.620-672.

at that stage. It is not clear from the custody record or from the evidence of Mark Quinn or the Gardaí as to who brought him to the cell from the interview room at 21.35 hours but I am satisfied that the chicken box meal went with him and that further comments of the type complained of were made to him at that stage.

- 8.109. It is clear beyond doubt that Mark Quinn was telling the truth from the beginning about the fact that he was shown post-mortem photographs of the Late Richard Barron. I am satisfied that he was shown these photographs by Sergeant Martin Moylan who had brought them into the interview room at the beginning of the second interview with Mark Quinn. However, I am satisfied that Mark Quinn's evidence was not completely accurate or clear in relation to all aspects of this encounter. I am satisfied that the photographs were shown to him in the presence of Garda John O'Dowd and that Sergeant Moylan pushed one of the photographs up to his face and that he was shouted at during the course of the incident and during the course of the interview by both interviewers.
- 8.110. It is also clear that a takeaway meal was obtained for Mark Quinn whilst he was custody. It included chicken served in a box. Mark Quinn states that this happened during the course of the second interview and that remarks to the effect that he should think of the injury to the Late Mr. Barron's head exhibited in the photographs whilst he was eating the meal, were made to him when the meal was produced to him in the interview room. He also said that further similar comments were made to him when he was taken to the cell after the second interview by Garda Leonard. This was denied by Mr. Leonard, Mr. Moylan and Mr. O'Dowd. I am satisfied that the remarks of which he complains were made to him when he received the meal. It is likely that he received the meal initially in the interview room and I am satisfied that the remarks were made on the two occasions which he recounted to the Tribunal. It is part of the vivid recollection which he had of the showing of the photographs to him. It is the event which most affected him. Mark Quinn's account of this occurrence is similar to that which he gave to his wife and which is contained in the notes furnished to the Tribunal.¹²⁷⁹ The Tribunal does not accept the evidence of Mr. Leonard, Mr. Moylan or Mr. O'Dowd in this regard.
- 8.111. Garda John O'Dowd chose not to tell the truth about these photographs until interviewed by investigators in March 2003 and Mr. Moylan told lies about it consistently until Mr. Quinn had given evidence and he was faced with the

¹²⁷⁹ Tribunal Documents, page 100 and page 138.

prospect of cross examining his former colleague Mr. O'Dowd, who was now accepting that photographs were shown. Mr. Quinn was unsure as to which of the two Gardaí showed him the photographs but from the evidence I am satisfied it was Sergeant Moylan. I am also satisfied that the photographs were brought into the interview room as a tool by which pressure might be applied to Mr. Quinn by shocking him into revealing information or admitting facts which Sergeant Moylan believed to be within his knowledge concerning the death of the Late Mr. Barron. There remains a suspicion that Garda O'Dowd knew of and condoned this approach notwithstanding Mr. Moylan's acceptance of full responsibility for the use of the photographs. Nevertheless, the version put forward by Mr. O'Dowd in his description to the Tribunal investigators and in evidence that it was Mr. Moylan and not he who used the photographs in this manner, is accepted. However, I do not accept that Sergeant Moylan left the room to get the photographs. Nor do I accept that any comment was made in relation to "Snodgrass" as stated by Mr. O'Dowd. I am satisfied that the photographs were brought in at the beginning of the interview and used when that was thought appropriate. At the very least, Garda O'Dowd condoned this practice. He did not intervene to object to it, though it was clearly happening in front of his eyes. He was aware that its occurrence was excluded from the notes of interview which he witnessed and that could only have been in order to present a distorted record of the interview. If any allegation of wrongdoing concerning photographs was made it could be denied by reference to the notes of interview. Of course, that is what happened. I am also satisfied that Mr. Quinn was shouted at during the course of this interview by the two interviewers. The Tribunal is also satisfied, on the evidence of Mark Quinn and his wife Donna Quinn, that the presentation of these photographs to him and the aggressive manner in which it was done has had the most serious traumatic consequences for him. The use of these photographs on this occasion could not in any sense be justified. It showed a complete disregard for the well-being and dignity of Mr. Quinn and very little respect for the memory of the Late Mr. Barron. It was not a legitimate investigative or interviewing technique. The fact that the photographs were brought into the interview room at the beginning suggests that Sergeant Moylan at least contemplated and probably intended to use them from the beginning.

Alleged Assault by Garda John O'Dowd

8.112. Mark Quinn complained in evidence that he had been assaulted by Garda John

O'Dowd whilst being interviewed by him in the presence of a number of other Gardaí. He alleged that Garda O'Dowd was sitting at a table with another uniformed Garda whose rank he could not recall. He said that he could not recall whether this incident happened before or after the showing of the post-mortem photographs to him. He described the incident in this way:

I was being interviewed by Garda O'Dowd and a few other Guards were there and ... I think that's the time that he pulled me up, Garda O'Dowd, and he had something down the leg of his trousers which he kept pulling up and down, which I took it was a baton, I don't really know. He just asked me questions about what I knew. ... He just grabbed me by the jacket, Chairman, and pulled me off the seat with one hand. I was up off the seat and there was something on the leg of his trousers and it was going up and down his leg, ... [Garda O'Dowd] was sitting the other side of the table ... to the right of me at that stage. He was seated. ... It was just a general question about what I knew, what times people left the pub. He insisted at one stage that I would say that Mark McConnell left my pub at half twelve. I can remember him saying that. It was half twelve, he says, and you know it was half twelve and say it was half twelve ... He wanted me to say that Mark McConnell left at half twelve ... I think it was after one, it was after one o'clock. He just kept sliding up and down this black shiny object from what I seen, that's all I see of it. ... He was trying to put some fear into me ... He got me by the lapels and he was putting it up and down ... he sort of grabbed me ... and pulled me up off the seat like. I was raised off the seat: towards him. ... My legs would probably have stopped at the table or maybe eight inches ... off the seat. I was just touching the table, I think. I'm not too sure, I don't think the table moved. He sort of grabbed me and pulled me up several inches and this hand here was going up and down the side of his trousers. I think it was his left hand. And I could see something black and shiny going up and down for a few inches like ... it seemed to be something circular and black and there seemed to be a shine off it.¹²⁸⁰

Mark Quinn's impression was that there were a number of Gardaí coming in and out at the time and that there was one uniformed Garda sitting with Garda O'Dowd.¹²⁸¹ The allegation was denied by Garda O'Dowd in evidence.

8.113. As pointed out by Mr. Connelly, solicitor to Mr. O'Dowd, in cross-examination of

¹²⁸⁰ Transcript, Day 439, Q.244-282.

¹²⁸¹ Transcript, Day 439, Q.283-284.

Mr. Quinn, no reference was made by him to this assault when furnishing his account to Mrs. Donna Quinn of what happened to him whilst in custody. Further, no such reference was made when furnishing instructions to his solicitor in respect of the matter in 2002.¹²⁸² In addition, it is said that no complaint was made by Mr. Quinn to his wife Mrs. Donna Quinn when she visited him at a time following the alleged assault at 23.40 hours on the evening of the 4th of December and he signed an entry in the custody record at 04.10 hours to the effect that he had no complaints to make on being released from custody.¹²⁸³ However, Mark Quinn also states that he did not wish to upset his wife at the time of their meeting by going into details of this kind and that at the time of his leaving the station he acknowledged that he had no complaints to make but did this because he simply wished to get out of the station.

- 8.114. It was also pointed out to Mark Quinn by Mr. Connelly that the Garda uniform trousers contain a specially sewn-in-pocket of sufficient size to accommodate a Garda baton, which is invariably sewn into the right hand pocket of the uniform trousers. Consequently, it was suggested that it was not likely that Garda O'Dowd would have his baton in a pocket on the left hand side of his person as it could not be accommodated there.¹²⁸⁴ It is also clear that this allegation was not made by Mr. Quinn until interviewed by Tribunal investigators on the 3rd of April 2006.¹²⁸⁵
- 8.115. **In all the circumstances, having regard to the late making of this allegation, nine years after the event, and the clear difficulty which Mark Quinn had in recalling details of this and other matters accurately, I am not satisfied on the balance of probabilities that Mark Quinn was assaulted by Garda John O'Dowd.**

Alleged Assault by Detective Garda Keating

- 8.116. An allegation, similar to an allegation made against Garda John O'Dowd by Mark Quinn, that he was assaulted by being pulled by the lapels and raised out of the chair in which he was seated during the course of an interview, was also made against Detective Garda P.J. Keating. This allegation contained the additional dimension that during the course of the assault Detective Garda Keating was alleged to have had bullets which he was shaking in his left hand, presumably as a form of additional intimidation of Mr. Quinn. It was also alleged that a uniformed Garda at a nearby table was toying with a handgun which was on one occasion pointed in Mark Quinn's direction during the course of this assault. This allegation first appears in notes made by Mrs. Donna Quinn of what her husband told her occurred during his detention. She noted his complaint in this way:

¹²⁸² Transcript, Day 439, Q.824-833 and Transcript, Day 440, Q.79-99.

¹²⁸³ Transcript, Day 440, Q.1-63.

¹²⁸⁴ Transcript, Day 439, Q.836-865.

¹²⁸⁵ Tribunal Documents, Mark Quinn, pages 90-91.

The plain clothes detective took hold of my shirt at the front and pulled me across the table. “Tell us you murdering bastard, tell us what happened” [There then followed an account of the presentation of the pictures of the post-mortem to him] ... A uniformed Garda sat with his hands on the table hiding a gun, he was playing with it and pointing it in my general direction and said nothing. The arresting plain clothes detective held the bullets in his hand and stood beside me shaking them. This was making me more nervous than I already was. I kept telling them I knew nothing about what happened.¹²⁸⁶

8.117. In evidence to the Tribunal, Mark Quinn said:

When I was being questioned by Garda Keating, he was there standing up and he came over towards the table I was sitting at and he pulled me by my lapels or my jacket, up off the seat and he said to me at that stage, “Tell us what you know, you murdering bastard”. At that stage I seen he had bullets in his other hand. There was two Gardaí sitting in the ... uniformed Gardaí on the table in front of me and there was one sitting at a table further back. He had got a gun in his hand and he put it down on the table and he pointed it in my direction. That part I can remember. That obviously made me very agitated and very frightened. He just called me ... kept on calling me a murdering bastard and he wanted me to tell him what I knew and I kept saying, “I don’t know, I don’t know anything.” That’s what I can recall at the moment.¹²⁸⁷

He told the Tribunal that this had occurred after the showing of the photographs to him by the other Gardaí.¹²⁸⁸ At the time of this incident, Mark Quinn said that he was being interviewed by two uniformed Gardaí whom he could not identify. Nonetheless, he did tell the Tribunal that Garda John O’Dowd, Sergeant Moylan and Sergeant Hannigan were not in the room at the time. He said that Detective Garda Keating came into the room. There was another uniformed Garda seated on a chair beside a second table in the room. Detective Garda Keating walked over to the Garda at the table, turned and came walking back towards where Mark Quinn was sitting. He came straight in front and to the left of Mark Quinn and grabbed him by his coat. At this stage he had bullets in his left hand and he was shaking them. Mark Quinn said that he was grabbed for a few seconds and told to tell what he knew and that he was a murdering bastard. Just after Detective Sergeant Keating let go of his jacket he became aware of the gun on the second table at which the uniformed Garda was seated. He said that this

¹²⁸⁶ Tribunal Documents, page 99 and pages 136-137.

¹²⁸⁷ Transcript, Day 439, Q.310-317.

¹²⁸⁸ Transcript, Day 439, Q.318.

Garda had his hand on top of the gun and moved it in his direction, he thought deliberately. He did not know where that Garda got the gun from. He said, "I really don't know what happened then. I think I might have been taken down to the cell again."¹²⁸⁹

- 8.118.** The sequence of interviews, as described in the custody record and given in evidence by the interviewing Gardaí, suggests that Mark Quinn's third interview was conducted by Detective Garda Keating and Sergeant Hannigan between 22.45 hours and 23.40 hours, when he was visited by his wife Donna Quinn. He was further interviewed, according to the record, by Detective Garda Keating and Sergeant Hannigan during the fifth and sixth interview periods between 01.50 hours and 02.30 hours and 03.30 hours and 04.10 hours on the morning of the 5th of December 1996. Mark Quinn has no recollection of being interviewed by Sergeant Hannigan during these periods. The notes of these interviews have already been discussed. It might be inferred from Mark Quinn's evidence that the alleged assault by Detective Garda Keating took place during the third interview before the visit of his wife and that his contention that Sergeant Hannigan was not present is supported by the absence of Sergeant Hannigan's signature from what purport to be the notes of the third, fifth and sixth interviews.
- 8.119.** There are two features of Mark Quinn's evidence which might assist me in determining the time of this alleged incident. The first is that he said that it happened after the photographs were shown to him. The second is that he alleges that after the incident he was taken to a cell. There are only two occasions upon which Mark Quinn is recorded as having been taken to a cell and they occurred after the second interview at 21.35 hours (in the course of which the post-mortem photographs were shown to him) and at 02.30 hours following an interview with Detective Garda Keating and Sergeant Hannigan. An attempt was made in cross-examination to anchor all of Mark Quinn's allegations prior to 21.35 hours, but I am satisfied that Mark Quinn never definitively did so in a manner upon which I could rely. In fact, Mark Quinn's chronological recollection of events was clearly confused and non-specific as to time. All that can be said is that the allegation of alleged assault against Detective Garda Keating is placed in his evidence after the showing of the photographs and was followed by him being placed in a cell. Detective Garda Keating had the opportunity, according to the custody record, to interview him twice prior to his being put in the cell at 02.30 hours and notes covering these periods of interview are signed only by Detective Garda Keating. There are no notes whatsoever in relation to the period 00.08 hours to 01.50 hours (the fourth interview) conducted by Detective Garda Scanlon and Sergeant Hannigan.

¹²⁸⁹ Transcript, Day 439, Q.319-364.

- 8.120. Indeed, when Mark Quinn was pressed on this matter in cross-examination he thought that the alleged assault had occurred after his wife’s visit, which had taken place between 23.40 hours and 00.08 hours.¹²⁹⁰ He then said that he thought it might have been before his wife came but he accepted that he was very confused about the matter.¹²⁹¹
- 8.121. For his part, Mr. Keating denied in very strong terms that this alleged assault had taken place. He asserted that one of the things a Garda would never do is to take a firearm into an interview room because if a prisoner attacked an interviewer he might attempt to take the gun from the interviewer and the person might be injured if the gun were discharged. He also said that there were no circumstances in which he would give his personal firearm to another Garda, as was strongly implied by Mark Quinn in his description of the uniformed Garda at the table who pointed the gun at him. His evidence was that he interviewed Mark Quinn in the company of Sergeant Hannigan and he did not go to the traffic corps room or any other interview room to conduct an interview with Mark Quinn without Sergeant Hannigan. No other Gardaí were present in the course of any interviews which he conducted with Sergeant Hannigan. There was no coming and going by other Gardaí from the interview room. His recollection was that all of the interviews were conducted in the traffic corps room.¹²⁹²
- 8.122. Sergeant Hannigan gave evidence that there was no assault or abuse of Mark Quinn at any time during the course of the three interviews which he conducted, together with Detective Garda Keating, with Mark Quinn. He said he interviewed Mark Quinn during all of the periods noted in the custody record. There were very few Gardaí available in the early hours of the morning and he knew of nobody else who conducted interviews other than those noted in the custody record. Both of them denied that there was any shouting but both accepted that there may have been raised voices during the questioning of Mark Quinn in order to emphasise questions or impress certain matters upon him.¹²⁹³
- 8.123. **The allegation made by Mark Quinn against Detective Garda Keating in respect of this alleged assault, and the use of bullets and the pointing of a firearm at him by another uniformed Garda, are very serious. In order to conclude on the balance of probabilities that it had occurred, the Tribunal would require clear and cogent evidence to that effect. In setting out the evidence in the matter, I have attempted to identify any feature of the evidence which might tend to support Mark Quinn’s account of this event. These incorporate what I regard as serious deficiencies in the note taking by the interviewers in the course of Mark Quinn’s detention, including the**

¹²⁹⁰ Transcript, Day 439, Q.708-720.

¹²⁹¹ Transcript, Day 439, Q.720-724.

¹²⁹² Transcript, Day 440, Q.853-911.

¹²⁹³ Transcript, Day 440, Q.921-923 and, Day 444, Q.223-233.

absence from Detective Garda Keating's notes of Sergeant Hannigan's signature as a witness. This was important in the light of Mark Quinn's contention that he did not recollect Sergeant Hannigan's presence during the course of these interviews and that he was not present during the alleged assault. Nevertheless, Mark Quinn's account of the alleged assault has for whatever reason been confused and unconvincing. Consequently, I am not able to be satisfied that this alleged assault occurred.

Detective Garda Padraic Scanlon

- 8.124. In Mark Quinn's account to his wife of what happened during his detention he told her that when she left (which was at 00.08 hours):

Hannigan took me to a room where he said the Dublin murder squad were waiting. Padraic Scanlon (now our local sergeant) was sat in the room behind a desk. "Come on your in business now, tell us now and we'll leave your pub alone don't cooperate and we'll be in every night and put you to the street".¹²⁹⁴

- 8.125. When interviewed by the Tribunal investigators on the 3rd of April 2006, Mark Quinn told Mr. Finn and Mr. Cummins that:

Sergeant Hannigan had taken me up the stairs and down along a corridor, a very long corridor to Padraic Scanlon. Padraic Scanlon was putting on his coat at the time we went into the room and Joe Hannigan asked me to tell Padraic Scanlon what happened and I says I know nothing and I'm still telling the same as I said and then Scanlon called me a low life and lower than a snake's belly and Sergeant Hannigan then took me back down and he insisted on giving me a ride home. This was later on.¹²⁹⁵

- 8.126. In evidence, Mark Quinn told the Tribunal that he recalled Garda Scanlon "in another interview room". He said:

Just before I was released ... Sergeant Hannigan ... took me up there and asked me to tell Mr. Scanlon or Garda Scanlon what happened. I can remember walking up the corridor with Sergeant Hannigan. He says I am going to take you to a man now you can talk to and I went up and he was getting ready to go, finish his shift or whatever, and he was putting on his coat and Joe says ... tell this man now and I says I'll be telling you what I've been telling yous all day. I'll tell you the same thing so [Detective Garda Scanlon] called me a low life and a snake's belly. That I was a low life and lower than a snake's belly and then Sergeant Hannigan

¹²⁹⁴ Tribunal Documents, page 101.

¹²⁹⁵ Tribunal Documents, page 94.

said “come on, we’ll go out to the car park at the side, I’ll have no wires on, you can tell me the truth.” I says “all I can do is tell you the same, the same things I’ve been telling you all the time,” and we went back downstairs again and the Garda says you can phone your wife or phone home or something for a lift. Sergeant Hannigan said I’ll take him home.¹²⁹⁶

- 8.127. Mark Quinn, in his evidence, suggested that this alleged incident with Detective Garda Scanlon occurred just before he was released. However, in Mrs. Quinn’s note of what she was told, it is said to have occurred just after her visit, well before his release and, at the time when the custody record indicates that he was in fact interviewed by Detective Garda Scanlon and Sergeant Hannigan (the fourth interview). Mrs. Quinn’s visit ended at 00.08 hours. The fourth interview then commenced and continued to 01.50 hours followed by the fifth and sixth interviews and Mr. Quinn’s release at 04.10 hours. Mark Quinn again appears to be confused as to times, which is perhaps understandable. It may be noted that Detective Garda Scanlon in evidence acknowledged that following the interview at 01.50 hours he went home, because he was in court the next morning in Letterkenny. Consequently, if the note taken by Mrs. Quinn was in fact correct and this encounter took place after she left and in the course of the interview which Detective Garda Scanlon actually held with Mark Quinn, Mark Quinn’s description that Detective Garda Scanlon was putting on his coat to go home is given a degree of credibility.¹²⁹⁷ However, that was not his evidence. Detective Garda Scanlon denied calling him any names and said the allegations were not true. Nonetheless, the fourth interview is the interview for which there are no notes, which also adds to the difficulty in ascertaining the facts of this matter.¹²⁹⁸
- 8.128. Sergeant Hannigan also denied that Mark Quinn was called insulting names by Detective Garda Scanlon as alleged or that his business was in any way threatened by them.¹²⁹⁹ His only dealings with Mark Quinn, in the presence of Detective Garda Scanlon, occurred during this interview and not at the end of the series of interviews.
- 8.129. **This alleged encounter between Mark Quinn and Detective Garda Scanlon and Sergeant Hannigan appears to me to be of a somewhat minor nature when compared with other matters investigated by this Tribunal. It seems not unlikely that things became heated from time to time between the interviewers and the detainee. The threat to Mark Quinn’s business, since he was starting out with a young wife and small children as a publican at that time, might be regarded as more serious. Having regard to the somewhat confused recollection exhibited by Mark Quinn in evidence**

¹²⁹⁶ Transcript, Day 439, Q.400-403.

¹²⁹⁷ Transcript, Day 444, Q.820.

¹²⁹⁸ Transcript, Day 444, Q.701-828 and Day 445, Q.1-191.

¹²⁹⁹ Transcript, Day 444, Q.244-247.

about this matter, I cannot be satisfied as a matter of probability that the encounter occurred, though this cannot be entirely discounted as a possibility, particularly having regard to the earlier account which he gave to Mrs. Quinn and the coincidence that Detective Garda Scanlon left for home after what he accepts was his only interview with Mark Quinn.

Release from Custody

- 8.130. Mark Quinn was released from custody at 04.10 hours on the morning of the 5th of December 1996. According to the custody record his release followed a sixth interview with Sergeant Hannigan and Detective Garda Keating. His property was returned and he had no complaints to make to the member in charge, Garda Tom Kilcoyne. He signed the custody record to that effect. Prior to the release, he said that he got his shoes back, which he had been without since he was first detained. He told his wife, Donna Quinn, that:

Hannigan said on his own, "Come on, we'll go into the car park and you can tell the truth, no wires or nothing. I said I'll be telling you the same." Garda told me to ring home and get a lift and Hannigan said he would give me a lift. In the car on the way home he said, "Wait till them boys with the wigs in Dublin get at you, they'll make small men of you. We'll get you one way or another." I was home at around 5.30 a.m., I had a cup of tea and some toast and threw the whole thing up. I couldn't believe I was actually home and the abuse from the Garda and the interrogation and intimidation had finally ended or so I thought.¹³⁰⁰

- 8.131. In evidence he described it to the Tribunal this way:

There was a Garda there and he said to me you're being released you can phone and get a lift. Sergeant Hannigan was there and he said he would give me a lift. So we went to his car and went up the road to Raphoe. ... The conversation arose about the big wigs in Dublin when they get you, they'll make small boys of you. We just got to outside my pub or whatever, and he said we'll get you one way or another as I was getting out of the car. ... It was more or less we'd be up in court in Dublin about this, this whole arrest, that I was arrested, like. The way he phrased it it was the big wigs in Dublin will make small boys of you. ... I was a bit concerned about when he says when I was getting out of the car we'll get you one way or another. My business, obviously, you know, because we were publicans at that time. It had been mentioned about in one interview. It was about if you tell us what we want to know we can

¹³⁰⁰ Tribunal Documents, page 102 and pages 138-139.

*leave your pub alone and if you don't we'll be in every night. I am not a hundred per cent sure but I nearly think it was Padraic Scanlon said it to me.*¹³⁰¹

Mark Quinn said that he was too frightened to make any complaints when he was released. He made no complaint to any senior officer of An Garda Síochána because he was afraid of losing his business and he had a heavy mortgage and two young children. Subsequently, he was interviewed by two members of the Carty team but did not make any complaints about his treatment in custody to them.¹³⁰²

8.132. Sergeant Hannigan said that he offered Mark Quinn a lift home following his release. He had to take himself off duty by returning to the station at Raphoe where he was the sergeant and he took the opportunity to offer a lift to Mark Quinn to his home in Raphoe, which was accepted. At the time of his release Mark Quinn appeared to Sergeant Hannigan to be withdrawn, tired and shocked. There might have been a bit of awkwardness between them on the drive out. He left him off at his pub and then drove back to the Garda station. He did not make any remarks to Mark Quinn to the effect of “wait until the boys with wigs in Dublin get at you.” He did not threaten Mark Quinn’s business. He noted that he never prosecuted Mark Quinn for breach of the liquor licensing laws. While he acknowledged that the arrest of Mark Quinn must have had an effect on him personally, as well as on his family and his standing in his community, he denied abusing him in any way or making the remarks attributed to him by Mark Quinn.¹³⁰³

8.133. Sergeant Hannigan accepts that the drive out to Raphoe may have been strained, having regard to the circumstances in which Mark Quinn found himself and the role which Sergeant Hannigan had played in his detention and interviews. It was a reasonable and decent thing on his part to offer to drive Mark Quinn home in the early hours of the morning from Letterkenny to Raphoe. In the broader scheme of events whether words were exchanged between them, as later recounted by Mark Quinn, is not of enormous significance. It seems likely that whatever exchange may have taken place was in the context of the very tiring and draining experience that Mark Quinn had undergone. Mark Quinn connects the alleged threat by Sergeant Hannigan to his business and the subsequent attention which he received from Gardaí, who called on a number of occasions to his premises over the following years: he believed this to be as a result of what was perceived to be his lack of co-operation with the Garda investigation. Allegations concerning what he might regard as harassment by Gardaí in the subsequent years, will be dealt with in the harassment module of the Tribunal’s

¹³⁰¹ Transcript, Day 439, Q.426-441.

¹³⁰² Transcript, Day 439, Q.425-426 and Q.448-468.

¹³⁰³ Transcript, Day 444, Q.247-254.

hearings. In respect of this specific allegation, I am not satisfied to conclude on the balance of probabilities that such a threat was made or that the words complained of were spoken. I cannot, however, ignore the possibility that some awkward or unpleasant conversation took place to which Mark Quinn is giving an exaggerated significance. It seems to me that the predominant fact at the time of his release was that he was offered and given a lift home by Sergeant Hannigan, which is to his credit, and does not suggest a major deterioration of relations between them at that stage.

Conclusions

8.134. The Tribunal has reached the following conclusions:

1. Mark Quinn was unlawfully arrested on the 4th of December 1996 by Detective Garda PJ. Keating. When effecting the arrest, Detective Garda Keating was acting on the basis of false information concocted by the Gardaí contained in the statement of Robert Noel McBride as set out in the second report of the Tribunal. In addition, Detective Garda Keating incorrectly proceeded on the basis that he could arrest Mark Quinn as a suspect on reasonable suspicion that he was an accessory after the fact to the murder of the Late Richard Barron, in circumstances in which it was not alleged that Mark Quinn had committed any act in support of the falsely suspected principals Mark McConnell or Frank McBrearty Junior. This was an error in law.
2. No Garda has adequately explained by whom and how it was decided that Mark Quinn should be arrested on the 4th of December 1996. Mr. Keating has given two different accounts of how the arrest came to be made. In the first version, the decision was made at a conference held at Letterkenny Garda Station on the 3rd of December 1996. The decision to arrest Mark Quinn was based on material presented to that conference, and at its conclusion, Detective Garda Keating was directed to carry out the arrest. The second version was that on the afternoon of the 4th of December 1996, Sergeant Hannigan received a direction from Inspector John McGinley that he should arrest Mark Quinn, following which Detective Garda Keating was requested to drive Sergeant Hannigan to Raphoe in order to carry out this arrest. Mr. Keating told the Tribunal that in the course of this drive he was asked to carry out the arrest. No adequate explanation has been offered to the Tribunal on this conflict of evidence. This is entirely unsatisfactory.

3. The Tribunal is satisfied that Mark Quinn’s allegation that he was manhandled at the time of his arrest and placed in the back of a patrol car by Detective Garda Keating is partially accurate. However, by the time Mr. Quinn was placed in the car, I am satisfied that he was sufficiently shocked at the fact of his arrest and the swiftness of his changed circumstances that he did not pose any threat to the two Gardaí on the drive to Letterkenny. He was in a very subdued state. Mark Quinn’s account of his arrest is exaggerated and though the initial approach adopted by Detective Garda Keating involved his being manhandled, I am equally satisfied that this lasted for no more than a few moments and did not involve his being thrust across the bonnet of the car. In the circumstances it was unnecessarily robust. A fully non-confrontational approach would have worked just as well and should have been adopted.
4. The Tribunal is satisfied that the car journey to Letterkenny Station following Mr. Quinn’s arrest was uneventful. It is not satisfied that any reference was made to the case of a former Garda sergeant by Sergeant Hannigan. I am satisfied that there was a conversation in which information was demanded of Mark Quinn and that, in this context, some mention of the presence of Detective Gardaí in Letterkenny from Dublin (whether they were referred to as the “Murder Squad” or otherwise) was made. Mr. Quinn was told that he might have to answer to the Dublin detectives in Letterkenny Station. This was calculated to impress upon Mr. Quinn that he would be better off telling his story to Detective Garda Keating and Sergeant Hannigan and it was implied to him that to be questioned by the Dublin Gardaí would be a deeply unpleasant experience. Both Gardaí believed their dealings with Mr. Quinn were normal. The passage of time may have blunted their memories of what they considered to be an unremarkable event still further.
5. The Tribunal is satisfied that Mark Quinn gave a truthful account of some of the happenings during his detention but that his memory in respect of other alleged events is not wholly reliable, and on a limited number of matters the Tribunal regards his account of events as exaggerated or untrue. Nonetheless, some of the allegations which he made and which were consistently denied over the years by the Gardaí, in particular the showing of photographs of the post-mortem of the Late Richard Barron to him during the course of an interview, were clearly true. Mr. Moylan and Mr. O’Dowd eventually admitted that such an incident occurred.

6. Mark Quinn alleged that his shoes were taken from him and he was left in his stockinged feet throughout the period of his detention. I am satisfied that his shoes were removed from him whenever he was placed in a cell. Given the vagaries of the heating system in Letterkenny Station it was likely that he was cold in the cell. It is also likely that he was interviewed at some stage without his shoes but I am not satisfied that this occurrence and the coldness of the cell were part of an overall ploy to undermine his will or humiliate him. However, it should not have happened.
7. In respect of the allegation that he was “dragged” by Detective Garda Keating from a cell in which he was lodged to an interview room for his first interview, where he was allegedly confronted by Garda O’Dowd and a number of other uniformed Gardaí, who shouted at him and abused him verbally, I am not satisfied that Mark Quinn’s recollection of these events is accurate or reliable. If there was physical contact on his being brought to the first interview by Detective Garda Keating and Sergeant Hannigan, this was minimal and has been greatly exaggerated in his own mind and has taken on proportions much greater than are justified. I do not accept that Mark Quinn was assaulted by Detective Garda Keating as alleged.
8. I am satisfied beyond reasonable doubt that Mark Quinn was shown post-mortem photographs of the Late Richard Barron in the course of an interview conducted by Sergeant Martin Moylan and Garda John O’Dowd. Though his evidence was not completely accurate in respect of all aspects of this encounter, I am satisfied that the photographs were shown to him in the presence of Garda O’Dowd and that Sergeant Moylan pushed one of the photographs up to his face and that he was shouted at during the course of the incident and during the course of the interview by both interviewers.
9. A takeaway meal was obtained for Mark Quinn whilst he was in custody. He alleged that during the course of the second interview and having been shown a photograph of the Late Mr. Barron’s head remarks were made to him to the effect that he should think of the injury to the Late Mr. Barron’s head whilst he was eating the meal. He said that the meal was first produced to him in the interview room and that further similar comments were made to him when he was taken to the cell after the second interview by Garda Leonard. These events were denied by Mr. Leonard, Mr. Moylan and Mr. O’Dowd. I am

satisfied that the remarks of which he complained were made to him when he received the meal. It is likely that he received the meal, referred to as a chicken box, in the interview room and I am satisfied also that the remarks were made on the two occasions which he recounted to the Tribunal. I do not accept the evidence of Mr. Leonard, Mr. Moylan or Mr. O’Dowd in this regard.

10. Efforts were made in the course of the Tribunal’s hearings to discover the reason why these photographs were brought into the interview room. I am satisfied that the purpose was to pressurise Mr. Quinn by shocking him into revealing information or admitting facts which Sergeant Moylan believed to be within his knowledge concerning the death of the Late Mr. Barron. There remains a suspicion that Garda O’Dowd knew of and condoned this approach. Photographs were brought to the interview room at the beginning of the interview and used when this was thought appropriate. There was no intervention or objection to this course taken by Garda O’Dowd. The event was excluded from the notes of interviews in order to provide deniability in respect of its occurrence. The Tribunal is also satisfied on the evidence of Mark Quinn and his wife Donna Quinn that this incident, and the aggressive manner in which it was done, had the most serious traumatic consequences for him which continue. No circumstances existed in this case which would excuse or render acceptable the showing of the post-mortem photographs to Mr. Quinn. The use of these photographs could not be justified and demonstrated a complete disregard for the well-being and dignity of Mr. Quinn and very little respect for the memory of the Late Mr. Barron. It had no legitimate investigative purpose.
11. Mark Quinn further alleged that he had been assaulted by Garda John O’Dowd whilst being interviewed but could not recall whether the incident happened before or after the showing of the post-mortem photographs. He said he was grabbed by the jacket and pulled off the seat and also alleged that a baton which Garda O’Dowd allegedly had down the side of his trousers was partially shown to him in a threatening manner. I am not satisfied on the balance of probabilities that Mark Quinn was assaulted by Garda John O’Dowd as alleged.
12. A similar allegation of assault was made against Detective Garda P.J. Keating by Mr. Quinn. He alleged that he was assaulted by being

pulled by the lapels and raised out of the chair in which he was seated during the course of an interview. At the same time, it was said that Detective Garda Keating was in possession of bullets which he was shaking in his left hand in an intimidatory fashion. It was also alleged that a uniformed Garda at a nearby table was toying with a handgun which was on one occasion pointed in Mr. Quinn's direction during the course of this assault. Though there are some features of the evidence which might tend to support Mark Quinn's account of this event, including serious deficiencies in the note taking by interviewers during the course of his detention, nevertheless I found Mr. Quinn's account of this alleged assault confused and unconvincing. I am not satisfied that this alleged assault occurred.

13. It was also alleged by Mr. Quinn that Sergeant Hannigan brought him into the presence of Detective Garda Padraic Scanlon shortly before his release and that he was verbally abused by Detective Garda Scanlon. This incident appears to be of a somewhat minor nature. He said that he was called "a low life and lower than a snake's belly" when he refused to give a satisfactory, from a Garda point of view, account of events to Detective Garda Scanlon. He had also alleged that Detective Garda Scanlon had threatened to be in every night to his business and to "put you to the street", though this latter allegation was not given in evidence. Mark Quinn had a confused recollection of these events and I cannot be satisfied as a matter of probability that this encounter occurred.
14. Mr. Quinn also alleged that Sergeant Hannigan drove him home after his release and made some remarks to him to the effect that "wait until the boys with wigs in Dublin get at you" when leaving him off in Raphoe and that the Gardaí would get him one way or another. While some awkward or unpleasant conversation may have taken place between Mark Quinn and Sergeant Hannigan in the course of this drive, I am not satisfied that Sergeant Hannigan made the remarks alleged. Whatever remarks may have been made have been exaggerated by Mr. Quinn, for whatever reason.
15. The Tribunal has been utterly dismayed by the attitude of the Gardaí to the taking of notes in the course of the interviewing of Mark Quinn. Note taking is basic to interviewing. The preservation of notes is basic to criminal investigation. Observance of the custody regulations and the timing of the making of notes at the beginning

and conclusion of an interview, are important and basic duties. They were well known by each of the interviewers involved in Mr. Quinn's detention. Exclusion of material from an interview, by choosing not to write down questions or answers, is totally unacceptable. In this context, Detective Garda Scanlon has accepted that he may have made no notes of the interview which he conducted with Sergeant Hannigan. If he made notes he did not preserve them properly. If he did not make notes and Sergeant Hannigan was present, he did nothing to rectify the situation. In respect of other interviews by Detective Garda Keating and Sergeant Hannigan no effort was made to time the notes. Separate notes of interview were not kept in respect of each interview without adequate explanation. This has led me to suspect that what is proffered to the Tribunal as a single set of notes covering three sets of interview separated substantially in time, relates only to the first of the three interviews. In addition, Sergeant Moylan deliberately left the showing of the post-mortem photographs out of the interview notes which he prepared and Garda John O'Dowd acquiesced in this. Having regard to the high importance afforded to note taking in the course of interviews under the custody regulations and by the courts, and the experience of the Gardaí involved, these deficiencies in note taking are completely unacceptable. Indeed, criticisms are made of Mark Quinn's recollection of events by those representing the Gardaí whose duty it was to maintain and preserve an accurate note of the interviews which they conducted. These deficiencies greatly fuelled my suspicion that the Gardaí involved behaved improperly in the course of these interviews. They hampered me in my work in that I did not have an accurate record of what had happened in the course of these interviews. Detective Garda Scanlon, Sergeant Hannigan and Detective Garda Keating were negligent in not ensuring that proper records were kept of these interviews, Sergeant Moylan and Garda O'Dowd were not only negligent but deceitful in the manner in which material was excluded from their note of interview.

CHAPTER 9

THE ARREST AND DETENTION OF KATRINA BROLLY

9.01. This sub-module examines certain issues which arise in connection with the detention of Mrs. Katrina Brolly in Letterkenny Garda Station on the night of the 4th of December 1996 and into the early hours of the 5th of December 1996. Mrs. Brolly was arrested at 20.25 hours on the 4th of December 1996 in the car park of Letterkenny Garda Station by Detective Garda Pat Tague. She had gone to the Garda Station for the purpose of collecting her sister, Mrs. Róisín McConnell, who had been arrested earlier in the day and was due to be released that evening. There is some dispute concerning the arrest of Mrs. Brolly. This will be dealt with later in this chapter.

Issues Arising

9.02. Mrs. Brolly alleges that during her period of detention she was subjected to the following abuse:

- (a) While being interviewed by Detective Garda John Dooley and Sergeant John White, in the presence of Garda Joan Gallagher, she was made to stand in the centre of the interview room, at which time the lights were turned off and post-mortem photographs of the Late Mr. Richard Barron were pushed close to and into her face;
- (b) She was verbally abused by Detective Garda Dooley and Sergeant White by being repeatedly called a “lying bitch” and/or a “lying bastard”;
- (c) That the two named interviewing officers roared and shouted at her during the interviews;
- (d) That her hair was pulled twice by Garda Joan Gallagher, who called her a “lying bastard”;
- (e) That Detective Garda John Dooley threatened to have her children taken into care, and that Sergeant White threatened to have her teenage son “targeted” by the Gardaí;
- (f) She was told that her brother-in-law was having an extra-marital affair;
- (g) She complained that Sergeant Paul Heffernan did nothing when she complained of the abuse to him;
- (h) That Detective Garda Seán Herraghty struck her on the finger with a pen during one interview.

9.03. After her release from custody, Mrs. Brolly consulted her solicitor. He wrote to the

Superintendent at Letterkenny Garda Station detailing her complaints regarding her detention. This letter was acknowledged on behalf of the Superintendent. It was not treated as a formal complaint. When eventually a copy of the letter was forwarded to the Garda Complaints Board a formal investigation commenced and , statements were submitted by Detective Sergeant White, Detective Garda Dooley and Garda Gallagher denying any abuse of Mrs. Brolly.

Denials and Admissions

- 9.04. The Garda denials persisted until the month of October 2005. At that time, Detective Garda John Dooley made a statement to the Tribunal admitting that Katrina Brolly had suffered abuse during his interview of her. On the 25th of March 2006, Detective Sergeant John White furnished a statement to the Tribunal largely agreeing with the statement of Detective Garda Dooley. Garda Joan Gallagher has steadfastly denied that she abused Katrina Brolly in any way, or that there was any abuse of her by Detective Garda Dooley or Sergeant White while she was present in the interview room.
- 9.05. Unfortunately, the disputes in the evidence do not end there. This is due to the fact that while Detective Sergeant White, in his statement and in his evidence, accepted responsibility for his role in the abuse, he alleged that in showing the post-mortem photographs and in pursuing an aggressive line of questioning of Mrs. Brolly, he was acting in furtherance of an order received from either Detective Superintendent Joseph Shelly or Inspector John McGinley that he should use his best endeavours to “break” Mrs. Brolly. He also alleged that Detective Superintendent Shelly had actually suggested that the photographs should be shown to the prisoners as a means of shaking them up, due to the fact that they were proving unco-operative up to that point. Detective Sergeant White further alleged that Inspector McGinley told him not to mention certain telephone records or the post-mortem photographs in his statement to Chief Superintendent Carey, who was investigating Mrs. Brolly’s complaints on behalf of the Garda Complaints Board. These allegations were strenuously denied by the two officers concerned. They maintained that Detective Sergeant White was telling lies in an effort to shift the blame onto them for his own admitted wrongdoing.
- 9.06. Thus, even where admissions have been made, the Tribunal must burrow into a web of allegation and counter-allegation in an effort to uncover the truth.

An Eventful Day

- 9.07. By any standard Katrina Brolly had an eventful day on the 4th of December 1996. It started badly and was to get considerably worse before the day was over. Some

time before 08.30 hours, she received a visit to her home from a friend, Ms. Lorna O'Donnell. Ms. O'Donnell recounted how on her way to work with Mrs. Brolly's sister, Róisín McConnell, they had been stopped by the Gardaí, who arrested Róisín McConnell on suspicion of being an accessory after the fact to the murder of Mr. Richard Barron. Ms. O'Donnell then came across another sister, Ms. Edel Quinn. She told Edel Quinn what had happened. They decided to go out to Róisín McConnell's house to tell her husband, Mark McConnell, what had happened to his wife. When they got there, they found that he too was being arrested. The Gardaí then arrested Edel Quinn. Ms. O'Donnell then went to the home of Katrina Brolly and recounted the story of the three arrests.

9.08. Katrina Brolly gave the following account of what she did on hearing this news:

Yeah. So I had to – I went to get my brother [Gerard] to go up and tell my mother ... We went up to tell Mammy that they had been arrested. ... I phoned then Mark's mother, Hannah McConnell, to see if the baby was down with her and she had the baby but he was still in his pyjamas. They had left, they had taken his bag with all his clothes and anything he needed, they had taken it on to Letterkenny with them. They hadn't left it. So while we were in Hannah's, I think, ... Rosalyn McBrearty had got word that Frank was lifted. ... Then my mother phoned to say that another cousin of mine, Charlotte Peoples, and her husband were lifted. ... So we went back up home again and my aunt Dolly Eaton, Charlotte's mother, was in her house. So I went up to see her and we phoned Letterkenny and I asked – I think it was Martin Leonard I was chatting to about going down to visit them, and he told me to come ahead.¹³⁰⁴

Letterkenny Garda Station

9.09. Katrina Brolly recounted how she went to Letterkenny Garda Station for the purpose of visiting her sister, Edel Quinn. However, on arriving at Letterkenny Garda Station she was informed that Edel Quinn had in fact been detained at Lifford Garda Station. With her on that occasion was Mrs. Catherine Eaton, the mother of Charlotte Peoples. She had gone to Letterkenny Garda Station to see her daughter. However, she was not then allowed to see her. Mrs. Eaton gave evidence in the course of another sub-module that the member in charge, Garda Martin Leonard, treated her in a rude fashion when refusing her the opportunity to visit her daughter. Mr. Leonard denied any rudeness on his part. Katrina Brolly described his manner as laughing when informing her that her sister, Edel Quinn was detained in Lifford. He also denied this.

¹³⁰⁴ Transcript, Day 429, pages 37-38.

- 9.10. Katrina Brolly then proceeded to Lifford Garda Station. There she managed to see her sister Edel Quinn. She described their meeting in the following terms:

Well I got in and – no, I think actually it must have been the first time I realised because I went in and I know there was Guards sitting in the room with Edel and I said to Edel, what’s going on, what’s wrong. She was just looking, she was in pure shock, she says, ah, she says that they told her that she had something to do with the death of Richie Barron. So that was the first time that we actually I think kind of knew what it was all about ... She was pure shocked and dazed like, you know. She just – because at this stage she hadn’t got a solicitor or anything and I think I said to the Guard about a solicitor and I says, does she need one and he said, “oh well, that’s up to you whether you want to get her one or not.”¹³⁰⁵

- 9.11. Mrs. Brolly stated in her evidence that she felt that she had been treated fairly and civilly by the Gardaí at Lifford Garda Station that morning. Mrs. Brolly stated that having left Lifford Garda Station, she returned to her mother’s house to inform her what had happened and, in particular, that she had managed to get to see Edel Quinn, but that she had not been allowed a visit to Róisín McConnell. She stated that she was up and down to her mother a number of times during the day to check that she was alright.

Visit from the Gardaí

- 9.12. Later in the afternoon of the 4th of December 1996, Katrina Brolly went out to her part-time job cleaning offices. This only took her a short period, less than one hour. When she returned home, she found Garda Pádraig Mulligan, Garda Tina Fowley and Detective Garda Noel Jones awaiting her arrival. They wanted to know her account of what she had done later in the evening of the 13th/14th of October 1996, after she left the Town & Country pub. She freely gave a statement to Detective Garda Noel Jones and Garda Tina Fowley. In that statement she gave details of what had occurred at her house in the early hours of the 14th of October 1996 as follows:

Further to my statement of 16th of October 1996 I wish to add that having arrived home on the night of the 13th of October 1996 my husband and I made a cup of tea. Róisín’s wee boy, my sister’s wee boy Dean had been staying here. My own sons and daughter were babysitting him. Dean had been staying all night as his mother and father intended staying here that night. I got Dean into bed with Debbie as she is the only one that he’d cling onto. Eunan and I went to bed together at around 1.00 a.m. When

¹³⁰⁵ Transcript, Day 429, page 40.

I was going to bed I left the key out. I remember Róisín and Mark arrived into the house. I do not know what time. I had been asleep. Róisín came into my room and said Richard Barron had been knocked down. She said Mark had curry and chips. I got up then. We sat and ate them in the kitchen. I have no idea of the time. I had work the next morning at 9.00 so I went off back to bed. Mark had already gone to bed. Róisín had gone to deal with Dean as he had woken up again. Around 8 I woke up the next morning. I had slept sound and had not been disturbed from the time I went back to bed. I was up with the kids. Mark, Róisín and Dean were sleeping in the house and also Eunan, at the time I left for work. I would have left some time around 9.45 a.m. I heard nothing else about the incident in Raphoe. I had been with Mark and Róisín earlier that night. He was wearing a grey/blue tracksuit top with stripes, white, running around the arm. He had the same clothing on when I saw him in my kitchen. Róisín and myself discussed the argument that Mark had had earlier that night with Richard Barron. Róisín was upset, she is of a sensitive nature. There has been no discussion on this topic with Róisín and Mark since. Róisín had said to Mark to phone the hospital to see how Richard Barron was. He said I'm not phoning and left to go to bed. Prior to that Róisín stated that she had heard that he was knocked down by a car and had been badly hurt then, she was leaving the Parting Glass, she had been talking to Frank McBrearty, Senior, she stated that she had heard from him that he was not badly hurt. I expressed it as different rumours.¹³⁰⁶

- 9.13. Katrina Brolly made dinner and then returned to her mother's house to see how she was coping. While she was at the house, with her brother Paul Quinn and his wife Sue Quinn, they received a telephone call from Róisín McConnell informing them that she had been released. Paul Quinn and Katrina Brolly went to Letterkenny Garda Station to collect Róisín McConnell.

The Arrest

- 9.14. In his evidence to the Tribunal on Day 312, Detective Garda Pat Tague stated that his suspicion that Katrina Brolly had acted as an accessory after the fact to the murder of Mr. Richard Barron was based on the following grounds:
- (a) That he had been told by Garda Tina Fowley that in her second statement made on the afternoon of the 4th of December 1996, Katrina Brolly had denied that any telephone call was made to Letterkenny General Hospital from her home in the early hours of the 14th of October 1996; whereas Detective Garda Tague knew from speaking to Mark McConnell earlier in the day that he had made such a call on the night in question. On this

¹³⁰⁶ Tribunal Documents, pages 248-249.

account he thought that Katrina Brolly was telling lies about the making of that telephone call.

- (b) He thought that Katrina Brolly was lying when she said that Mark McConnell and Róisín McConnell had stayed at her home for the entire of the night of 13th/14th October 1996 and were still in her house when she left for work on the following morning. He held the belief that she was lying due to the existence of a Martin Laird statement, which put Mark McConnell coming out of the Town & Country pub at approximately 08.10 hours on the 14th of October 1996 and the statement of Colette McGlinchey, which was an alleged sighting of Róisín McConnell in a somewhat distressed state walking along the road early in the morning of the 14th of October 1996. He stated that he thought that Katrina Brolly was telling lies to cover for the fact that Mark McConnell and Róisín McConnell did not spend the entire of the night in her house.

9.15. In fact, Katrina Brolly's second statement, made on the 4th of December 1996, does not contain an absolute denial that a telephone call was made to Letterkenny General Hospital on the night in question: she simply recounts a conversation with Róisín McConnell about a phone call. However, Detective Garda Tague had not read that statement prior to the arrest. He said that he relied in this regard on what he had been told by Garda Tina Fowley to the effect that the statement contained such a denial.

9.16. In a statement made on the 31st of July 1997, Detective Garda Tague stated that at 20.25 hours on the 4th of December 1996, he had arrested Katrina Brolly under Common Law for felony murder of Richard Barron on the 14th of October 1996, believing her to be an accessory after the fact.¹³⁰⁷ In a later undated statement he set out the grounds for suspecting her of that crime:

Further to my statement of evidence of the 31st of July 1997 in connection with the arrest of Katrina Brolly, Railway Road, Guesthouse End, Raphoe at 8.25 p.m. at New Line Road, Letterkenny, I now wish to add for clarification purposes that when I introduced the prisoner to the member in charge at Letterkenny Garda Station, Garda Martin Leonard, I explained to Garda Leonard that the prisoner Katrina Brolly was with a suspect Mark McConnell after the murder of Richard Barron at Raphoe on 14.10.96. That she harboured the suspect at her house and was aware of the suspect's involvement in the murder. That a phone call was made to Letterkenny General Hospital from her home enquiring about Richard Barron on the night of the murder and that she provided a false alibi for Mark McConnell.¹³⁰⁸

¹³⁰⁷ Tribunal Documents, page 1.

¹³⁰⁸ Tribunal Documents, page 2.

- 9.17. Before giving an account of the actual arrest, it is worth noting that the Tribunal has already found in its second report that the arrest of Katrina Brolly on the 4th of December 1996 was unlawful, due to the fact that it was effectively predicated on the statement of Robert Noel McBride, which was deliberately designed by a Garda to unlawfully found the suspicion necessary for these arrests.
- 9.18. It is common case that Katrina Brolly was arrested in the car park at Letterkenny Garda Station. She described it as follows:

Well, I was sitting in the car and the next thing I seen Tina Fowley coming down but then she went away out around the car. Then she came over to the passenger door and asked me to open it and I opened it and she asked me to step out. That's when Garda Tague, he had come along then, and he arrested me. And I was told ... Yes. Conspiracy after the facts to murder. And I was told not to speak to anybody on the way in. But while we were standing there another Guard came and said that they were to bring me in the back doors.¹³⁰⁹

Conflict Over the Arrest

- 9.19. Detective Garda Pat Tague stated that he had been requested by Garda Tina Fowley to effect the arrest because she was on light duties at that time. He stated that he complied with her request and effected the arrest. Garda Tina Fowley gave a different account. She denied that she had made any such request of Detective Garda Tague. She claimed that on the evening of the 4th of December 1996, she was patrolling the car park of Letterkenny Garda Station to make sure that persons who were being released from custody did not cause any damage to cars parked in the car park. She stated that while doing this tour of the car park, she saw Katrina Brolly sitting in her car. She said that she requested Katrina Brolly to step out of the vehicle so that she could merely talk to her. Garda Fowley said that at that moment Detective Garda Tague appeared and effected the arrest of Mrs. Brolly. She said that both Mrs. Brolly and she were shocked. It is perhaps worthwhile to set out verbatim Garda Fowley's account of the arrest:

At 8.25 p.m. on 4th of December 1996, I left the Garda Station to patrol the front car park. The requirement for this was, I believe that before the release of the prisoners that some vindictive act could be carried out and perhaps a car damaged or maybe a window damaged in the station. I was walking along the car park. I noticed Katrina Brolly and I'm not sure, I think it could have been her brother Paul ... pull in. They parked in an upper car park space. I walked along by the car and in my efforts to ensure that nothing

¹³⁰⁹ Transcript, Day 429, page 52.

happened, I went over and I spoke to Mrs. Brolly. Her car was parked quite close, adjacent to the next car and as you moved, you had to move in sideways to get to where she was seated in it and I did go to her and ask her to step out of the car so I could engage her in conversation. I had just been out at her house and felt that we were on an amiable basis and that this was the best way to diffuse any situation that would arise in the car park ... No, but it was just my attempts at being amiable and friendly towards her, because I had been out in her house and in case there would be some development in the car park, at least there was somebody that I would be on a talking basis to that we could try and diffuse it. As it happens, there was absolutely no issue with her ... As I just spoke to her, Detective Garda Tague came from behind and arrested her for accessory after the fact ... I was aware that members were directed to effect the arrest after her second statement had been handed in. I was of the belief that they had gone to arrest her. I did not know that Detective Garda Tague was going to effect that particular arrest at that particular time. Mrs. Brolly was shocked and I was shocked.¹³¹⁰

- 9.20. The Tribunal does not consider that it is necessary to fully resolve the issue which has arisen between Detective Garda Tague and Garda Fowley in relation to the arrest of Mrs. Brolly. However, it is more likely that the request made to Mrs. Brolly by Garda Fowley to get out of the car was made, not for the purpose of simply speaking to her, but for the purpose of facilitating her arrest.

The Detention of Mrs. Katrina Brolly

- 9.21. The following table shows the salient events as recorded in the custody record in relation to the detention of Katrina Brolly:

Occurrence on the 4th of December 1996	Detail of Occurrence	Comment
20.58 hours	Detective Garda Keating and Garda Lohan interview.	
21.25 hours	Interviewers replaced by Sergeant Heffernan and Detective Garda Jones.	
21.35 hours – 22.10 hours	Consultation with solicitor.	
22.12 hours	Sergeant Heffernan and Detective Garda Jones interview.	

¹³¹⁰ Transcript, Day 437, pages 60-61.

22.45 hours	Taken to toilet by Gardaí Fowley and Gallagher.	
23.15 hours – 23.40 hours	Sergeant Heffernan and Detective Garda Jones interview.	
23.55 hours	Prisoner elects to continue questioning.	
Occurrence on the 5th of December 1996	Detail of Occurrence	Comment
23.40 hours to 00.50 hours	Sergeant White and Detective Garda Dooley interview.	Husband refused visit.
00.50 hours	Rest period – tea given.	
01.35 hours – 02.45 hours	Sergeant Heffernan and Detective Garda Herraghty interview.	
02.20 hours	Period of detention extended by Superintendent Fitzgerald.	
02.45 hours – 04.00 hours	Sergeant White and Detective Garda Dooley interview.	No notes.
03.15 hours	Checked by member in charge.	All in order.
03.45 hours	Checked by member in charge.	All in order.
04.00 hours – 5.30 hours	Sergeant Heffernan and Detective Garda Herraghty interview.	
5.30 hours	Rest period.	
06.15 hours – 07.10 hours	Sergeant Heffernan and Detective Garda Herraghty interview.	
07.10 hours – 08.15 hours	Sergeant White and Detective Garda Dooley interview.	No notes.
08.15 hours	Released.	No complaints.

Visit from Solicitor

9.22. In the custody record it is recorded that between 21.35 hours and 22.10 hours Katrina Brolly received a visit from her solicitor, Mr. James O'Donnell. In his evidence, he stated that on the 4th of December 1996, he found the atmosphere in Letterkenny Garda Station quite hostile. He stated that it was difficult to gain access to see his clients that day. He said that there was nothing specific that he could point to, to show the atmosphere, but that he had a general feeling that there was a hostile and difficult atmosphere in the police station. He stated that when he saw Mrs. Brolly, she was very distressed. She had not anticipated that

she might be arrested. She was concerned for the welfare of her young children. However, she had no specific complaints to make about the Gardaí at that time.

Garda Joan Gallagher

- 9.23. It is necessary to give details of Katrina Brolly's encounters with Garda Joan Gallagher during her period of detention. This is due to the fact that Mrs. Brolly makes a serious allegation against this Garda in respect of an assault which she alleges was perpetrated on her by Garda Gallagher later on towards the end of her period of detention. That allegation has been denied by Garda Gallagher. It appears that Garda Gallagher was called in to Letterkenny Garda Station as a result of a telephone call from Garda Tina Fowley. Garda Gallagher states that this was a request to her by Garda Fowley for replacement due to the fact that Garda Fowley was feeling very tired at that time. Garda Fowley agreed that she did request the attendance of Garda Gallagher, but stated that she had not done so because she was feeling tired, but out of a desire to share the overtime expenses which would be involved in doing an added tour of duty during night-time hours. The Tribunal is not concerned with this conflict of evidence. It is common case that Garda Joan Gallagher came to Letterkenny Garda Station at some time after 22.00 hours.
- 9.24. In the custody record it is noted that at 22.55 hours Garda Gallagher and Garda Fowley accompanied Katrina Brolly to the toilet in Letterkenny Garda Station. Arrangements were made to ensure that Katrina Brolly had all the necessary items to deal with the fact that she was menstruating at that time. She accepts that she had a friendly chat with Garda Gallagher during that initial encounter.
- 9.25. Some time later at approximately 00.50 hours on the 5th of December 1996 Katrina Brolly was given a cup of tea. She was supervised at this time by Garda Gallagher. It was accepted that they had a friendly conversation during that rest period. At that time both women seemed to be getting on well. Certainly, Katrina Brolly had no complaints in relation to her treatment by Garda Gallagher arising out of either of these two periods of interaction with her. It is against this background of apparently cordial relations that the subsequent allegation must be judged.

The Early Interviews

- 9.26. Interviewing of Katrina Brolly commenced at 20.58 hours on the 4th of December 1996, when she was interviewed for 27 minutes by Detective Garda Keating and Garda Georgina Lohan. At the end of that period Detective Garda Keating was replaced by Sergeant Heffernan and two minutes later Garda Lohan was replaced by Detective Garda Jones. Sergeant Heffernan and Detective Garda

Jones continued to interview Mrs. Brolly intermittently up to 23.40 hours. No complaint is made in respect of these interviews.

- 9.27. From 23.40 hours to 00.50 hours Katrina Brolly had her first interview with Sergeant White and Detective Garda Dooley. This was largely uneventful, save for one matter, being the refusal of a visit from Eunan Brolly, her husband, who had attended the station for that purpose.

An Unpleasant Encounter

- 9.28. Eunan Brolly stated that he had telephoned the Garda Station to enquire if he could see his wife. He was told by Sergeant Heffernan that he could come up to the Garda Station. When he arrived, he said that he met Sergeant Heffernan who took him down a corridor and told him to wait. After some short time, Eunan Brolly said that Sergeant Heffernan returned and stated that it was not possible for him to see his wife at that time. He said that Sergeant Heffernan was courteous in his dealings with him. The same could not be said of his encounter with Sergeant White, which he described in the following manner:

I met [Sergeant Heffernan] just at the reception area and we had a brief conversation. He took me through the door and then he brought me to the left and I was heading – just walking. We weren't speaking or nothing, we were just walking and the next thing he was told to wait a minute or I was told to wait a minute. He said to me to take a seat. I sat down and there was a good bit of activity going on. Four or five minutes later he came back to me and he says we'll go this road, back the way we came. And we went back out to the front desk and he explained to me that you couldn't see Katrina and I said "why, what's wrong?" He was explaining to me at that stage and that's when the door opened then and this other guy came out to me. That's when I explained ... [a] big heavy built fella [came out] and he asked me what time I was at work that day and I looked at Paul. He was as shocked as I was, and there was other people in reception, and I said "sure I have already told you what time I was at my work" and he says to me "either you or that lying B up there is telling lies": [referring to] Katrina. And I hadn't a clue. I didn't know what to do. So I got on to him and I says "what's going on, what's going on in here?" and he just never said anything. So we had to wait on Donna and he was still standing beside me for a good bit of that time. [The other Garda] oh aye, he went back ok. Just slammed the door and went back ... Yeah that's the same guy that was up in front of me

*there, John White. I hadn't a clue who he was then, I had never met the man before in my life.*¹³¹¹

- 9.29. In his evidence, Detective Sergeant White stated that he did not have a very clear recollection of Mr. Eunan Brolly coming to the station for the purpose of visiting his wife. However, he accepted that that had happened. He stated that, at that time, they believed that there was a conspiracy among members of the Quinn/McBrearty/Brolly families which was designed to protect the two main suspects, Frank McBrearty Junior and Mark McConnell. He said that he was afraid that Mr. Eunan Brolly might have spoken to some of the other persons who had been released earlier and on that account might communicate, either by words or by body language, to his wife that she should stay quiet and say nothing to the Gardaí. He said that he could not actually remember speaking to Eunan Brolly that evening, but agreed that it was something which he might have done if there was an issue which he wanted resolved and if he was aware that there was somebody who had the answer elsewhere in the station. He stated that it would not be unusual to go out and speak to such a person, hopefully to gain some small bit of information from him. However, he denied that he ever made the comment to the effect, "either you or that lying bastard up there is telling lies". He said that he would not have used such language at the time because it would only cause aggression and he also pointed out that of course Katrina Brolly was not upstairs in the station, she was in a downstairs part of the building. He did accept though that it was possible that he might have said to Eunan Brolly that his wife was lying.¹³¹²
- 9.30. Katrina Brolly stated that having gone out of the room for some moments, Sergeant White returned and said to her that her husband said she was lying, because he had gone to work on the morning of the 14th of October 1996. She said that she replied that that was correct, but that he had not gone to work at the time that she had left for work on that morning. She maintained that both her statement and her answers to the Garda questioning had been correct.
- 9.31. In his evidence, Sergeant Paul Heffernan stated that on the evening of the 4th of December 1996, he had been put onto the telephone to speak to Mr. Eunan Brolly. He stated that Mr. Brolly was quite annoyed because he had not been told that his wife had been arrested. Sergeant Heffernan stated that he was able to reassure him in relation to the arrest and that it was agreed that he should call to the station for the purpose of visiting his wife. Sergeant Heffernan had a recollection of Eunan Brolly attending at the station. He could recall bringing him down the corridor and then going to talk to somebody about Katrina Brolly receiving a visit from her husband. He could not recollect to whom he spoke

¹³¹¹ Transcript, Day 434, pages 93-94.

¹³¹² Transcript, Day 433, pages 88-97.

about this matter. He accepted that Mr. Brolly did not get to see his wife. He also accepted that Mr. Brolly's recollection of the events was more likely to be correct, because for Mr. Brolly this was one single important incident in the night, whereas for Sergeant Heffernan he had many things on his mind at that time. He thought that he may have spoken with a duty officer who in turn may have spoken to one of the Gardaí in the interview room. He had no recollection of going into the interview room himself to consult with Sergeant White, or any other interviewing Gardaí. He said that it was possible that he may have spoken to some of the interviewing Gardaí, but he had no recollection of knocking on the interview room door. He did not have a recollection of being told by anyone in particular that the visit would not be granted. However, he did have a recollection of bringing Eunan Brolly back out to the foyer in the public part of the station and of speaking to him there. He could not recollect who made the decision that Katrina Brolly would not receive a visit. He stated that it was not he who made that decision. Doing the best that he could, all he could say was that it was either the member in charge or Sergeant White who had made that decision. Sergeant Heffernan had no recollection of the exchange between Sergeant White and Eunan Brolly in relation to whether or not his wife was telling lies about Eunan Brolly going to work on the morning of the 14th of October 1996. Sergeant Heffernan stated that he did not inform the member in charge that Eunan Brolly had arrived in the station for the purpose of visiting his wife, nor did he mention the fact that such a visit had been refused when he saw the member in charge later that evening.

- 9.32. In his evidence, Detective Garda Tom Kilcoyne stated that he was unaware of the fact that Eunan Brolly had called to the station that evening to visit his wife. He said that it was quite possible that he was elsewhere in the station supervising the visit of Donna Quinn to her husband Mark Quinn, who was also detained in the station that evening. He stated that nobody told him that such a visit had been refused. It was for this reason that it was not recorded in the custody record.
- 9.33. **There is no mention in the custody record of Katrina Brolly's husband arriving in the station for the purpose of visiting his wife, nor of the refusal to grant this visit. The Tribunal is of the opinion that the decision not to allow that visit was taken by Sergeant White. The member in charge was not made aware of the fact that Eunan Brolly had come to the station for the purpose of visiting his wife, nor did he play any part in the decision to refuse the visit. The procedure that was adopted in relation to the making of this decision was in flagrant disregard of the provisions of the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987. This episode also demonstrates the**

attitude of Sergeant White towards his prisoner in his first interview with her. If there were sound operational reasons why the visit should not have been allowed at that time, these should have been brought to the attention of the member in charge to enable him to make the necessary decision in an informed manner. The resulting decision should then have been recorded in the custody record. This was not done.

- 9.34. The Tribunal is satisfied that the decision was simply taken unilaterally by Sergeant White. The Tribunal is further satisfied that Sergeant Heffernan, while not making the decision to refuse the visit, did not object to Sergeant White dictating that Katrina Brolly should not receive a visit at that time. Sergeant Heffernan struck the Tribunal as a compassionate and conscientious Garda. It is a pity that he did not act as he should have done in respect of this visit.

Extension of Detention

- 9.35. In his statement and in his evidence, Superintendent John Fitzgerald stated that he had had a discussion with Detective Garda Tom Kilcoyne, who was the member in charge, about the ongoing interviewing of Katrina Brolly. He stated that Detective Garda Kilcoyne told him that Katrina Brolly was denying knowledge of the telephone calls that had been made from her house on the morning of the 14th of October 1996 and was holding back on vital information in her possession relating to the movements and actions of persons whom the Gardaí thought were responsible for the murder of Mr. Richard Barron. Mr. Fitzgerald stated that as a result of this conversation he authorised the extension of the detention of Katrina Brolly for a further period of six hours under the provisions of section 4 of the Criminal Justice Act, 1984. He stated that while it was unusual for him not to speak directly to one of the interviewing Gardaí, it sometimes happened that he only consulted with the member in charge. However, he was aware that the member in charge had spoken to members of the interview teams before seeking the authorisation for the extension of the detention from him.
- 9.36. Detective Garda Tom Kilcoyne was the member in charge. He stated that at 02.05 hours he had brought a cup of tea to Katrina Brolly in the interview room. At the same time he had a discussion with Detective Garda Seán Herraghty, who informed him of his opinion that Katrina Brolly was not telling the truth and that an extension of her period of detention was necessary for the proper investigation of the offence. Following on this discussion, Detective Garda Kilcoyne stated that he then contacted Superintendent Fitzgerald by telephone and relayed the request for the extension of the detention. He stated that

Superintendent Fitzgerald granted the necessary authorisation at 02.20 hours and the prisoner was informed of this at 02.25 hours.

- 9.37. Sergeant Heffernan stated that he was not consulted by anyone about the extension of the detention of Katrina Brolly. He thought that this was somewhat unusual, as he was one of the interviewing Gardaí. Mr. Herraghty had no specific recollection of the conversation with Detective Garda Tom Kilcoyne, but accepted that the account given by Detective Garda Kilcoyne was probably correct. However, he denied that he would have sought the extension of the detention of Katrina Brolly on his own initiative. He felt that it would have been a consensus reached among all the interviewing Gardaí and he would merely have been the person bringing this information to the attention of the member in charge. However, he had no recollection of who specifically directed him to approach the member in charge with a request that an authorisation for the extension of the detention be obtained from the superintendent.
- 9.38. Thus, the sequence of events would appear to be that there was a conversation between Detective Garda Herraghty and the member in charge, Detective Garda Kilcoyne, where the progress of the interview was discussed. It seems likely that Detective Garda Herraghty informed Detective Garda Kilcoyne of his belief that Katrina Brolly was not telling the truth and was withholding vital information and that this, in turn, was passed by Detective Garda Kilcoyne to Superintendent Fitzgerald; as a result of which the superintendent authorised the extension of the period of detention of Katrina Brolly.

The Contentious Interviews

- 9.39. Mrs. Brolly had refused the opportunity to have her questioning suspended after midnight. She elected to proceed with the interviews so as to get her period of detention over with as soon as possible. Her period of detention was extended by Superintendent Fitzgerald at 02.20 hours on the 5th of December 1996. The allegations arise out of the interviews which were carried out after this time.
- 9.40. The main interview in respect of which complaint is made was the second interview conducted by Sergeant White and Detective Garda Dooley. That interview commenced at 02.45 hours and concluded at 04.00 hours on the 5th of December 1996. Katrina Brolly gave the following account of what happened to her during that interview:

No they would have taken the photographs in and they threw them, they didn't mention, they just threw them on the table beside me so that I could have a view of them. Then they, one of them actually said – oh, they had the lights turned down – "Richie

Barron will come back to haunt you tonight.” And I said “I wish to God he would, he might tell you what happened to him.” Then I remember Mr. Dooley thought I was too comfortable and he made me stand out in the middle of the floor and they were pushing the photographs into my face and Joan Gallagher was in the room at this stage and the next thing, I can’t remember what question they had asked me, and she said “you lying bastard you,” and she reached for my hair. And I told her to let it go. That was alright. A few minutes later she reached for me again and I said to John White and John Dooley, I said “that’s it.” I says “I thought I was brought in here for questioning, not to be abused.” They kept asking questions and she was standing behind me, over at the side and I wouldn’t answer them. And the next thing White went like that there to her [indicating a nod of the head] ... yeah well it would have been a sign to get out of the room. So then they kind of turned all nice and Dooley pulled the chair up again and said, “oh sit down.” You know, to sit down again. They started questioning again and I remember Dooley pulled like a wee slip of paper out of his pocket. I don’t know, am I allowed to mention the girl’s name. ... It had a named person and asked me did I know her and I said I did. He asked me details about her and he said “did you know that Mark McConnell is riding her,” that was his – and I looked and I started to laugh, he says “do you know what riding is, Katrina?” And I said “I find that hard to believe.” And there was a mention of Mark making a statement too that he had done it and I laughed and he said “what do you find so funny, when will you believe it, will you believe it when he is up in court tomorrow,” I says “no I will believe it whenever it comes out of Mark’s mouth.” And did I know that Mark was abusive to Róisín, that she was terrified of him.¹³¹³

- 9.41. Katrina Brolly stated that while she was standing in the middle of the floor, with the lights turned down or turned off, there was still sufficient light coming into the room from the exterior of the building and also from a window over the door. She stated that it was at this time that Detective Garda Dooley pushed post-mortem photographs of Richard Barron into her face. She stated that it was also at this time that Garda Joan Gallagher had come from behind her and pulled her hair twice and called her a “lying bastard”. She stated that she thought that some of her hair had actually come away in Garda Gallagher’s hand. Her recollection was that when she refused to answer any further questions, due to

¹³¹³ Transcript, Day 429, pages 72-73.

the pulling of her hair, Sergeant White had nodded his head to Garda Joan Gallagher to indicate to her that she should leave, which she did.

- 9.42. Katrina Brolly also stated that at various times she was told that she would spend various periods in prison. At first she was told by Sergeant White and Detective Garda Dooley that she would get fourteen years for her part in covering up the murder of Mr. Barron. Later she stated that she was told by Sergeant Heffernan that she would do seven years. Later again, she said that she was told that she would have to look after her sister Róisín McConnell's child, Dean, while Róisín McConnell was in prison. While the discrepancies in what was said to Katrina Brolly obviously obliterated the effect of the threat in that regard, the Tribunal regards these statements as an underhand method of placing the prisoner under maximum possible pressure.
- 9.43. Katrina Brolly was adamant that Garda Joan Gallagher was present when the lights were turned off or dimmed, and while the post-mortem photographs were shown to her by Detective Garda Dooley. Katrina Brolly's recollection was that Garda Gallagher walked over from the filing cabinet to a position behind her, from where she pulled her hair. Detective Garda Dooley's recollection was that Garda Joan Gallagher got up from her seat, walked around the table and pulled Mrs. Brolly's hair. This may seem a somewhat trivial discrepancy, but for the fact that Garda Joan Gallagher denies walking over to Katrina Brolly, or pulling her hair at any stage during the interview.
- 9.44. Katrina Brolly's recollection was that Garda Joan Gallagher left the interview room prior to the termination of the interview due to the fact that she had received an indication from Sergeant White that she should leave the room. However, all three Gardaí were of the view that they left the interview room together at the conclusion of the interview at 04.00 hours. The Garda response to this allegation will be examined in detail later in this section.

The Following Interview

- 9.45. On the conclusion of the second interview by Sergeant White and Detective Garda Dooley at 04.00 hours, Sergeant Heffernan entered the room for the purpose of commencing a further interview. He was slightly ahead of his partner, Detective Garda Seán Herraghty. Katrina Brolly stated that she told Sergeant Heffernan at that time that she had not come into the Garda Station to be abused, that she had not received a visit from her husband, nor had she been allowed to make a telephone call as she had requested and that her hair had been pulled. She stated that she became somewhat agitated and pointed her finger at Sergeant Heffernan, at which time she alleges that Detective Garda Seán Herraghty struck her finger with his biro, stating that she should not act like

that towards Sergeant Heffernan. She went on to state that Sergeant Heffernan's response was to shrug his shoulders and say that he had not abused her in any way. The interview then proceeded in a normal fashion.

9.46. Sergeant Heffernan stated that he did have a recollection of Katrina Brolly stating that she had not come to the Garda Station to be abused. However, he did not have a recollection of her being any more specific in her complaints. In particular, he did not remember her saying that her hair had been pulled. He stated that he interpreted her remark not as a complaint that somebody else had abused her, but as an accusation directed against him that he should not abuse her. He accepted that he got defensive when that remark had been made and replied to her that he had not abused her or words to that effect. He denied that Detective Garda Herraghty had struck her finger, or tapped her finger, with his biro.¹³¹⁴ Sergeant Heffernan accepted that he might have told Katrina Brolly that she could get seven years for involvement in such a serious crime. He stated that he would have said this in an attempt to refocus her attention on the interview and to impress upon her the seriousness of the matter at hand.

9.47. In his evidence, Mr. Seán Herraghty, who has since retired from An Garda Síochána, stated that while he did recall Katrina Brolly making some comment to them about not coming into the Garda Station to be abused, he did not think that she was making any specific complaint about any particular matter. He accepted that it may have been a misunderstanding on his part and on the part of Sergeant Heffernan as to what she was stating to them. However, he did not take it as a formal complaint about any specific abuse. He denied that there was any mention of hair pulling. He stated that he had no recollection at all of ever tapping her with his biro to stop her pointing at Sergeant Heffernan. He said that this was not something that he would do even though he was used to doing interviews in a fairly intense manner. He accepted that during the course of the interview there may have been some reference to the likely penalty she would get if convicted of the crime for which she had been arrested.

Analysis

9.48. **Having heard the relevant witnesses, the Tribunal is of the view that while Katrina Brolly did make some complaint to Sergeant Heffernan, it was more likely to have been a statement to the effect that she had not come into the Garda Station to be abused, followed by a remonstrance that she had not received the visit from her husband, nor had the opportunity to make the telephone call. The Tribunal does not find that a formal complaint was made by Katrina Brolly to Sergeant Heffernan. It may well have been that these two Gardaí misinterpreted what she was actually**

¹³¹⁴ Transcript, Day 436, pages 55-62.

saying to them at that time. Accordingly, the Tribunal does not criticise Sergeant Heffernan for failing to act upon the statement or comment made by Katrina Brolly when he entered the room at 04.00 hours on the 5th of December 1996.

- 9.49. While neither of the Gardaí concerned can recall any reference to her not being allowed to have her telephone call, the Tribunal accepts that she may have mentioned this at the time that she made her complaint to Sergeant Heffernan. However, her initial request for a telephone call had been prompted by her desire to see how her husband and children were getting on. In the interim, her husband, Eunan Brolly, had arrived at the station and although he had not been allowed to visit his wife, she was aware that he had been in the station and therefore would have known that her family knew of her arrest and that her children would have been looked after by her husband. In these circumstances, one can understand how the telephone call became overlooked and how a complaint in that regard may not have been seen as significant by the Gardaí to whom it was made. **The Tribunal is satisfied that there was no deliberate decision by any of the Gardaí to deny Mrs. Brolly the opportunity to make a telephone call to her family. While she did raise it in her comments to Sergeant Heffernan at 04.00 hours, the Tribunal is satisfied that Mrs. Brolly was not making a big issue of it at that time.**
- 9.50. In relation to the finger striking allegation, the Tribunal accepts the account given in evidence by Katrina Brolly. She is an honest witness doing her best to give an accurate account. The finger incident has to be seen not as a deliberate and violent assault, but as a reflex action on the part of Detective Garda Herraghty which was designed to show the prisoner who was in control of the interview process. While it does constitute a technical assault, the Tribunal does not think that in a realistic sense it should be seen as an assault on the prisoner.

The Final Interview

- 9.51. Katrina Brolly described the following exchange between Detective Garda Dooley and her in the last interview from 07.10 to 08.15 hours:

That would have been the one that I told you, they put me sitting over at the side of the wall, I wasn't at the table and that I was smoking a cigarette and John White pulled it out of my hand and says, oh, he says "I can't stand smoking" and he put my cigarette out but he stood and lit one up beside me himself. Then one of them said, "oh, we'll get your friend back in again, we'll get Joan

back in to you again.” And she came in and she was standing and she made a remark that she says “oh I know what you are going to do, you are going to write a book.”¹³¹⁵

- 9.52. There is a conflict of evidence in relation to that account. Garda Gallagher says that she was not in the interview room at any stage during this last interview between Detective Garda Dooley and Sergeant White and Katrina Brolly. Detective Garda Dooley could not recall any threat being made by him to bring back Katrina Brolly’s friend, Joan, nor of Garda Gallagher actually coming into the interview room or of making any reference to writing a book.¹³¹⁶
- 9.53. Katrina Brolly also alleged that Detective Garda Dooley threatened that her children would be taken from her. He said this on account of the fact that her teenage son had looked after Róisín McConnell’s young child, Dean, on the night of the 13th of October 1996, until the Brollys returned home from the Town & Country pub. Detective Garda Dooley accepted in evidence that he did state to her that her children might be taken into care on this account.

The Release

- 9.54. According to the custody record, Katrina Brolly was released at 08.15 hours on the 5th of December 1996. The last entry in the custody record indicates that Katrina Brolly was released with no complaints. Immediately beneath that appears the signature of Katrina Brolly. In evidence, Katrina Brolly accepted that this was her signature. She could not explain why she had signed the custody record indicating that she had no complaints, when in fact she had considerable complaints about her treatment during the second interview with Sergeant White and Detective Garda Dooley. However, it will be noted later on in this section that on the following day she told her solicitor that it had been indicated to her that she would not be released unless she signed the custody record stating that she had no complaints. In a letter dated the 10th of December 1996 sent by her solicitor to the Superintendent at Letterkenny Garda Station, Mr. James O’Donnell stated as follows:

We are further instructed by our client that she was told that she would not be released unless she signed a form stating that she had no complaints regarding her detention. Our client has instructed us that she only signed this form to secure her immediate release. She instructs us that she wishes to make an official complaint in relation to the treatment she received by a female member of the Garda Síochána during her detention.¹³¹⁷

¹³¹⁵ Transcript, Day 429, page 104.

¹³¹⁶ Transcript, Day 430, page 176.

¹³¹⁷ Tribunal Documents, page 209.

The Next Day

9.55. On the day of her release, having returned home to see her children and having rested for a few hours, Katrina Brolly accompanied her sister Róisín McConnell and her brother-in-law, Mark McConnell, to see their solicitor, Mr. James O'Donnell. In evidence, he recollected that Katrina Brolly informed him at that consultation that photographs showing the body of the Late Mr. Richard Barron had been flashed in front of her face. She also complained that a Ban Garda whose name was Joan, and who was based in Glenties Garda Station, pulled her hair twice. Katrina Brolly told him that she asked her to let it go and then asked her to leave the room. She described the female Garda as having short curly dark hair. She said that the Gardaí indicated to her that they had a tape of a telephone call made to the hospital from her home. They also said that if she did not co-operate and tell the truth her mother would be taken into custody. Mr. O'Donnell also stated that Katrina Brolly said that it was put to her during her detention that her brother-in-law, Mark McConnell, was having an extra marital affair with a named woman. It was also put to her that Frank McBrearty, Senior was bribing her to stay silent.¹³¹⁸ Mr. O'Donnell made discovery to the Tribunal of his notes of that consultation. These confirmed the nature of the complaints made to him that day.¹³¹⁹

9.56. Mr. O'Donnell stated that Katrina Brolly was in a very distressed state at the time of his second consultation with her on the 5th of December 1996. As a result of that consultation he wrote a letter to the Superintendent at Letterkenny Garda Station on the 10th of December 1996 as follows:

Re: Detention of Katrina Brolly on 4th December 1996

Dear Superintendent,

We act for Katrina Brolly, who has instructed us that she was arrested and detained pursuant to Section 4 of the Criminal Justice Act, 1984 at approximately 8.15 p.m. in the car park of Letterkenny Garda Station on the 4th of December.

Our client instructs us that during the course of her detention she was repeatedly harassed, abused and physically assaulted on two occasions when her hair was pulled by a female Garda. Our client instructs us that during the course of her questioning this Garda pulled our client's hair out while she was being questioned by other members of the Gardaí.

We would be grateful if you would now furnish us with all of the statements signed by Katrina Brolly.

¹³¹⁸ Transcript, Day 435, pages 30-35.

¹³¹⁹ Tribunal Documents, pages 293-294.

We are further instructed by our client that she was told that she would not be released unless she signed a form stating that she had no complaints regarding her detention. Our client has instructed us that she only signed this form to secure her immediate release. She instructs us that she wishes to make an official complaint in relation to the treatment she received by a female member of the Garda Síochána during her detention. We look forward to hearing from you.¹³²⁰

- 9.57. It appears that the letter from the solicitor was simply acknowledged on behalf of the Superintendent. It was not until some months later, in October 1997, that a copy of the letter was forwarded as a formal complaint to the Garda Complaints Board. It took some months for an investigating officer to be appointed. Eventually, Chief Superintendent Carey took a statement from Katrina Brolly on the 10th of February 1998. In that statement, she details the complaints that she had to make about her period of detention at Letterkenny Garda Station. The critical portion of her statement is as follows:

After my time being extended I had John White and John Dooley in to question me. Joan Gallagher was also in the room. John Dooley told me to stand out in the middle of the floor. The lights were turned down low. They had photographs of Richie Barron's body. John Dooley rubbed them against my face. John White said, "We know it wasn't Mark done it that it was young Frank". Joan Gallagher said, "You lying bastard" and she caught me by the hair of my head. A few minutes later she reached for me again by the hair of my head. I said, "No more" to John White. "I came in to answer questions, not to be abused." They continued to ask me questions but I wouldn't answer them. Joan Gallagher then left the room. They gave me a seat and told me to sit down. One of them, either John White or John Dooley, told me they were going to take my wains away from me. They said they were going to lift my mother. They would put her into a cell and take off her shoes. John White said he would have to get my husband and he was a cocky little bastard. John Dooley asked me did I know a [name redacted]. He seemed to pull a piece of paper from his pocket and looked at the name. He asked me did I know what riding is. He said, "Do you know that Mark is riding her." He told me that Mark was battering Róisín. Both White and Dooley continued to verbally abuse me. They asked me if I was having an affair. They asked me if Frank McBrearty was bribing me and if that was why I was afraid to talk. Around 8.00 a.m. the next morning I was released. Garda Martin Leonard was back on duty when I was released. He was in charge at that time. He asked me if I had any complaints and I said, "No". Earlier I had told Paul Herring [sic] and his

¹³²⁰ Tribunal Documents, page 209.

partner about the abuse. Garda Herring [sic] said “Did I touch you”. Garda Herring [sic] didn’t abuse me or touch me. I didn’t see any point in making a complaint. I left the station and I was collected by my husband. At 3.00 p.m. on the 5th of December 1996 I went to see my solicitor, James O’Donnell. I told him that I had my hair pulled in a Garda Station. I told him it was a female member and that her name was Joan. I didn’t know her second name at that time. I don’t know if I told my solicitor that her name was Joan or not. I told him that I was verbally abused in the Garda Station and that the photographs were rubbed in my face. I cannot remember if I told the solicitor the names of the Gardaí who abused me. This statement has been read over to me. It is correct.¹³²¹

Garda Denial

- 9.58. Detective Sergeant White, Detective Garda Dooley and Garda Gallagher each made statements to Chief Superintendent Carey. Each of them denied that there had been any abuse of Katrina Brolly. Garda Joan Gallagher was the first to make her statement, which was made on the 1st of April 1998. The salient part of her statement is as follows:

During the time that I was present in Letterkenny Station on 4th/5th December 1996, I did not witness any ill treatment of Katrina Brolly and I am not aware she was harassed or abused in any way. I certainly did not pull her hair. Katrina Brolly made no complaint to me regarding her treatment. I spoke to her on several occasions during that night when I was checking on her welfare and bringing her tea. I wasn’t present when she was released. ... I did not mistreat Katrina Brolly while she was in Letterkenny Garda Station. The allegations made by Billy Flynn and V.P. McMullin & Sons on her behalf are totally unfounded. They are causing me immense distress and have had a negative impact on my professional and private life. I have been a member of An Garda Síochána for sixteen years now and this is the first time that a complaint has been made against me. I attach copies of documents sent to me by Billy Flynn plus statements made in connection with court proceedings against him. I didn’t make any statement to Katrina Brolly indicating that she wouldn’t be released from custody unless she signed a form stating that she had no complaints.¹³²²

- 9.59. On the 17th of April 1998, Detective Garda John Dooley made a statement in response to allegations that had been made by both Róisín McConnell and Katrina Brolly. The salient portion of his statement is as follows:

Both prisoners were treated in accordance with the regulations governing the treatment of persons in custody at all times during the interviews. ... I

¹³²¹ Tribunal Documents, pages 151-152.

¹³²² Tribunal Documents, pages 102-103.

did not harass or assault Mrs. Brolly at any time during the course of the interviews. Her hair was not pulled at any time while I was present in the interview room. I acted in accordance with the regulations at all times in the course of interviewing Róisín McConnell and Katrina Brolly. The allegations as stated in Mr. McMullin's correspondence dated 10th and 23rd December 1996 are without foundation and I vehemently refute them. On 16th of February 1998 I received correspondence from Mr. William G. Flynn, whom I understand is a Private Investigator acting on behalf of Mrs. McConnell and Mrs. Brolly. I forwarded a copy of Mr. Flynn's letter to the District Officer, Glenties on 17th February 1998. I found the allegations and remarks contained in Mr. Flynn's correspondence contemptible and most hurtful to me personally. I put this matter in the hands of my solicitor, Mr. Patrick J. Sweeney, Dungloe. I attach a copy of all such correspondence.¹³²³

- 9.60. Finally on the 2nd of June 1998, Detective Sergeant White made his statement denying the allegations:

In relation to the complaint made by Mrs. Katrina Brolly, no. B2/CD 1031/97, concerning her detention on 4/12/1996 at Letterkenny Garda Station, I wish to state that I did interview Mrs. Brolly on that date accompanied by D/Garda John Dooley and Garda Joan Gallagher. I was aware that Mrs. Brolly was being detained under the provisions of Section 4 of the Criminal Justice Act, 1984 on suspicion of being involved in the murder of Richard Barron on 14.10.1996 as an accessory after the fact.

Mrs. Brolly was treated in accordance with the Garda custody regulations, 1987. I did not mistreat Mrs. Brolly in any way either physically or mentally. I can state quite clearly that nobody else mistreated Mrs. Brolly in any way either physically or mentally while she was in my presence. During her period of detention I made written memos of interview of our conversations with Mrs. Brolly. She did not at any stage during our interviews indicate that she was unhappy with the way in which she was treated while in the interview room.

I understand that Mrs. Brolly had claimed that some Gardaí threatened to take her "wains" or children away from her and that they threatened to have her mother arrested. Both of these accusations are completely false and malicious. I did not ever threaten to do either and neither did any other member in my presence. I was not aware until several months after her detention that Mrs. Brolly had any problem with her detention on 4.12.1996 or the way in which she was treated.

¹³²³ Tribunal Documents, pages 44-45.

I was extremely surprised to become aware of this as I was of the opinion that we had parted company on good terms despite the fact that she had been a prisoner. From perusal of Mr. McMullin's letter of 10.12.1996 I see that Mrs. Brolly later complained that her hair had been pulled by a female Garda during questioning. I can state with certainty that Mrs. Brolly's hair was not pulled and that she was not mistreated in any way while I was present in the interview room with her. I found that Garda Gallagher treated Mrs. Brolly with respect as did D/Garda Dooley and myself throughout the interviews. I also understand that Mrs. Brolly states that she was informed that she would not be released unless she signed a form stating that she did not have any complaints to make. This is ludicrous. Mrs. Brolly left Letterkenny Garda Station after willingly signing a form stating that she did not have any complaints because she could not have had any possible complaint regarding her treatment. As I previously stated she appeared to me to be on good terms with the members at the time of her release.¹³²⁴

- 9.61. Matters did not progress beyond the making of these statements due to the fact that in the month of May 1999, the Garda Complaints Board decided to defer consideration of any of the complaints submitted by members of the Quinn, McBrearty and McConnell families, including the complaint by Katrina Brolly, pending the outcome of criminal proceedings then pending in the District Court and the outcome of the investigation then being conducted by Assistant Commissioner Kevin Carty. When nothing further happened by the months of October and November 2001, all the complaints were formally withdrawn by Mr. Ken Smyth, solicitor, acting on behalf of the various complainants. Thus, the actual complaint submitted by Katrina Brolly was never adjudicated upon in a substantive manner by the Garda Complaints Board.

A Change of Heart by Detective Garda Dooley

- 9.62. During the summer of 2005, Detective Garda John Dooley had a change of heart. He decided, apparently, that it was time to tell the truth. He consulted with a friend and colleague, Chief Superintendent Manley and also with his own superintendent in Glenties, Superintendent Terry McGinn. He indicated to both of these officers that he wanted to make a statement about something that was worrying him. He did not tell them exactly what it was that he was going to say in that statement. Both of the officers encouraged him to take the course of telling the truth. Detective Garda Dooley also received considerable support from the Garda Welfare Officer, Garda Brendan Flynn.
- 9.63. On the 14th of October 2005, Detective Garda John Dooley submitted a detailed

¹³²⁴ Tribunal Documents, pages 67-68.

statement wherein he outlined how he, Sergeant White and Garda Joan Gallagher had abused Katrina Brolly in varying ways during her detention. The statement also contained admissions in relation to the abuse of another prisoner, Mrs. Róisín McConnell. The parts of that statement that are relevant to Katrina Brolly are as follows:

At 02.45 a.m. I again entered the interview room where Katrina Brolly was present. I was accompanied by Sergeant White and Garda Joan Gallagher. I cautioned Mrs. Brolly that she was not obliged to say anything unless she wished to do so but whatever she said would be taken down in writing and may be given in evidence. Sergeant White and I questioned the prisoner in relation to what had occurred in her home on the morning of 14th October 1996. The interview consisted mainly of repeating questions to Katrina Brolly and her replying with similar answers. I told Katrina Brolly to stand up because I believed she was too comfortable and the interview was going nowhere. She stood up as directed. Sergeant White still had the album of post-mortem photographs of Richie Barron's post-mortem examination. I showed these photographs to Katrina Brolly but I certainly did not rub them in her face. The showing of these photographs to Katrina Brolly only lasted a few minutes. I recall that the lights were switched off during this time - however the outside lighting provided reasonable light within the room. I believe that I switched the lights on and off but I am not a hundred per cent sure about this. The interview continued but I cannot remember the specific questions asked. I do remember that Katrina Brolly continued to deny the fact that phone calls had been made from her home by her sister, Róisín McConnell on the morning of 14th of October 1996. At one stage during the interview Garda Joan Gallagher left her own seat and walked around the other side of the table behind Katrina Brolly and pulled her hair twice and called Katrina Brolly a "lying bitch" or words to that effect. Katrina Brolly became annoyed and said, "I am not here to have my hair pulled." I offered Katrina Brolly a seat and asked her to sit down. Sergeant White and I continued to question her. At this stage I was aware that Frank McBrearty, Junior had made a statement admitting to the murder of Richie Barron at the time the interview with Katrina Brolly took place I believed that Katrina Brolly had knowledge of this but was refusing to tell the truth. The reason I showed the photographs was to shock her into telling the truth. I still had the scrap of paper on which I had written the name of [name redacted] and I took it from my pocket and asked Katrina Brolly if she was aware that Mark McConnell was "riding" [name redacted]. She said she had no knowledge

of the affair. Sergeant White at one stage reminded Katrina Brolly that if she did not tell the truth she would be forced to spend a number of years in prison. Sergeant White also informed Katrina Brolly that we had reason to believe that Frank McBrearty, Junior had murdered Richie Barron and that Mark McConnell witnessed the murder. I admit that both Sergeant White and I uttered profanities during our interview with Katrina Brolly. Both Sergeant White and I asked Mrs. Brolly if she was afraid to talk because the McBreartys had bribed or intimidated her into staying silent. During the course of the interview I was extremely tired and I genuinely cannot remember the specific details of the questions we asked Katrina Brolly. At 04.00 a.m. Sergeant White, Garda Gallagher and I left the interview room and Sergeant Heffernan and D/Garda Herraghty entered the interview room. Sergeant White and I went to the kitchen and I dozed on and off on a chair with my head on the table. Due to fatigue and the lack of food and heat I was unable to sleep for any reasonable period. At 07.10 a.m. Sergeant White and I entered the interview room and again questioned Katrina Brolly in relation to the events which took place in her home on the morning of 14th October 1996. We were aware that on the night of the 13th October 1996 Katrina Brolly had sent her eldest son home with her youngest child (both children were minors) to enable her to stay out and continue socialising in Town and Country bar. I told Katrina Brolly that if she did not tell the truth I would report her to Social Services who would more than likely take her children away from her for being an unfit mother. I said this to Katrina Brolly in order to put pressure on her to tell the truth. At 08.15 a.m. Katrina Brolly was released from custody. I realised that there was no written record made of the interviews conducted by Sergeant White and I for the period 02.45 a.m. to 04.00 a.m. on 5th December 1996 and 07.10 a.m. to 08.15 a.m. on 5th December 1996. I admit that this was a breach of procedure on our behalf and for that I am sorry. The interviews consisted of repeating questions to Katrina Brolly and her replying with similar answers. I was on duty for over twenty-five hours without a rest period and I was exhausted and suffering from chronic fatigue for the greater part of Katrina Brolly's interviews. I had to wash my face and hands repeatedly during the night in order to stay awake and keep myself as alert as possible. This is the principal reason why there are no written memos of interviews for the said periods. I acknowledge that this was a blatant breach of procedure on our behalf and I deeply regret it. This was my last involvement in the investigation into the death of Richie Barron. ... I admit that I showed the Late Richie Barron's post-mortem photographs to Katrina Brolly of my own accord and

that I switched the lights in the interview room on and off while doing so in order to persuade Katrina Brolly to come clean and tell the truth. I admit that I threatened to report Katrina Brolly to Social Services re: the care of her children in order to coerce her into telling the truth. I admit that Sergeant White and I used profanities and spoke in raised voices during our interview sessions with Katrina Brolly. I admit that Garda Joan Gallagher pulled Katrina Brolly's hair on two occasions during the second interview and called her a "lying bitch" or words to that effect. I admit that Sergeant White and I informed Katrina Brolly that she would spend several years in prison if she did not come clean and tell the truth about the phone calls made from her home on 13th/14th October 1996. I admit that I asked Katrina Brolly if the McBrearty family had threatened her and/or bribed her not to tell the truth. I accept that a written record of interview was not made in relation to the second and third interviews taken with Katrina Brolly.

I realise that the custody regulations were breached in the course of interviewing both Katrina Brolly and Róisín McConnell. I deeply regret being a party to these breaches and realise that I should not have been involved in the breaches in the first place and secondly, I should not have denied such breaches. It is still my view that both prisoners told lies or at least were less than forthcoming during these interviews. However, I wish to apologise for my own behaviour.¹³²⁵

Detective Sergeant White's Response

- 9.64. When Detective Garda Dooley's statement of the 14th of October 2005 was served on the solicitors acting for Detective Sergeant White in March 2006, they sent the following letter to the Tribunal on the 13th of March 2006:

Dear Sirs,

We are in receipt of your letter enclosing the statement of John Dooley.

The allegations involving our client are totally denied. Would you please let us have copies of any statements made by John Dooley in relation to the civil actions instituted by Mrs. McConnell and Mrs. Brolly to enable our client submit his statement.

We await your earliest advices.

Yours faithfully,

PA Dorrian & Company¹³²⁶

¹³²⁵ Tribunal Documents, pages 237-241.

¹³²⁶ Tribunal Documents, page 282.

9.65. However, on the 25th of March 2006, Detective Sergeant White submitted a statement wherein he largely agreed with the statement of Detective Garda John Dooley. Most of his statement deals with the allegations of mistreatment made by Róisín McConnell. The salient parts of his statement in respect of the detention of Katrina Brolly are as follows:

I broadly agree with the statement made by Garda Dooley. I do, however, take issue with some of the detail and emphasis contained in his statement. Similarly, I broadly agree with the statements of Róisín McConnell and Katrina Brolly.

No proper notes were kept regarding some of the interviews of Róisín McConnell and Katrina Brolly. I cannot recall in detail of the words and exchanges which passed between us but I agree that they were broadly as outlined by these two ladies. I acknowledge that the language used was abusive, excessive and inappropriate. It is conceded that the custody regulations both in the letter and spirit were breached. I fully accept that my conduct in this regard fell far below any acceptable standard.

I agree that the following incidents occurred:

Photographs of Richard Barron, deceased were shown to the prisoners.

Allegations of infidelity by Mark McConnell were made to Mrs. McConnell and Mrs. Brolly.

It was suggested to the prisoners that Frank McBrearty was the main focus of our investigation.

Mrs. Brolly was denied access to her husband.

A chair was roughly skidded across the interview room.

Intemperate and insulting language was used.

Lights were switched on and off.

Information was deliberately kept out of the interview notes.

The reference to Mrs. McConnell's father's grave is correct.

I made a false statement to Chief Supt Carey on 2nd June 1998.

With regard to Garda Dooley's statement, I wish to state the following:

The photographs were present and shown to the prisoners...

... It was suggested to Mrs. Brolly that she was being bribed by the McBreartys and that she was scared of them.

I categorically deny that I assaulted or laid hands on Róisín McConnell or

Katrina Brolly ... I deny that I threatened to have Mrs. Brolly's mother arrested ...

... In relation to Katrina Brolly the pattern of questioning was similar to that of Róisín McConnell and my attitude was not any different. I accept I was the senior officer present at the interviews and that a great proportion of the responsibility of what occurred rests with me.

Garda Dooley in his statement states that Garda Gallagher pulled Mrs. Brolly's hair. I did not see this happening. I have no reason to doubt Garda Dooley's version of events.

During the interviews with Mrs. Brolly I was aware that there was a statement of admission made by Frank McBrearty, Junior to the murder of Richard Barron. This greatly affected my approach to these interviews.

I admit that I made a false statement to Chief Supt Carey. I acknowledge that this was wrong.

The statement that I prepared for Chief Supt. Carey was two months after Garda Dooley submitted his statement and he had sent a photocopy of his handwritten statement to me prior to the making of my own statement. My explanation for my false statement is that it was the easiest way out of the crisis I found myself in. Also, I did not wish to do down my colleague or myself. I refused to make any further statements as I was uncomfortable with what I had done and did not want to compound this wrong. I most certainly did not ask Garda Dooley to make a false statement ...

... I acknowledge that my conduct in these matters falls far short of an acceptable standard. Despite this, however, I categorically deny spitting at or breaking wind in the face of Róisín McConnell or assaulting her. I must admit to making a false statement. I have found this to be extremely worrying and it is utterly regretted.

I again wish to express my sincere regret for the stress and pain caused to either Mrs. McConnell or Mrs. Brolly due to my conduct in the course of their questioning. I acknowledge that their treatment was in breach of the custody regulations and their human rights. I fully acknowledge that each of them is blameless in relation to the investigation and the treatment of them by me is inexcusable.

Dated the 25th day of March 2006

John White¹³²⁷

¹³²⁷ Tribunal Documents, pages 256-265.

Garda Joan Gallagher's Response

9.66. Also in the month of March 2006, Garda Joan Gallagher issued her response to the statement which had been furnished by Detective Garda John Dooley. In the early part of her statement, she stated that she had been attested to An Garda Síochána on the 27th of April 1982. She then outlined various posts that she had held within the Donegal Division ending up in November 2005 when she was appointed as the Divisional Criminal Intelligence Officer for the Donegal Division and was transferred to Letterkenny Garda Station. She then went on to describe how she had been asked to come into Letterkenny Garda Station on the 4th of December 1996 by Garda Tina Fowley. She described how she was introduced to Katrina Brolly by Garda Fowley at 22.55 hours. She stated that her function was to attend to any needs that Mrs. Brolly might have during her period of detention, such as to escort her to the bathroom if needed. She then came to deal with the critical interview period:

At 2.45 a.m. on 5th of December 1996 I entered the interview room at Letterkenny Garda Station along with Sergeant John White and Garda John Dooley. Ms. Brolly was present in the interview room. Garda Dooley cautioned Ms. Brolly and thereafter he and Sergeant White questioned her about events that occurred in her home on the morning of the 14th of October 1996. I took no part in the interview, nor did I take any notes of what was being said. As previously stated I did not have any detailed knowledge of the matters under inquiry and I did not feel that I had any role to play in the questioning of Ms. Brolly. I was aware that Sergeant White and Garda Dooley had detailed knowledge of the matters under investigation and I was of the view that they were the appropriate people to ask any questions of Ms. Brolly.

I cannot give a detailed account of what questions were being asked of Ms. Brolly, however, I do recall that she was asked questions about a telephone call from her home to Letterkenny General Hospital. I also recall her being asked if she was intimidated by the McBreartys.

I recall being told that Mark McConnell was allegedly having an extra marital affair but I am not sure if this was put to Ms. Brolly during the course of the interview. I also recall there being some discussion about Ms. Brolly leaving her children alone while she went out socialising but again I am not sure if this was in conversation with Garda Dooley, or if it was mentioned during the interview with Ms. Brolly.

During the period that I was in the interview room the member in charge, Garda Kilcoyne, entered on two occasions to check on Ms. Brolly. She did

not make any complaint on either occasion.

Garda Dooley has alleged that the following incidents occurred during the interview and while I was present:

1. He, Garda Dooley told Ms. Brolly to stand up and that she stood up as directed.

I have no recollection of Ms. Brolly being directed to stand up and I cannot recall whether she did so or not.

2. That Ms. Brolly was shown post mortem photographs of the Late Richard Barron.

I do not recall any photographs being shown to Ms Brolly. To the best of my knowledge I have never seen these photographs. I understand that they are very graphic and I would remember if I had seen them. I would also be unhappy about such an incident and I am satisfied that if it happened I would have reported it.

3. That the lights were switched on and off during the interviews.

I have no recollection of the lights being switched on and off. Such an event would be most unusual and I am sure that I would recall it if it had happened. I am satisfied that no one switched the lights on and off while I was present.

4. That I left my seat and walked around to the other side of the table behind Ms. Brolly and pulled her hair twice calling her a “lying bitch” or words to that effect.

I did not assault Ms. Brolly as alleged by Garda Dooley. My recollection is that I was not seated during the interview. I recall that there was a filing cabinet at the rear of the room and I spent the time during the interview leaning up against it. I do not remember being seated at any time. I did not intervene at any stage during the course of the interview and I have no recollection of calling Ms. Brolly a lying bitch or anything like that.

5. That Garda Dooley and Sergeant White used foul language towards Ms. Brolly.

I have no specific recollection of Garda Dooley or Sergeant White using foul language. They may have used foul language as they both used such language in everyday conversation.

I would like to state that I did not abuse or ill-treat Ms. Brolly in any way during the course of any dealing which I had with her. I did not witness any such abuse while I was present.

I note from Ms. Brolly's statement dated 10th February 1998 that she alleges that I pulled her hair and called her "you lying bastard". I deny that I assaulted Ms. Brolly and called her a lying bastard.

Ms. Brolly has stated that I left the room after I allegedly pulled her hair. I did not leave the room until the interview terminated at 4.00 a.m. at which time Sergeant White, Garda Dooley and I left the room together.

During the period of my duty in Letterkenny I spoke to Ms. Brolly on several occasions enquiring if she wished to use the bathroom and on at least one occasion I brought her a cup of tea. The only conversation that I had with Ms. Brolly was during one of her rest periods when she was having a cup of tea. We chatted generally about her children, their ages and schools. Ms. Brolly appeared to be calm and in control on any occasion which I saw her on the night of the 4th/5th December 1996. It appeared to me that at times Ms. Brolly was somewhat dismissive and arrogant.

Overall my recollections of the night in question are vague as nothing out of the ordinary happened.

On the 28th May 1997 I received a telephone call from a man identifying himself as Billy Flynn, Private Investigator. He told me that Ms. Brolly was his client and he began to verbally abuse me and allege that I pulled Ms. Brolly's hair while she was in custody in Letterkenny Garda Station. A short time later, I received a similar call from Mr. Flynn. This was the first indication I received that Ms. Brolly had any complaint to make about her treatment while in custody or that she was making any allegation against me. Mr. Flynn was extremely abusive to me on the telephone and the calls which he made were the subject of criminal proceedings resulting in a plea of guilty by Mr. Flynn.

I was extremely upset by these telephone calls, not only because of Mr. Flynn's abusive manner, but also because of the substance of his allegations. I wish to repeat that I deny any abuse of Mrs. Brolly.

Since the Tribunal has begun I have discussed what happened on the night of the 4th/5th December 1996 with Garda Dooley on many occasions always at his instigation. Garda Dooley came to my home to discuss the matter and even sought my help in preparing his statement of evidence.

He discussed his role in the interviewing of Róisín McConnell and Katrina Brolly. He was particularly worried that there were no memos of interview recorded during the last two interviews that he conducted with Ms. Brolly. He told me that he had seen post mortem photographs of the Late Richard Barron but he did not tell me that they were shown to Ms. McConnell or Ms. Brolly.

We also discussed the allegation made by Ms. Brolly that I pulled her hair. Garda Dooley agreed with me that the allegation was ridiculous and agreed that it was an amazing coincidence that Ms. Brolly and Ms. McConnell made the same complaint against me even though I never met Ms. McConnell and therefore any such allegation by Ms. McConnell could not be true.

I note from Garda Dooley's statement that he alleges that he had a conversation with Sergeant White and Detective Sergeant Joe Costello from Garda Headquarters. In his statement he says that Sergeant White asked D/Sergeant Costello how the tapes were going and that D/Sergeant Costello replied that they were talking very low. I am surprised by this portion of the statement as Garda Dooley at all times led me to believe that he walked away from Sergeant White and D/Sergeant Costello and did not hear what they had discussed.

Garda Dooley was very concerned about how the publicity surrounding his evidence might impact on his family and particularly on his elderly mother. I advised him that the only course open to him was to tell the truth.

I am stunned by Garda Dooley's allegations. I have known him since 1993 and have on a number of occasions worked closely with him. I counted him among my closest friends and I am at a loss to understand why he is making these allegations.

I am aware that he has been unwell for some time and in May 2005 I advised him to seek medical assistance as he told me he was feeling very depressed. The last contact that I had with him was in June 2005 when he told me that he was in-patient in St. John of God's Hospital and that he would contact me when he felt better. I sent him a number of text messages wishing him well and since then I have had no further contact with him.

I have tried to cover all of the relevant issues in this statement. I am anxious to assist the Tribunal's inquiries and I will make myself available at the convenience of the Tribunal if there are any other matters which require

clarification or elaboration.

Signed: Joan Gallagher¹³²⁸

Evidence of Detective Garda John Dooley

- 9.67. In his evidence to the Tribunal, Detective Garda John Dooley accepted that it was he who stood up, turned off the lights, made Katrina Brolly stand up and placed the post-mortem photographs close to her face. He denied that he actually pushed the photographs into her face so as to make contact with her face. However, he did concede that it was possible that they may have touched her while flicking through the pages from one photograph to the next.
- 9.68. He accepted that he had used abusive language towards Katrina Brolly. He stated that Garda Joan Gallagher was definitely present for all of the abuse that he gave to Katrina Brolly during their second interview with her.
- 9.69. On the issue as to whether Katrina Brolly's hair was pulled by Garda Gallagher the following exchange took place:

Q. Chairman: Sorry, would you describe the hair pulling incident in a little more detail to me, please, because it is being denied. Garda Gallagher says it never happened.

A. Yeah.

Q. Chairman: Could you just describe it in a bit more detail?

A. Yes Chairman. Garda Gallagher, from my recollection, was sitting over to my left. This would be after the photograph incident and the dimming down of the light and she walked around and I think it would have been on the left side she pulled Katrina Brolly's hair first. It was a good - a strong - tug. She repeated it.

Q. Chairman: With what interval between the two?

A. Not very much.

Q. Chairman: More or less one after the other?

A. Yes.

Q. Chairman: Did you see any hair being dislodged?

A. I didn't but as far as I recall, I had the lights off during this period and there would be just light coming in

¹³²⁸ Tribunal Documents, pages 242-247.

from the street lights of the Garda Station, so, as somebody described it earlier, it would be a dim light. I didn't, but it was a strong tug, yeah.

Q. Chairman: What was Mrs. Brolly's reaction to it?

A. Oh she was annoyed.

Q. Chairman: For instance, what I am really wondering, did she scream or shout?

A. No.

Q. Chairman: Or complain?

A. She says, "I didn't come in here to have my hair pulled." She was still standing up. I directed her to stand up in the centre of the floor and she was still standing up and she wouldn't answer questions then for a while and I was trying to get her to sit down and, you know, trying to get back to a bit of normality.

Q. Chairman: Did she direct any comments to Garda Gallagher personally?

A. No. No, Chairman. It's just that she said, "I didn't come here" - I'd say it might have been directed to Sergeant White seeing that he was the sergeant present.¹³²⁹

9.70. Detective Garda John Dooley was cross-examined at length by the solicitor acting on behalf of Garda Joan Gallagher. It was put to him that both Mrs. Brolly and Garda Gallagher herself were in agreement that Garda Gallagher was standing during the period of the interview. Detective Garda Dooley maintained that he had a clear recollection of Garda Gallagher sitting and rising from her seat in order to walk over behind Mrs. Brolly. In the course of that cross-examination Garda Gallagher's solicitor put it to Detective Garda Dooley that he had convinced himself that the hair pulling incident occurred, when it had not in fact occurred. Detective Garda Dooley reacted to that suggestion quite strongly, saying that while he had indeed suffered from depression he had talked to his psychiatrists and they had assured him that he had never suffered from any psychotic illness. The following exchange with Detective Garda Dooley and the solicitor for Garda Gallagher in cross-examination is instructive:

Q. My client's evidence will be that she was never on that side of the table. That she was at all times standing

¹³²⁹ Transcript, Day 430, pages 157-159.

behind Mrs. Brolly and that she was at no time seated during the second interview. I want to move now to what your colleague Sergeant ...

A. *Sorry, could I say something to the Chairman?*

Q. *Chairman: Yes.*

A. *Chairman, I want to make it clear that I have a good working relationship with Garda Gallagher, we would have been friends but unfortunately – and we would have been good friends and Garda Gallagher would have been loyal to me in many ways. But unfortunately, when you come to the point of telling the truth, you cannot cherry pick the truth. It gives me no pleasure to be going down this route with Garda Gallagher. But I just have to tell all the truth.*

Q. *Mr. Connelly: OK. Sergeant White, your colleague, indeed officer in the interrogation, doesn't recollect the hair pulling incident?*

A. *Well he says that he has no reason to doubt it either.*

Q. *I think you will accept that he has no recollection of it. Do you accept that?*

A. *That's what he says in his statement, yes.*

Q. *Sergeant White, in his most recent statement, concurs or agrees with virtually everything that you have admitted to or that you have proposed in your October statement; is that correct?*

A. *That is correct.*

Q. *Would you agree that the one departure, one of the primary departures from that is the incident of the alleged hair pulling?*

A. *Yes, I would agree with that. But he says he has no reason to doubt me.*

Q. *If it occurred as you say it occurred, why would he deny it, or why would he say that he has no recollection of it? What interest has he in denying that that event occurred, given that he has admitted*

everything else or that he is satisfied and that he agrees that everything else occurred?

A. *I'm sure Sergeant White will account for that himself. You know, I have to tell all the truth, that's why I am in this position.*

Q. *It is not more likely that he didn't see it happening because it didn't happen?*

A. *I would not come into this Tribunal, take an oath and tell lies. It happened.*

Q. *Would you accept that if an incident such as this occurred in a room the size of the interview room in question, in the environment that you were in, is it not extraordinary he's alleging he didn't see it?*

A. *Well I am surprised that he didn't see it, yes.*

Q. *Is it possible then, Garda Dooley, that this process that you have engaged in, in coming to a position where you tell the truth, the whole truth and nothing but the truth, that you have convinced yourself that the incident occurred as described by Mrs. Brolly?*

A. *No, with respect, Chairman, I resent that, I resent that type of remark. I suffer from depression, I was not psychotic, I have not convinced myself. I had my mind made up before I went to hospital that I was going to tell the truth and the whole truth to this Tribunal.¹³³⁰*

9.71. Detective Garda John Dooley accepted in evidence that he had put it to Katrina Brolly that her brother-in-law was "riding" a particular woman. He stated that he had no recollection of saying to her that Mark McConnell was abusive towards his wife. He said that he had absolutely no information along these lines. He admitted that he had told her during the last interview that her children would be taken from her and put into care. This was due to the fact that Róisín McConnell's young son, Dean, had been left in the care of Mrs. Brolly's thirteen year old son for a period on the Sunday evening of 13th October 1996.

9.72. Detective Garda Dooley did not try to blame anyone else for his actions. He did not allege that he was following any set of orders in abusing Katrina Brolly in the way that he did. He admitted that no notes were taken during the second and third interviews conducted by him and Sergeant White with Katrina Brolly.

¹³³⁰ Transcript, Day 431, pages 18-21.

Evidence of Detective Sergeant White

- 9.73. Detective Sergeant White stated that he had been very tired, verging on exhausted, when he commenced interviewing Katrina Brolly on the evening of the 4th of December 1996. He stated that he was very disappointed when she did not elect to have her questioning suspended at midnight. He accepted that his statement to Chief Superintendent Carey in June 1998 was untrue. He accepted that he probably did have some discussion with Detective Garda Dooley in relation to their statements for the Garda Complaints Board. Detective Garda Dooley had alleged that one day on a trip out to Bruckless Village to look at a caravan, Detective Sergeant White and he had discussed what should be said in the statements that they would submit to the Garda Complaints Board. Detective Garda John Dooley alleged that he had asked Detective Sergeant White whether he should make any mention of the post-mortem photographs and that Detective Sergeant White had advised against this. Detective Sergeant White agreed that they may have discussed the statements which were to be submitted to Chief Superintendent Carey, and indeed had a recollection that he received a copy of Detective Garda Dooley's statement prior to submitting his own, but denied that they had any conversation wherein he advised that the post-mortem photographs should not be mentioned in the statement. He admitted that post-mortem photographs had been shown to Katrina Brolly. He could recall that Detective Garda Dooley had placed them very close to her face. He could not say if any of them had actually touched her face. He stated that Katrina Brolly was standing at the time. The lights may have been turned off. He accepted that forceful language was used towards her.
- 9.74. In relation to the hair pulling allegation, Detective Sergeant White stated that he did not see Katrina Brolly's hair being pulled, but he went on to state that if Detective Garda Dooley said that that happened, he accepted that it did. When he was asked how he could have failed to have seen such a thing in such a small interview room, he said that he was very short sighted at the time and wore glasses. Due to tiredness he may have removed his glasses at the relevant moment.¹³³¹
- 9.75. Detective Sergeant White denied that he nodded to Garda Gallagher to leave the interview room as alleged by Katrina Brolly. His recollection was that she stayed for the entire interview. However, he could not discount the possibility that Garda Gallagher may have left the room at some stage to go to the toilet, or for some other reason.
- 9.76. When asked why he had a change of heart and decided to admit that Katrina Brolly had been abused, he stated that prior to Detective Garda Dooley's

¹³³¹ Transcript, Day 432, page 169.

statement and Mrs. Brolly actually attending at the Tribunal for the delivery of the Further Opening Statement of Counsel, he was “playing the odds” and hoping that she would not come in to the Tribunal and that the module would not get off the ground. This was a reference to the certain threats of non-cooperation from isolated quarters that were made much of in the media. However, he denied that he ever intended to give perjured evidence before the Tribunal.¹³³²

Evidence of Garda Joan Gallagher

9.77. Garda Joan Gallagher found herself in a difficult position before the Tribunal. Three of the four people in the interview room said that there had been abuse of the prisoner in various ways – abusive language, being made to stand up, lights turned off, post-mortem photographs shown – but Garda Gallagher denied that this had happened while she was in the room. She did not see it happen. How could this be? Two of the three people alleged that Garda Gallagher had pulled Katrina Brolly’s hair. She denied that she did that to Mrs. Brolly.

9.78. Garda Gallagher’s first difficulty was the similarity in the three statements of denial made to Chief Superintendent Carey in 1998. She could not explain how her statement, which she maintained was the truth, said the same things as Detective Sergeant White and Detective Garda Dooley had said in their statements, when they had admitted that their statements were false. She was confronted with this conundrum by Mr. Barr SC early in her evidence:

Q. You made a statement on the 1st of April 1998 for the purpose of responding to the complaint that had been made by Mrs. Brolly to the Garda Complaints Board?

A. That’s correct.

Q. Isn’t that right?

A. Yes.

Q. And in that statement you said that you were not aware of any harassment or abuse of the prisoner, you did not witness any such abuse or harassment and you said, I certainly did not pull her hair?

A. That’s correct.

Q. Some sixteen days later Garda John Dooley made a similar statement and two months later on the 2nd of June 1998, Detective Sergeant White made a similar statement to the Garda Complaints Board: all denying all of the allegations made by Mrs. Brolly?

¹³³² Transcript, Day 432, pages 160-163

A. Yes.

Q. *Detective Garda Dooley and Detective Sergeant White have subsequently come in and said my statements made to the Garda Complaints Board were false, they were lies?*

A. *That's right.*

Q. *Can you explain the peculiarity of what you say is the truth in your statement, agreeing with what they say were their lies?*

A. *I can't. What I said in that statement of the 1st of April is the truth.*

Q. *If it was the truth why would they come along later and say, look, I told lies about that, we did mistreat the woman in the manner alleged, save for Detective Sergeant White did not see the pulling of the hair, but he says that he would not disagree with Garda Dooley in his account of it?*

A. *I can't explain it.*

Q. *So you are asking the Chairman to take it that you, Detective Garda Dooley, and Detective Sergeant White were telling the truth in the first statements that were made to the Garda Complaints Board in 1998?*

A. *I know that I was telling the truth in that statement. I can't say whether they were or they weren't.*

Q. *Well you are all saying the same thing?*

A. *Well.*

Q. *You are saying that there was no abuse?*

A. *That's correct.*

Q. *No harassment of the woman?*

A. *That's correct.*

Q. *And they are saying the same thing and you are saying that is the truth?*

A. Yes.

Q. *So when they come along subsequently in 2005 and 2006 and say, look, I was telling lies in 1998 when I said there was no mistreatment of the prisoner, they are in fact now telling lies, is that what the Chairman is to take?*

A. *Mr. Chairman, all I can comment on is that hour and a quarter that I was in the interview room and while I was there there was no mistreatment. What happened at previous or subsequent interviews I can't comment on, but I know that while I was there there was no mistreatment.*

Q. *So that when they made their statements in 2005 and 2006 and when Garda Dooley got into that witness box and gave evidence that there was mistreatment of Mrs. Brolly during the course of that seventy-five minute interview, he was telling lies?*

A. *Effectively, yes.*

Q. *And that they were in fact telling the truth when they denied the mistreatment back in 1998 and they are telling lies now when they say that those earlier statements were false?*

A. *Again, I can only comment on the one interview. I wasn't present ...*

Q. *Yes?*

A. *... during all of the interviews. So it's while that interview was going on that nothing happened.*

Q. *There were three interviews?*

A. *Yes.*

Q. *Between Detective Sergeant White and Detective Garda Dooley, all are agreed that with the exception of a refusal of a visit from her husband, there was nothing ... unpleasant in the first interview. The prisoner agrees with that; the interviewers agree with that and you weren't there for it. The second interview is the critical one because the prisoner and the two Gardaí who were in that small room are saying that the mistreatment took place during that interview. The abuse, the showing of the photographs, the turning down*

of the lights, the threats in relation to her children and the pulling of the hair. They are saying that all occurred in that second interview. And you are saying that they are telling lies, not only about you but about themselves in their recent statements?

A. *I disagree with the account of the second interview.*

Q. *Why would Detective Sergeant White say in his recent statement I agree with the vast bulk of Detective Garda Dooley's statement about what went on in the interview with Mrs. Brolly and thereby admit to mistreatment of the lady?*

A. *I don't know.*

Q. *And the very first thing he instructed his solicitor to do in cross-examination of Mrs. Brolly was to offer a public apology to the woman and to admit to the mistreatment?*

A. *I don't know.*

Q. *Is he telling lies about himself when he is admitting to the mistreatment of the woman and apologising publicly for it?*

A. *I can only repeat what I said earlier on.*¹³³³

9.79. Garda Gallagher stated that during that night in Letterkenny Garda Station she had become bored. She had spent some hours in the canteen watching television. With nothing else to do, she accompanied Sergeant White and Detective Garda Dooley for the interview starting at 02.45 hours. She said that she went into the small interview room, which appears to have measured some twelve feet by nine feet approximately. It was common case that there was a table and a number of chairs in the room and also a filing cabinet. Garda Gallagher said that she spent the time standing by the filing cabinet. She stated that the filing cabinet was to the rear of the interviewing Gardaí, who were sitting across the table from Katrina Brolly. It is worth noting that in the course of cross-examination of Detective Garda John Dooley by the solicitor acting for Garda Gallagher, it was put to Detective Garda Dooley that the filing cabinet against which Garda Gallagher was standing was in fact positioned behind the prisoner. This would appear to accord with Katrina Brolly's recollection of the position that Garda Gallagher took in the room prior to the alleged hair pulling incident.

9.80. Garda Gallagher stated that she chose to stand during the interview due to the

¹³³³ Transcript, Day 431, pages 154-157.

fact that she had a painful back as a result of a road traffic accident. Garda Gallagher denied that anything untoward happened during that interview. She gave the following description of that interview:

*Well when we went into the room, as far as I remember Garda Dooley cautioned Mrs. Brolly and they started to chat to her. The main focus of the questioning, from my recollection, was about this phone call to the hospital in Letterkenny, and why she was denying that it had been made from her house. The other thing that they talked a lot about was the alleged intimidation by Mr. McBrearty and, you know, that she was afraid of them and he was bribing her, those type of things. That to me was ... that's my recollection of what went on in the interview. It was a very long, boring interview.*¹³³⁴

9.81. Garda Gallagher denied that Katrina Brolly was made to stand up, or that the lights were turned off or dimmed, or that post-mortem photographs were shown to her. She stated that she did not see any post-mortem photographs at any stage in the room. In her statement, she had described Katrina Brolly as being at times “dismissive and arrogant” towards the Gardaí. She denied that it was this attitude on the part of Mrs. Brolly which might have caused her to pull her hair. In relation to the hair pulling allegation, she denied this emphatically in the following terms:

Q. *In your statement you say that she was at times dismissive and arrogant. Can we take it then that the period that you are referring to is this period of interview?*

A. *That's correct.*

Q. *How did her arrogance and dismissiveness manifest itself to you?*

A. *When she was being asked about the telephone call to the hospital, she seemed to think that it was just totally unimportant that an answer be found as to whether this call was made or not. During the interview ... maybe arrogant isn't the right word, but, you know, she seemed to be totally undaunted by the whole thing.*

Q. *Well arrogant, with respect, is your word?*

¹³³⁴ Transcript, Day 431, page 141.

- A. *Yeah, I know, I'm saying possibly.*
- Q. *That was the word you chose? ...*
- A. *Yes.*
- Q. *... to describe how she was at that time?*
- A. *Yeah.*
- Q. *Did that annoy you?*
- A. *Not particularly, no.*
- Q. *Did it annoy the other questioners that she was dismissive and arrogant, in your eyes?*
- A. *Yeah, I'd say the dismissive bit definitely, but they were trying to get an answer to a question that they felt was important and Mrs. Brolly wasn't taking it seriously.*
- Q. *Were you very tired at this stage, having worked a full shift, being on your way going towards bed and having to come out and effectively work all through the night?*
- A. *I was.*
- Q. *And was your back sore?*
- A. *It was.*
- Q. *Were you getting annoyed by virtue of Mrs. Brolly's arrogant and dismissive attitude?*
- A. *No.*
- Q. *Did you go around the table and pull her hair?*
- A. *No.*
- Q. *Did you go anywhere near her?*
- A. *No.*
- Q. *So is that an intentional deliberate lie on the part of Mrs. Brolly?*
- A. *Yes.*

- Q. *Why would she tell that lie against you?*
- A. *I have no idea.*
- Q. *On your account, you only had two very pleasant encounters with her, one at 10.55 p.m. and the other at ten to one in the morning, when you gave her tea and chatted to her while she had a cigarette. Why would she go, on the afternoon of her release, to her solicitor, and make an allegation that you had pulled her hair twice and called her a lying bastard?*
- A. *I have no idea why she would make such an allegation.*
- Q. *Why would your friend and colleague, Detective Garda Dooley, make the same allegation?*
- A. *I believe that Garda Dooley believes what he is saying. I don't think that he is ... that he feels that he is telling lies, but I know it didn't happen.*
- Q. *Chairman: Would you explain that please? That's an unusual statement?*
- A. *I agree, Sir. I believe that John Dooley believes one hundred per cent in what he is saying. But I am also saying that it is incorrect. I don't think John Dooley is saying anything out of malice or to get anybody or anything like that. I believe that John Dooley believes what he is saying. But I am also saying that it didn't happen.*
- Q. *Mr. Barr: He says post-mortem photographs were pushed into ... or shown to Mrs. Brolly and put close to her face?*
- A. *I didn't see that. I didn't see the post-mortem photographs.*
- Q. *If it happened, if it happened, if he got up and walked around and put an album of photographs close to the lady's face, given the dimensions of the room that you indicated to us, isn't it the case that you would have had to have seen it?*
- A. *Yes, I would have had to have seen it.*

- Q. *Therefore are you saying that it didn't happen?*
- A. *That didn't happen while I was there.*
- Q. *Garda Dooley is very clear in saying it happened during the second interview?*
- A. *That's correct.*
- Q. *Mrs. Brolly says it happened during the second interview. Sergeant White says it happened during the second interview?*
- A. *It didn't happen while I was there.*
- Q. *Why are all those three people telling lies about that?*
- A. *I have no idea.*¹³³⁵

9.82. The only concession that Garda Gallagher was prepared to make was that there may have been some bad language used during the interview. She explained this by stating that such language was common currency among some of the Gardai in the Donegal Division. Garda Gallagher denied that she had left that interview early as alleged by Katrina Brolly. She stated that she had no further contact with Katrina Brolly for the remainder of her detention period. She denied that she had not gone back to check on Katrina Brolly due to any embarrassment about what had occurred during that period of interview. She denied that she had re-entered the interview room at any time during the third interview with Sergeant White and Detective Garda Dooley, or that she had made any remark about writing a book, as alleged by Katrina Brolly. She said that there was no particular reason why she did not accompany Sergeant White and Detective Garda Dooley for their third interview with Mrs. Brolly.

The Member in Charge

9.83. Detective Garda Thomas Kilcoyne was the member in charge from 22.00 hours on the 4th of December 1996 to 06.30 hours on the 5th of December 1996. He visited the interview room on two occasions during the second interview conducted by Sergeant White and Detective Garda Dooley, at 03.15 hours and again at 03.45 hours. He noted that at the conclusion of that interview at 04.00 hours, Mrs. Brolly requested a cup of tea, which was provided some five minutes later. Detective Garda Kilcoyne stated that in all probability he would have been acting as member in charge and also would have been in charge of the public office during this period. This would mean that he may have been away from the area of the interview rooms for periods during the night. In such circumstances,

¹³³⁵ Transcript, Day 431, pages 147-150.

he would have had to be informed by other officers of any comings and goings from the interview rooms so that these could be noted in the custody record. He had no actual recollection of going into the interview room to check on the prisoner at the two times noted during the critical second interview with Sergeant White and Detective Garda Dooley. He could only say that it happened because it had been recorded in the custody record. For both these visits he had written in the custody record “all in order.” He said that he was not aware of any of the mistreatment that had subsequently been admitted by Detective Garda Dooley and Sergeant White.

- 9.84. In cross-examination by the solicitor acting for Garda Gallagher, Detective Garda Kilcoyne stated that the lights were on when he did his visits to the interview room during that particular interview. He stated that his desk was further down the hall and he would not know if the lights were on or off from where he was sitting at his desk. He recalled that there were papers on the table in the interview room but he could not say if there were any photographs there.

The Road to Damascus

- 9.85. Detective Sergeant White stated that on the evening of the 4th of December 1996, he was told by either Inspector John McGinley or Detective Superintendent Joseph Shelly that he would be required to stay on to question Katrina Brolly and that he was to try to “break” her. He stated that this meant that he was to use all means possible to secure an admission from Mrs. Brolly.
- 9.86. Detective Garda Dooley stated that Sergeant White had told him that they had been ordered to stay on and to try to break Katrina Brolly. He understood this just to be a Garda term, meaning to try to get the truth from a witness. He denied that it meant using any illegal or improper tactics to achieve any particular end.
- 9.87. Detective Sergeant White also alleged that at some time during the detention of the prisoners, Detective Superintendent Shelly had suggested that post-mortem photographs might be used to shake the prisoners up, as they were not being co-operative up to that time. He stated that it was in response to this suggestion that he had first used the post-mortem photographs during the detention of Mrs. Róisín McConnell earlier in the day and the same tactic had been used by Detective Garda Dooley during their interview of Katrina Brolly.
- 9.88. Detective Sergeant White also alleged that the series of lies in his statement to Chief Superintendent Carey were partly due to a conversation which he alleged that he had had with Inspector John McGinley. He alleged that Inspector McGinley had told him not to mention anything in that statement about the telephone records, which had been improperly obtained, or the use of post-mortem photographs, as an interviewing technique.

- 9.89. In their evidence, Mr. John McGinley and Mr. Joseph Shelly both strenuously denied these allegations. Mr. McGinley stated as follows:

*Well there is a difference ... there is a difference in being on the road to Damascus and putting your hands up and saying that, yes, I did wrong, but he's qualifying it by saying I did wrong because he was instructed by senior officers to behave in this fashion, which is a totally different thing. Certainly as far as I am concerned, he didn't receive any instructions from me to behave in an illegal or unlawful fashion, or to treat anybody other than with respect and dignity and in accordance with the regulations. He certainly didn't get any instructions to omit anything from any statement or any interview. When he was on the road to Damascus, he should have stayed on it and left the rest of us out of it.*¹³³⁶

- 9.90. When it was put specifically to Mr. McGinley that either he or Detective Superintendent Shelly had instructed Sergeant White to "break" Katrina Brolly, the following exchange occurred:

Q. With particular reference to Mrs. Brolly's interview Sergeant White has given very clear and distinct evidence that he was told very definitely that he was to go in and be tough in this interview, that he was to break them: get the admissions that were required and that he was told that by his superior officers, either yourself or Superintendent Shelly?

A. That's not the case, Chairman. Clearly, Chairman, Sergeant White, as I understand it, has given evidence of his vast experience in all these matters. He was a sergeant in the Gardaí, Chairman. He had a responsibility not just to see that he did the job properly himself but to see that all those who worked under him and with him did it too. In fact, Chairman, you know, I think it is fair to say that sergeants, in the words of a former Commissioner, are the lynchpin of the Force in that they're the first people to most scenes, they're the first supervisors present, the decisions they make have a huge bearing on any case. After five o'clock in the evening in any country division you won't get anybody maybe higher than a sergeant around the place. So when people come into the Garda stations, the most people that are running the stations are sergeants. They are responsible for the running of a station. They are responsible for the implementation of

¹³³⁶ Transcript, Day 437, page 125.

*the law. They are responsible for the people who work under them and they are responsible for the regulations. And for Sergeant White to come along and say that he can be instructed by some other officer to go in and abuse people in custody is outrageous. He had a responsibility himself and he had a responsibility to see that those who worked with him did too.*¹³³⁷

9.91. Mr. Joseph Shelly was equally trenchant in his denial that he told Sergeant White to “break” Katrina Brolly. He also denied that he ever told or suggested to Sergeant White that he should use post-mortem photographs to shake up the prisoners. He said that such a tactic had never been used by him and would be totally inappropriate. He denied that members of the Detective Branch routinely resorted to such tactics to achieve results.

9.92. It is also noteworthy that in the course of his evidence to the Tribunal, Sergeant Heffernan, who also interviewed Katrina Brolly that night, denied that he received any instruction to “break” Katrina Brolly. He described the instructions that he did receive in the following terms:

Q. *Detective Sergeant White has alleged that he received an instruction that he was to stay on although he was very tired and engage in the interviewing of Mrs. Brolly and that he was to attempt to break her. Did you receive any such instruction?*

A. *Mr. Chairman, at no stage did I receive that particular instruction from anybody.*

Q. *Did you receive any instruction from the senior officers as to what your approach should be when interviewing Mrs. Brolly?*

A. *The specific instructions that I received are not ... I don't have any memory of them exactly. But when interviews officers, the people in charge of the incident room, they would have told me, go into the interview room, assess what you can get, we need as much information as we can, who this lady was with during the course of the day to substantiate it or otherwise. My role in this interview was to gather as much information as I could and treat it as such, as an information gathering exercise and that was my ... that was the way I treated the interview.*¹³³⁸

¹³³⁷ Transcript, Day 437, pages 183-184.

¹³³⁸ Transcript, Day 436, pages 66-67.

9.93. In the course of his evidence, Mr. Seán Herraghty denied that he had received any direction or suggestion that he should attempt to “break” Katrina Brolly. He said there was no question of that being said or intimated to him prior to his interviews with Katrina Brolly.¹³³⁹

Omissions

9.94. Detective Sergeant White also alleged that prior to interviewing Katrina Brolly, Inspector John McGinley had told him not to make any reference in the interview notes to any telephone records, which had been obtained in an unauthorised fashion, and which showed a telephone call from the Brolly house to the Dolan house during the night of 13th/14th October 1996. In his evidence, Mr. McGinley denied that he had given any such instruction to Sergeant White. He stated that the fact of that call had been mentioned by Katrina Brolly herself in the course of the interview, and that this would have afforded Sergeant White a very good opportunity to pursue that line of questioning in a legitimate manner, but that he did not pursue it. His recollection was that the unauthorised telephone records were not obtained until after the 4th of December 1996.

9.95. However, the evidence of Sergeant John O’Toole, who was the officer who had obtained the telephone records through the use of a contact in Crime & Security Branch, was to the effect that the relevant details had been faxed through to him well in advance of the 4th of December 1996. Detective Sergeant White also stated in evidence that on approaching the then Garda O’Toole, looking for a copy of the fax, he had refused to give it to him but had written out the relevant details onto a sheet of paper, or permitted Sergeant White to take down the details on a sheet of paper that he could use for the interview process. Mr. McGinley based his belief as to the time when the telephone records first became available by reference to the fact that jobs were made out as a result of those telephone records to go and interview the Dolans, and that these jobs were issued in January 1997. On this basis he thought that the records only became available some time shortly prior to that. However, the Tribunal is of opinion that the telephone records, which had been obtained in an unauthorised manner, were most likely available prior to the 4th of December 1996.¹³⁴⁰ However, this does not necessarily imply that Inspector McGinley made the alleged comment to Sergeant White about not referring to the records in the interview notes. The point made by Mr. McGinley in his evidence was a good point to the effect that when Katrina Brolly mentioned the possibility of a call to the Dolans, this opened the door for Sergeant White to pursue that matter in a legitimate fashion during the interview, but that that opportunity was not taken.

9.96. Detective Sergeant White also alleged that Inspector McGinley had instructed

¹³³⁹ Transcript, Day 436, pages 167-168.

¹³⁴⁰ Tribunal Second Report, pages 268-269.

him to leave certain matters out of the statement that he made to Chief Superintendent Carey in 1998. Mr. McGinley denied that he had any input whatsoever into the content of Detective Sergeant White's statement to Chief Superintendent Carey, nor had he advised him in relation to it:

Chief Superintendent Carey's investigation, Chairman, was an independent investigation. I had no communication with Chief Superintendent Carey in relation to it. I fail to see how Sergeant White would be concerned about complaints that didn't exist and why he could discuss non-existent complaints or concerns with me. He didn't, Chairman. He's lying. ... And the same is true here, Chairman. The telephone issue didn't arise and if John White wasn't frank with John Carey I don't know anything about it, he can't blame me for it. And he certainly can't ... I can't see, Chairman, how or why he would raise issues with me which weren't part of the complaint. It just doesn't make sense. I am saying that it didn't happen.¹³⁴¹

Analysis

- 9.97. Having considered the evidence of Detective Sergeant White, Mr. John McGinley and Mr. Joseph Shelly, together with the evidence of the other interviewing officers, and having also had regard to the time at which the telephone records came in and became known to the investigation team, the Tribunal is satisfied that when Detective Sergeant White came late in the day to make his statement of admission, he did so because he was forced into that position by the statement made by Detective Garda John Dooley in October 2005. Although he has accepted that he acted in the way that he did, both during those interviews and in making the subsequent false statement to Chief Superintendent Carey, he has attempted to avoid any moral blame by variously suggesting that it was common practice within the Gardaí to act in the way that he did during the relevant interviews, or that, in doing the things that he did, he was acting under the orders, or at the very least the suggestions, of his superior officers.
- 9.98. The Tribunal does not accept this self-serving series of excuses for these events. The Tribunal is satisfied that Sergeant White participated in the abuse of Katrina Brolly because he had utter disdain for the prisoners under his care. He was prepared to use whatever tactics he could to achieve what he thought were the desired results for the investigation team. The Tribunal does not consider that it would be safe to accept his

¹³⁴¹ Transcript, Day 437, pages 190-191

attempt to shift the blame for his conduct onto others. His evidence is rejected on this aspect. The Tribunal accepts the evidence of Mr. John McGinley and Mr. Joseph Shelly as being honest and accurate on these matters.

Conclusions

1. The Tribunal has listened carefully to the evidence of Katrina Brolly. The Tribunal is satisfied that this lady has told the truth in her account of what happened to her during her detention at Letterkenny Garda Station on the 4th and 5th of December 1996. She was an honest witness. Insofar as there are any discrepancies between her account and any findings of the Tribunal on ancillary matters, the Tribunal is satisfied that these are due to errors of recollection on the part of Mrs. Brolly and were not part of any desire to mislead the Tribunal in any way.
2. The Tribunal is satisfied that the account given by Katrina Brolly of the abuse which she received in Letterkenny Garda Station was both accurate and honest. That account has been supported almost in its entirety by the evidence of Detective Garda John Dooley and to a large degree by the evidence of Detective Sergeant White.
3. The Tribunal finds that Katrina Brolly was abused during the period of interview conducted by Sergeant White and Detective Garda Dooley from 02.45 hours to 04.00 hours on the 5th of December 1996. This abuse took the form of verbal abuse in raised voices; being made to stand in the middle of the interview room; the lights being turned off; being shown post-mortem photographs in very close proximity to her face; being told that her brother-in-law was having an affair; and being called unpleasant names such as being “a lying bitch”. The Tribunal finds that both Detective Garda Dooley and Sergeant White were responsible for the abuse.
4. The Tribunal accepts the evidence of Katrina Brolly that she was told by Detective Garda Dooley that her children would be taken into care and that she was told by Sergeant White that her son would be “targeted” by the Gardaí. The Tribunal rejects Detective Sergeant White’s denial that he made the threat about her son. The Tribunal regards these threats as an appalling abuse of the prisoner. They were a cowardly attempt to coerce her into saying what the Gardaí wanted to hear.

5. The Tribunal is satisfied that Garda Joan Gallagher was present when the abuse of Katrina Brolly took place. The Tribunal finds that Garda Gallagher has lied when she said that this abuse did not happen while she was present in the interview room.
6. The Tribunal finds the evidence overwhelming that Garda Joan Gallagher pulled Katrina Brolly's hair during this period of interview. The complaint by Katrina Brolly to her solicitor is very clear as to when and by whom her hair was pulled. The account given by Mrs. Brolly is supported by the evidence of Detective Garda John Dooley. The Tribunal is satisfied that both Katrina Brolly and Detective Garda John Dooley have told the truth in this regard. The fact that there are small discrepancies, such as whether Garda Gallagher came from a sitting or a standing position, or where the filing cabinet was located within the interview room, or whether Garda Gallagher left the room some short time in advance of the other two Gardaí, or the fact that Detective Sergeant White says that he did not see this incident, is not material to the core evidence in respect of this allegation.
7. The Tribunal also notes that no credible explanation has been forthcoming from Garda Gallagher as to why the statement of Garda Gallagher to the Garda Complaints Board would tally completely with the statements of Detective Garda Dooley and Detective Sergeant White, which they have accepted were lying statements, if her statement was the truth. The Tribunal concludes that these three statements were false statements. Whether this came about by collusion, or as a result of the Gardaí adopting a default denial position, the Tribunal cannot say. It is accepted on the evidence that there was some conversation between Detective Garda John Dooley and Detective Sergeant White at that time. The Tribunal is entirely satisfied that all three statements to the Garda Complaints Board were false.
8. The Tribunal rejects the evidence of Garda Joan Gallagher. The Tribunal finds that she has told lies to the Garda Complaints Board in her statement of the 1st of April 1998. She has persisted with these lies in her evidence to the Tribunal.
9. In relation to the allegation that a complaint was made to Sergeant Heffernan which was not followed up by him, the Tribunal prefers the account of that exchange as given in evidence by Sergeant Heffernan and Mr. Herraghty; which was to the effect that Katrina Brolly merely

made a comment to them that she had not come into the Garda Station for the purpose of being abused. She was not more specific in relation to her complaints at that time. The Tribunal finds that it was reasonable for Sergeant Heffernan not to treat this as a formal complaint of any specific abuse, but rather as a generalised statement, which he perhaps mistakenly interpreted as being an accusation against himself to the effect that she did not intend to allow herself to be abused by him, to which he responded that he had not abused her at any time.

10. In relation to the alleged striking of the finger of Katrina Brolly by Detective Garda Seán Herraghty, the Tribunal accepts the account given in evidence by Katrina Brolly. However, as already noted, this episode has to be seen not as a deliberate and violent assault, but as a reflex action on the part of Detective Garda Herraghty, which may be seen as perhaps somewhat bullying in nature and designed to show the prisoner who was in control of the interview process.
11. In relation to the allegation that Katrina Brolly did not receive the opportunity to make a telephone call to her family, the Tribunal notes that Sergeant Heffernan very candidly admitted that such a request may have been made to him prior to 23.00 hours on the 4th of December 1996. He accepted that he may have forgotten to make sure that she was allowed to make the telephone call at the requested time. However, he denied that any subsequent complaint was made to him in this regard by Mrs. Brolly at 04.00 hours. The Tribunal thinks that Mrs. Brolly might have made a mistake here and accepts Sergeant Heffernan's evidence on this aspect. The Tribunal accepts that there may well have been an oversight in relation to furnishing her the opportunity to make a telephone call at 23.00 hours. The Tribunal accepts the evidence of Sergeant Heffernan that there was no malicious intent on his part in this regard.
12. The decision not to allow Eunan Brolly to visit his wife was taken unilaterally by Sergeant White. The member in charge was not informed of the request, or of the refusal. This was in flagrant disregard of the custody regulations. The Tribunal unreservedly accepts the evidence of Mrs. Brolly.
13. The attempt by Detective Sergeant White to pass the blame for his actions onto the shoulders of his superior officers is rejected as a self-serving lie on the part of Detective Sergeant White.

14. As to non-compliance with the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987, the Tribunal is satisfied that there was a clear breach of the custody regulations in a number of respects in relation to the detention of Mrs. Katrina Brolly: the decision not to allow a visit from her husband, Mr. Eunan Brolly, was made in clear breach of the regulations insofar as the member in charge was not informed of the request, nor did he have any input into the decision to refuse such request, nor was the refusal recorded in the custody record; the actual treatment of Mrs. Brolly as outlined in this report was in breach of the custody regulations; and the failure on the part of Sergeant White and Detective Garda Dooley to take notes of their second and third interviews with Mrs. Brolly was in breach of their obligations under the regulations. The fact that they simply did not bother to take any notes, nor did they fear any reprimand in this regard, demonstrated the utter disdain with which they regarded the observance of these regulations.
15. The Tribunal is also concerned about two other matters connected to the custody regulations: being the manner in which the period of Mrs. Brolly's detention was extended by Superintendent John Fitzgerald and the continuing of her questioning beyond midnight on the 4th of December 1996. The extension was treated far too lightly. The second matter concerns the continuation of the questioning of the prisoner beyond midnight. The custody regulation providing for the suspension of questioning after midnight is badly worded. Such questioning after midnight is undesirable. The member in charge should be authorised by law to suspend questioning even if the prisoner wants to get the detention over with. Such decision should depend on the state of the prisoner and the availability of Gardaí who are not tired out by their day's work. This matter is further considered in Chapter 16.
16. It took almost ten years for the truth about the detention of Katrina Brolly to emerge. During this time she had to live with the knowledge that her allegations were being denied. In effect she was being called a liar by those against whom she had made very serious allegations. Two things happened to change the status quo. Firstly, Detective Garda John Dooley courageously and honestly made his statement of the 14th of October 2005. Secondly, Katrina Brolly had the courage to be the first of this group of detainees to come into the Tribunal to

give evidence about her detention. For having the courage to do so and for having given her evidence in a dignified manner, she is to be congratulated. I hope that this section of the report will give her some closure on a painful episode in her life. She is a person of integrity who has shown a commitment to the truth.

17. Detective Garda John Dooley stated in evidence that it was in the summer of 2005 that he realised that he would have to confront the past and tell the truth. In reaching that determination he acknowledged that he had received considerable support from Chief Superintendent Manley, Superintendent Terry McGinn and the Garda Welfare Officer, Garda Brendan Flynn. In encouraging this man to tell the truth, these Gardaí have done both Detective Garda Dooley and the people of Ireland a considerable service.

CHAPTER 10

THE ARREST AND DETENTION OF FRANK MCBREARTY SENIOR

Introduction

- 10.01. In the Tribunal's second report,¹³⁴² I considered the manner in which the Garda investigation team in Letterkenny enquired into the circumstances surrounding the death of the Late Mr. Richard Barron of Raphoe, Co. Donegal on the 14th of October 1996. In chapter 5 of that report I referred to the various arrests that took place in the course of that investigation.¹³⁴³ I concluded that as no lawful arrest can occur where the agency effecting the arrest is responsible for manufacturing the evidence on which the grounding suspicion was allegedly based, the arrests that occurred as a result of the statement of Robert Noel McBride dated the 29th of November 1996, were illegal. The arrest of Mr. Frank McBrearty Senior did not occur as a result of this statement. Therefore, while this report is mainly concerned with the treatment of persons in custody in connection with that investigation, this chapter also deals with the legality of Mr. Frank McBrearty Senior's arrest. It is divided into two parts: Part I deals with the legality of his arrest, while Part II deals with his treatment by the Gardaí.
- 10.02. On the 3rd of December 1996 Detective Superintendent Joseph Shelly signed a search warrant authorising the search of Mr. Frank McBrearty Senior's dwelling house situated at Tullyrap, Raphoe, Co. Donegal. He did so as he was satisfied that there were reasonable grounds to believe that evidence relating to the commission of a scheduled offence under Part V of the Offences Against the State Act, 1939, as amended, was to be found at the home of Mr. McBrearty Senior. At approximately 19.00 hours on the 5th of December 1996 a search of the dwelling house of Mr. Frank McBrearty Senior commenced. At approximately 19.55 hours on the same date, Sergeant Paul Heffernan arrested Mr. Frank McBrearty Senior pursuant to the provisions of section 30 of the Offences against the State Act, 1939, on suspicion of having been involved in the commission of a scheduled offence under section 7 of the Conspiracy and Protection of Property Act, 1875.

¹³⁴² Report on the investigation into the death of Richard Barron and the Extortion Calls to Michael and Charlotte Peoples.

¹³⁴³ Report on the investigation into the death of Richard Barron and the Extortion Calls to Michael and Charlotte Peoples, Chapter 5, pages 450 to 455.

PART I

THE LEGALITY OF THE ARREST OF MR. FRANK MCBREARTY SENIOR

The Legal Framework

10.03. The Conspiracy and Protection of Property Act, 1875, was passed in order to curb the excesses of trade unionism and to undermine the labour movement generally. This statute created new offences such as hiding a workman's tools and watching and besetting premises. Section 7 of the Conspiracy and Protection of Property Act, 1875, provides that:

Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without authority;

(1) Uses violence to or intimidates such other person or his wife or children, or injures his property; or

(2) Persistently follows such other person about from place to place; or

(3) Hides any tools, clothes or other property owned or used by such other person, or deprives him or hinders him in the use thereof; or

(4) Watches or besets the house or other place where such other person resides, or works, or carries on business, or happens to be, or the approach to such house or place; or

(5) Follows such other person with two or more other persons in a disorderly manner in or through any street or road,

Shall on conviction thereof by a court of summary jurisdiction or on indictment be liable either to pay a penalty not exceeding £20 or to be imprisoned for a term not exceeding three months.

Hence there was a serious allegation against Mr. Frank McBrearty Senior that he followed people with a view to making them desist from their lawful activity, which, in this instance, was co-operating with the police authorities.

10.04. Because the statutory provision under which Mr. McBrearty Senior was arrested constitutes an offence which was a scheduled offence under section 30 of the Offences Against the State Act, 1939, he could be arrested under the provisions of that statute and be detained for a period of twenty four hours, followed by a subsequent period of twenty four hours if the period of detention was extended by an officer of the Garda Síochána not below the rank of Chief Superintendent.

His detention did not require the sanction of the member in charge of the Garda station.

- 10.05. By virtue of section 30(4) of the Offences Against the State Act, 1939, it is only a member of An Garda Síochána of officer rank who has the requisite authority to release a person detained under the provisions of that section.
- 10.06. By virtue of section 9 of the Criminal Justice Act, 1984, sections 4 (8), 5, 6 (2) and 6(3) of that Act apply to those persons detained pursuant to the provisions of the Offences Against the State Act, 1939. Section 4 (8) of the Criminal Justice Act, 1984 is of particular relevance to the detention of Mr. McBrearty Senior. It provides as follows:

Where it appears to a member of the Garda Síochána that a person arrested...is in need of medical attention, or where during his detention it comes to notice that he is in need of such attention, and he is taken for that purpose to a hospital or some other suitable place, the time before his arrival at the station or the time during which he is absent from the station, as the case may be, shall be excluded in reckoning a period of detention permitted by this section.

- 10.07. Therefore, any time spent receiving medical attention in a place other than a Garda Station is excluded from the calculation of period of detention permitted by the statute.

Background Facts Relevant to the Search of the Dwelling House of Mr. Frank McBrearty Senior and his Subsequent Arrest

- 10.08. The allegation made against Mr. McBrearty Senior is inextricably linked with the Garda investigation into the death of Mr. Richard Barron. The particular allegation was that he was interfering with that Garda investigation. For this reason, it is helpful to briefly outline what was going on in Raphoe from the time of Mr. Barron's death to the arrest of Mr. Frank McBrearty Senior, which events are more fully set out in the Tribunal's second report.
- 10.09. On the 14th of October 1996, the Late Mr. Richard Barron was found dead on the roadway outside Raphoe, County Donegal. An Garda Síochána commenced an investigation into this death. On the 14th of October 1996, Mr. Frank McBrearty Senior made a statement to Sergeant Joseph Hannigan, which confirmed that he had seen the Late Mr. Barron shortly after midnight on the night he met his death.¹³⁴⁴ On the 18th of October 1996, Mr. McBrearty Senior made a further statement to Detective Garda Michael Carroll, which concerned the ejection of Paul 'Gaza' Gallagher from Frankie's nightclub on the night of Mr. Barron's death.¹³⁴⁵

¹³⁴⁴ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 415.

¹³⁴⁵ Tribunal Documents, (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 416.

- 10.10. This Garda investigation turned into a murder investigation within a very short period of time. The chief suspects for the murder of Mr. Barron were Mr. Frank McBrearty Junior (Mr. McBrearty's son) and Mr. Mark McConnell (Mr. McBrearty's nephew). The Tribunal has found that the basis for this suspicion was a rumour that had its origins in the speculation of people in the wake-house, where Mr. Barron's remains lay.¹³⁴⁶
- 10.11. During the rest of October 1996 the investigation team focussed narrowly on the potential guilt of Frank McBrearty Junior and Mark McConnell.¹³⁴⁷ The Tribunal has found that those leading the investigation were not interested in anything that might tend to show the innocence of either suspect. That would have been unwelcome news as far as they were concerned.¹³⁴⁸ Furthermore, the Tribunal has found that no objective assessment was made of any information that came to the conference room.
- 10.12. In the following extract from the Tribunal's second report, the emerging concerns of Mr. Frank McBrearty Senior with regard to the Garda investigation are set out with the Tribunal's comment with regard to same:

Corporal Mickey McGahern, who was working in Frankie's nightclub on the night of the 13th/14th of October, was requested by Mr. Frank McBrearty Senior to return from Cork to make a statement to the Garda Síochána in the days following the death. He did so on the 24th of October 1996. He had concerns that questions were asked pointedly about the movements of Frank McBrearty Senior and Junior by Garda Collins and Garda O'Dowd during the course of an interview. He also had concerns about a suggestion made to him to the effect that he would probably go and speak to Frank McBrearty Senior about what he told the Gardaí. He said that Garda Collins then told him "that there was a great big can of worms going to open up here in Raphoe town and I hope you are not stuck in the middle of it, seen the job you do, making reference to the Department of Defence".

This was reported back to Mr. McBrearty Senior who then went with Mr. McGahern to complain about the two Gardaí to Superintendent Fitzgerald. He did not think he got a satisfactory answer from the superintendent about the reasons for the nature of the question asked. Mr. McBrearty Senior has indicated that he was very taken aback at what Mr. McGahern had told him and the nature of the questions asked of him, particularly as he was co-operating fully with the Garda Síochána at the

¹³⁴⁶ Report on the Investigation into the Death of Richard Barron and the Extortion Calls to Michael and Charlotte Peoples, Term of Reference (a) and (b), pages 360-366.

¹³⁴⁷ Report on the Investigation into the Death of Richard Barron and the Extortion Calls to Michael and Charlotte Peoples, Term of Reference (a) and (b), page 387.

¹³⁴⁸ Report on the Investigation into the Death of Richard Barron and the Extortion Calls to Michael and Charlotte Peoples, Term of Reference (a) and (b), page 386.

time. He then sensed that the investigation was focussing unjustifiably upon his family. However, in the normal course of events, an investigation pertaining to the whereabouts of various parties in the course of the evening would have been reasonable and Mr. McBrearty Senior's reaction might have been regarded as overblown. As matters turned out, he was right to be worried.¹³⁴⁹

Statements re Frank McBrearty Senior

- 10.13.** It is against this background that a number of statements concerning the alleged activities of Mr. Frank McBrearty Senior came to be made during late October and November of 1996. These statements are summarised in the following paragraphs.
- 10.14.** On the 28th of October 1996, Garda John O'Dowd made a statement reporting that he felt threatened by Mr. Frank McBrearty Senior in circumstances in which Mr. McBrearty Senior approached him when he was sitting in a patrol car with Garda Dan Curran at 03.00 hours on the 28th of October. He alleged that Mr. McBrearty Senior asked him in a menacing voice if he slept well at night, to which Garda O'Dowd responded that he had no problems. Garda O'Dowd then alleged that Mr. McBrearty Senior said that he should have because he would not forgive him until the day he died. Mr. McBrearty Senior then allegedly approached Garda Curran and after a short while walked away. He then returned to Garda O'Dowd and told him that he was a blackguard and he would get him sorted out and that money meant nothing to him. Garda O'Dowd then alleged that a few minutes later, Michael McConnell, a nephew of Mr. Frank McBrearty Senior, came over shouting abuse at him until eventually Mr. Frank McBrearty Senior returned and took Mr. McConnell away.¹³⁵⁰
- 10.15.** The Tribunal notes that while Garda O'Dowd is alleging that Mr. McBrearty Senior's behaviour was threatening it also seems to be accepted by him that some short time later Mr. McBrearty Senior came to Garda O'Dowd's assistance.
- 10.16.** Garda Dan Curran made a statement recounting that he had been on duty as observer in the patrol car with Garda John O'Dowd on the 27th/28th October 1996. At 03.00 hours Mr. Frank McBrearty Senior approached Garda O'Dowd and said to him "Do you sleep in your bed at night, you've really ruined my family this time" in a raised voice. Mr. McBrearty Senior then approached Garda Curran and said to him "you know my family well, sure you know my sister they're decent people". Later on in the night, when Garda Curran was on foot patrol, Mr. McBrearty Senior approached him at the entrance to Frankie's nightclub and said to him "yous really hurt me and my family this time", and informed him that a youth had earlier called him a murderer. Garda Curran asked Mr. McBrearty

¹³⁴⁹ Second Report of the Tribunal, paragraphs 3.229 and 3.230, pages 164-165.

¹³⁵⁰ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 541.

Senior whether he realised that there was a murder investigation going on to which Mr. McBrearty Senior replied “I phoned people and sent them to the Garda station to make statements and I was accused of starting a conspiracy” It should be noted that within a short time of these incidents Michael McConnell apologised for his actions.¹³⁵¹

- 10.17.** In a statement dated the 5th of November 1996, Garda John O’Dowd reported that on the previous day, the 4th of November 1996, he was on Garda duties which involved calling to a house at St. Eunan’s Terrace, Raphoe. As Garda O’Dowd travelled down St. Eunan’s Terrace he noticed Mr. Frank McBrearty Senior watching a patrol car which was parked outside the house. Garda O’Dowd called to the house and informed Garda Collins, who was already there, that Frank McBrearty Senior was sitting in his car outside watching the patrol car. As Garda O’Dowd left he saw Mr. McBrearty Senior driving away.¹³⁵²
- 10.18.** In his statement also dated the 5th of November 1996, Garda Philip Collins also stated that on the previous day, the 4th of November 1996, he was on Garda duties which involved calling to the house at St. Eunan’s Terrace, Raphoe. While there, taking a statement from a female witness, Garda John O’Dowd arrived and informed Garda Collins that Frank McBrearty Senior was sitting in his car outside watching the patrol car. Mr. McBrearty Senior had left prior to Garda Collins’ departure.¹³⁵³ The incident under inquiry had nothing to do with the death of the Late Mr. Barron.
- 10.19.** In a further statement made on the 13th of November 1996, Garda Philip Collins reported that on the 10th of November 1996, while he was at the home of Michael Peoples investigating a complaint he had received from him about the receipt of threatening phone calls, he observed a car being driven by Frank McBrearty Senior drive down the terrace, drive past the house again a few minutes later and past the Peoples’ house one more time. He said that it appeared to him that Frank McBrearty Senior was watching him doing his duty in the Peoples’ house that afternoon.¹³⁵⁴ Of course, the investigation of those calls was something that Mr. McBrearty Senior, wanted.
- 10.20.** On the 13th of November 1996 Bridget Kelly made a statement to Detective Garda John V. Doherty, reporting that Mr. Frank McBrearty Senior called to her flat in the early hours of the 13th of November 1996 enquiring as to what the Gardai had been asking her about him or Frank McBrearty Junior. She also told Garda Doherty that Mr. McBrearty Senior stated to her that he had warned the

¹³⁵¹ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), pages 543 and 544. This incident was also the subject of a summons issued against Mr. McBrearty Senior and is dealt with in the Tribunal’s Report on Alleged Harassment of the McBrearty family. (Term of Reference (c)).

¹³⁵² Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 540.

¹³⁵³ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 510.

¹³⁵⁴ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 512.

Gardaí to stop asking questions about the McBreartys.¹³⁵⁵ Ms. Kelly had made a previous statement to the Gardaí in relation to the Garda investigation into the death of Richard Barron on the 18th of October 1996.

- 10.21. Philomena Lynch, in a statement taken by Sergeant Tom McMenamain on the 18th of November 1996,¹³⁵⁶ complained that Frank McBrearty Senior had telephoned her son, Daniel, on the 7th of November 1996 and enquired of him as to what the Gardaí had been saying to him and whether he had mentioned any of the McBrearty boys in his statement to the Gardaí. Mrs. Lynch then telephoned Frank McBrearty Senior who told her that the Gardaí were trying to blacken his family name and stated that as far as he could make out the Gardaí did not know what happened to the Late Richard Barron. Furthermore, he enquired of Mrs. Lynch as to which Gardaí had called and what Caroline, her daughter, and Damien, her son, had said to the Gardaí.
- 10.22. Ms. Caroline Lynch, the daughter of Philomena Lynch, in a statement taken on the 18th of November 1996 by Detective Garda John V. Doherty, stated that she felt very intimidated by Frank McBrearty Senior when he approached her as she went into Frankie's disco on Sunday, the 10th of November 1996. Mr. McBrearty Senior enquired from her as to what the Gardaí said to her and what reply she furnished to the Gardaí. Furthermore, he asked her to find out who was making statements in the St. Johnston area and to revert to him with regard to same.
- 10.23. In a statement taken by Detective Garda John V. Doherty on the 19th of November 1996 from Aileen Campbell, who was then an employee of Frank McBrearty Senior, it is recorded that on the 16th of November 1996, Mr. Frank McBrearty Senior asked her whether she had been questioned by the Gardaí, what the Gardaí had asked her and whether they had asked her about him and Frank McBrearty Junior. The statement records that when she told Mr. McBrearty Senior that she had said she had seen both him and his son at the end of the night on the night of Richard Barron's death, he became frustrated and ultimately asked her to write out a statement setting out her interaction with the Gardaí. Her statement continues that she felt very intimidated and scared of getting involved in the situation. On the following Sunday night when she went into work she was again asked by Frank McBrearty Senior whether she had written out the required statement. She replied that she was not going to do so, whereupon she said that Mr. Frank McBrearty Senior said "yes, but you're fond of the work in here, aren't you?"¹³⁵⁷ Ultimately, Ms. Campbell said that as a result of what happened she was annoyed and upset and wanted to cry and left work.¹³⁵⁸

¹³⁵⁵ Tribunal Documents, (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 502.

¹³⁵⁶ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 507.

¹³⁵⁷ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 504.

¹³⁵⁸ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 504.

Meeting on the 20th of November 1996

- 10.24. Inspector John McGinley accompanied Detective Superintendent Shelly to a meeting with Mr. Frank McBrearty Senior which ultimately took place on the 20th November 1996 in Mr. McBrearty Senior's licensed premises. Mr. Shelly told the Tribunal how and why this meeting came about as follows:

There were reports coming in to conference for quite a while before that, Chairman, of difficulties out in the Raphoe area concerning Mr. McBrearty Senior and certain people who had made statements to the Gardaí. These reports were causing quite a bit of concern to the investigation and particularly so to the people out on the ground who were working out there on enquiries. These concerns were ongoing and at the time I told ... I suppose volunteered is the word, to Superintendent Fitzgerald, who was in charge of the investigation, that I would go out and talk to Mr. McBrearty, to basically see what was happening and why it was happening. I did that. I actually went out twice. I got to see him the second day, on the 20th.¹³⁵⁹

- 10.25. The two officers had a discussion with Mr. McBrearty Senior about his interference, as perceived by the Gardaí, in the ongoing Garda investigation. Mr. McGinley told the Tribunal that this perception was based on the statements outlined in the preceding section and "a lot more than the statements."¹³⁶⁰ He explained to the Tribunal as follows:

I think it's fair to say that during the course of the investigation information was coming in to the incident room from people on the ground, particularly the members in Raphoe themselves, Chairman, that Mr. McBrearty was behaving in a particular way and that it was making the investigation difficult.¹³⁶¹

- 10.26. Mr. Shelly told the Tribunal that Mr. McBrearty Senior denied what the Gardaí were putting to him, that he did not believe that Mr. McBrearty Senior was listening to them and that his attitude was that he had nothing to stop doing because he was not doing anything wrong in the first place.¹³⁶² A similar account of the meeting was given by Mr. John McGinley.¹³⁶³

- 10.27. Unknown to Mr. McBrearty Senior, this meeting was recorded on a tape cassette by Inspector John McGinley. The transcript of this tape as prepared by Garda Tina Fowley demonstrates that the following propositions were put to Mr. McBrearty Senior: that he was conducting an investigation of his own, that he was following

¹³⁵⁹ Transcript, Day 543, pages 53-54.

¹³⁶⁰ Transcript, Day 563, page 34.

¹³⁶¹ Transcript, Day 563, page 35.

¹³⁶² Transcript, Day 543, page 55.

¹³⁶³ Transcript, Day 563, pages 35-36.

Gardaí around and that he was checking out what the Gardaí were doing with other persons who had been interviewed.¹³⁶⁴ From the recording, it is clear that the meeting was quite heated and that Mr. McBrearty Senior made very strident replies to the issues raised.

- 10.28.** Mr. McBrearty Senior told the Gardaí that he was asking his staff what detectives were saying about him. He denied that he was following and watching Gardaí. He demanded details of the houses that he was supposed to be watching. He said that he was annoyed with the Gardaí because of their interest in his family and he alleged that the Gardaí hated him.
- 10.29.** Mr. McBrearty Senior addressed the issue of his allegedly suspicious movements around the town of Raphoe in the early weeks of the Barron investigation in the course of a detailed statement that he furnished to Tribunal Investigator Chief Superintendent Brian Garvie (RCMP), when the latter interviewed Mr. McBrearty Senior on the 29th of May 2003. Referring, in the first instance, to the meeting on the 20th of November 1996 with Detective Superintendent Joseph Shelly and Inspector John McGinley, the statement read:

When both Garda were leaving, Inspector McGinley and Det. Shelly said they hoped this would be the end of the reports coming to them, I said to them I hope you're right because I don't want the Garda coming back here accusing me in the wrong. I told them I was Lord Mayor of the town and that I was on four different committees, that I was President of both the football club as well as being involved in various charity organisations around the town, as well as this most of my part-time staff who work for me live in the town and as a result of this I would be in and out of a lot of houses in both St. Eunan's Tce. and Meadowhill Housing Estate and houses in the town in general, and because I was in and out of these houses didn't mean I was watching Gardaí.¹³⁶⁵

- 10.30.** Following on from the 20th of November 1996 to the date of Mr. McBrearty Senior's arrest there does not appear to be any record of further incidents of the kind of activities that caused the Gardaí to visit Mr. McBrearty Senior on that date. However, Mr. Shelly told the Tribunal that he couldn't "say that anyone was satisfied that this sort of activity wasn't continuing. A lot of people would have been talking to the guards out there in relation to what was happening but they mightn't have made statements".¹³⁶⁶

¹³⁶⁴ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 1), pages 82-4 to 82-10. This meeting was secretly taped by Inspector John McGinley without the knowledge of Detective Superintendent Shelly. This matter is dealt with further in Chapter 16 in the context of recommendations concerning the tape-recording of meetings by members of An Garda Síochána.

¹³⁶⁵ Tribunal documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), pages 563-564.

¹³⁶⁶ Transcript, Day 543, question 58.

Aileen Campbell

- 10.31.** Two days after Mr. McBrearty Senior's meeting with Inspector McGinley and Detective Superintendent Shelly, Aileen Campbell returned to Mr. McBrearty's nightclub on a social night out.¹³⁶⁷ Ms. Campbell went over and spoke to Mr. Frank McBrearty Senior, who told her that her job was still available for her if she wanted it. She returned to her employment and continued to work for Mr. Frank McBrearty Senior for approximately one year.¹³⁶⁸ She told the Tribunal that when she spoke to Mr. McBrearty Senior on that Friday night, there was no mention of writing out the requested statement or anything of that nature.
- 10.32.** The fact that Ms. Campbell never completed a statement for Frank McBrearty Senior and continued in his employment for approximately one year was not recorded by the Gardaí, whether by way of a further statement or in the subsequent reports completed by Superintendent Kevin Lennon¹³⁶⁹ or by Sergeant Martin Moylan¹³⁷⁰ for onward transmission to the State Solicitor for Donegal, Mr. Cíaran McLoughlin.
- 10.33.** Some controversy arose about the reference to the word 'intimidated' in the statement of Ms. Campbell. She told the Tribunal that the word 'intimidated' was one which would have been introduced by Detective Garda Doherty, who took the statement, and she would have felt "more uncomfortable and embarrassed more than scared."¹³⁷¹
- 10.34.** In 1996, Detective Garda John V. Doherty served in Milford Station, Co. Donegal. He was assisting in the investigation into the death of Richard Barron and his specific task was the taking of statements from persons whose names had been assigned to him. He explained to the Tribunal that this assignment was not part of his normal duties. He maintained that he had no preset agenda in carrying out this assignment and he was delighted with this extra duty as he earned extra overtime which was helpful in discharging some of his domestic responsibilities.¹³⁷² On being questioned about the references to intimidation in the statements of Caroline Lynch and Aileen Campbell, Mr. Doherty was adamant that if such a reference appeared in the statements it was because it was said by each of the girls.¹³⁷³ Caroline Lynch does not dispute this.¹³⁷⁴ The Tribunal accepts the evidence of Mr. Doherty. He gave his evidence to the Tribunal in a frank and forthright manner. The Tribunal agrees with the following observation made by Mr. Doherty:

¹³⁶⁷ Transcript, Day 539, page 7.

¹³⁶⁸ Transcript, Day 539, page 8.

¹³⁶⁹ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), pages 484-487.

¹³⁷⁰ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), pages 488-498.

¹³⁷¹ Transcript, Day 539, pages 10-11.

¹³⁷² Transcript, Day 550, pages 19-27

¹³⁷³ Transcript, Day 550, page 16.

¹³⁷⁴ Transcript, Day 320, page 122.

I mean when you are talking to her now she's 27, a married woman I'm sure and probably children, she's had a lot ... more intimidation in her life since that. The word intimidation at 17 would be a lot stronger when you have no experience of dealing with people and somebody comes along and gives you a b...in front of everybody. It wouldn't be in that statement if she didn't say it. I read it out to her and she signed it. So I mean I didn't add anything in there that wasn't said.¹³⁷⁵

Information from Robert Noel McBride

10.35. Mr. John O'Dowd told the Tribunal that he received information from William Doherty after the 29th of November 1996 to the effect that Frank McBrearty Senior had given money to Robert Noel McBride.¹³⁷⁶ Mr. O'Dowd said that he brought this to the attention of Sergeant Moylan and, possibly, Inspector McGinley, either on the 1st or the 2nd of December 1996. He said that he knew this information was of great significance.¹³⁷⁷ He heard no more of the matter until the 4th of December 1996 when Sergeant Moylan told him to obtain a statement from the witness as a matter of urgency.¹³⁷⁸ He said that he tried to contact Noel McBride and thereafter, through William Doherty, made an arrangement to meet Noel McBride. He subsequently met him down a laneway on the 4th of December 1996 where a statement was taken from him.¹³⁷⁹ This statement is set out in full hereunder:

ADDITIONAL STATEMENT OF NOEL MC BRIDE OF FIGART,

RAPHOE, [telephone number redacted] OCCUPATION UNEMPLOYED

DATE OF BIRTH 16.11.71 ON 4.12.96 BY GARDA JOHN O'DOWD

I hereby declare that this statement is true to the best of my knowledge and belief and that I make it knowing that if it is tendered in evidence I will be liable to prosecution if I state in it anything which I know to be false or do not believe to be true.

Further to my statement of the 29/11/96 I now wish to offer the following information in relation to the night of 13/14 October and the death of Richard Barron. A couple of days after the death of Richard Barron, I would say either the following Wednesday or Thursday, I was walking out home from Raphoe towards Figart. I was walking alone past O'Flanagans house near the bad bend when a large silvery car pulled up beside me. I

¹³⁷⁵ Transcript, Day 550, pages 19-20.

¹³⁷⁶ Transcript, Day 542, page 167.

¹³⁷⁷ Transcript, Day 542, pages 167, 168, 170, 197.

¹³⁷⁸ Transcript, Day 542, page 170.

¹³⁷⁹ Transcript, Day 542, pages 170 and 171.

immediately recognised the driver of this car as Frank McBrearty Snr owner of the place known as Frankies Nightclub in Raphoe. He offered me a lift and I got in beside him. He was alone in the car. He drove on over half a mile and just past Mark McConnell's house he pulled up. Up till this stage we were talking normal chat. After he pulled up old Frank asked me what did I see the night Richard Barron died. I said I know nothing at all. He asked me was I up in the car park that night. I said I wasn't. Just then old Frank put his hand into the glovebox in the door and pulled out a cloth bank bag. He reached in and counted out £500.00 in £20 & £50 denomination. It was all punts. He said to me take that there and say nothing. There is plenty more where that came from and we will look after you from here on in. He put the bundle of notes up in front of me and I refused them at first. He kept pressing me to take the money and after three or four times I eventually accepted the money and put it in my pocket. Old Frank then said to me you are not to tell the Guards or your family anything about this and everything will be all right. When I got into the car first at Flanagans and during the journey of ½ mile or so to Mark McConnells, old Frank was asking me in the car about my financial situation. I told him I had no money, only lying about the house all day doing nothing and that all I had was the dole. The time of the day old Frank picked me up was 3 p.m. Since this occasion old Frank nor anybody else has approached me with any more cash. The only other contact has been the anonymous phone calls at my house in Figart which I received at 1 .am. On the 3rd Sunday after the death of Richard Barron. Since I have received this money and the anon. Phone calls I am afraid of my life of the McBreartys and that is the main reason why I am staying up in Killygordon since the death of Richard Barron. I don't go into Raphoe either and I am terrified. I will meet some of them on the road since I got the cash from Frank McBrearty Snr. I have spent it all. I bought some clothes a watch and some things for my girlfriend. This statement has been read over to me and it is correct.

Signed: NOEL MCBRIDE

WITNESSES: JOHN O'DOWD¹³⁸⁰

- 10.36. Having taken the statement, Mr. O'Dowd said that he returned to Letterkenny Garda Station and handed the statement to Sergeant Moylan.¹³⁸¹ John O'Dowd gave the following evidence to the Tribunal in relation to the genesis of the Noel McBride bribery allegation that was ultimately reflected in Mr. McBride's statement of the 4th of December 1996:

¹³⁸⁰ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), pages 594-596.

¹³⁸¹ Transcript, Day 542, pages 171 and 172.

I received information from ... William Doherty, sometime after the statement of 29th of November 1996, which McBride made in Letterkenny Garda Station, that he had received money from Mr. McBrearty Senior. I brought this to the information of Sergeant Moylan and I believe Inspector McGinley. That was the way it was left ... I certainly spoke to Sergeant Moylan. Now I can't be certain about Inspector McGinley at that stage ... I told him ... my informant has told me that the witness has received money from Frank McBrearty. And perhaps I mentioned the £500, I'm not sure ... I knew it was huge, important information ... At this stage the exact wording that I was told, it'd be something around certainly that he was getting money and that he was under some sort of threat or danger ... I did [feel he was terrified] ... I had no reason to doubt it ... I didn't [speak to him directly], not at that stage, no. I got the information from Doherty ... And I brought the information to the attention of the investigation straightaway ... The exact words [from Doherty] at this stage I can't mind ... I'm just telling you what it approximately was. That he was getting money from Mr. McBrearty and it seemed to me to perhaps interfere with the investigation ... The reaction that it invoked in [Sergeant Moylan] was probably, I better tell the Super, I can't remember now. But I brought that to his attention and nothing happened with it until the morning of the 4th that I know of. I don't know what happened exactly between this, when I got it and passed it to him and the 4th ... It was either the 1st or the 2nd [when I told Sergeant Moylan]. I passed it on as soon as I heard it ... I can't just tell you, to be honest with you, at this stage [what reaction it provoked] ... About one o'clock on the 4th Sergeant Moylan spoke with me and he told me that -- I knew from the way he was saying that it was urgent to get this statement in from McBride, whatever he was saying. And so I did that ... I tried to contact McBride first of all. Now, I'm not sure did I ring from the station or from my own phone at home. I'm sure the records are there at some place. I couldn't find him anyhow. So because of the urgency I got in touch with Doherty and he got in touch with him and he was to bring him to Raphoe Garda Station at -- two o'clock I believe it was. So I went to Raphoe anyway and there was no sign of them. I waited there until about three o'clock and I walked over the road towards the Diamond. I spotted the two of them along that footpath. McBride was a bit nervous I did think and I naturally assumed at

*that stage that he was afraid, perhaps a combination of being afraid to be seen going near the station, a combination -- I just don't know what else. But anyway, I told him to go down the laneway and I went back to the station and collected my car and I went back down the laneway and I collected him ... Doherty wanted to come with him of course. I went out the country and pulled into a laneway out at Beltany and I took down what he had said. He signed it. I brought them back towards the town and I dropped him off and I came back straight into Letterkenny Station, the conference room and I handed that statement, there and then, to Sergeant Moylan and there's absolutely no doubt in my mind about that. None at all. Then we went on to talk about the impending arrest of Mark Quinn and one thing led to another after that...I wasn't at the conference [at which it was decided to arrest Frank McBrearty Senior] ... Well I suppose looking at it now [the statement] was probably to give the search warrant proper strength you know for to search Mr. McBrearty's premises ... I know [the search warrant was issued on the 3rd]. But I suppose the fact that I had the information in before that anyhow, maybe it was based on that. I don't know what they based their evidence on for to get the search warrant anyhow. I am just supposing, I got a job to do you see.*¹³⁸²

10.37 Mr. O'Dowd gave evidence to the effect that his involvement in the investigation of Mr. McBrearty Senior's alleged activities was limited to complying with orders handed down to him from senior officers, and that he did not realise that Mr. McBrearty Senior's arrest was contemplated or that the confidential information supposedly emanating from Robert Noel McBride would be or was relied upon to issue the section 29 warrant. His recollection on these matters was, he said, not very good.¹³⁸³

10.38 The matter was addressed in the following exchange between Mr. O'Dowd and counsel for the Tribunal:

Q. Mr. McBride at this stage was terrified according to the statement?

A. Yes.

Q. That came in on the 4th when you took it?

A. Yes.

¹³⁸² Transcript, Day 542, pages 167-172.

¹³⁸³ Transcript, Day 542, pages 175-176.

Q. *But he's a man who previously -- and he's a man who previously had received anonymous phone calls in the days after 13th/14th October?*

A. *So he says.*

Q. *And at the same time he was willing to get into the car with Mr. McBrearty Senior and take £500 from him to keep his mouth shut?*

A. *So he says.*

Q. *Did you find that all very curious and contradictory?*

A. *I didn't think of it that way, it was a matter that needed to be investigated and I handed in the statement and it should have been. I mean I could only take it at face value at the end of the day.*

Q. *Why had he come to you with the story did he say?*

A. *Why did who come to me with the story?*

Q. *Why was McBride willing to give up this information, at that time?*

A. *I don't know, but sure I just believed it, I had to act on it. I believed it.*

Q. *He just got the £500 to keep his mouth shut, there's more in it for him apparently if he behaves himself?*

A. *If that's what he's saying, that's what he's saying, I can only take down what he was telling me.*

Q. *Because...(INTERJECTION)*

A. *If you're trying to suggest I was putting words into his mouth I certainly was not, nothing of that.*

Q. *Well, are you sure?*

A. *I'm certain. That sort of stuff was portrayed here before in the B module and it was wrong. And these fellows that come along here now and say Mr. Moylan, the same auld stunt carried on in the B module as well, you know, and it's all protecting the fellows above them, you know.*

Q. *Well, it's very curious that it all comes together when you want it to on the 4th of December?*

A. *I was directed to go out on the 4th of December. I wouldn't be going out there at all, only for I was directed to go out.*

Q. *Yeah, you had made two statements prior to this on the 28th of October and the 5th of November 1996 in relation to Frank McBrearty Senior?*

A. *That's correct.*¹³⁸⁴

10.39. The Tribunal is satisfied that Garda O'Dowd, having actively and knowingly participated in the taking of the false statement from Robert Noel McBride on the 29th of November 1996, which was the decisive development that facilitated the arrests of various people based on the false theory that Mr. McBrearty Senior's son and nephew had murdered the Late Mr. Barron, could not have honestly believed that Robert Noel McBride was a reliable witness when it came to the bribery allegation against Mr. McBrearty Senior. The Tribunal is not in a position to determine whether Mr. McBride, Mr. Doherty, Garda O'Dowd or a combination of some or all of them were responsible for the detail in the statement of the 4th of December. However, Garda O'Dowd was directly responsible, on his own admission, for feeding this information into the system a number of days beforehand. He did so knowing it to be false. It is also clear from the evidence that Garda O'Dowd, while he may not have been involved on a day-to-day basis in the investigation of the allegations against Mr. McBrearty Senior, had more than a passing interest in same, having made two previous statements that tended to indicate that Mr. McBrearty Senior was attempting to deliberately frustrate the Garda investigation into Mr. Barron's death.

10.40. Mr. McBride told the Tribunal that he made that statement at the behest of Mr. Doherty, who had given him a story and rehearsed it with him.¹³⁸⁵ Mr. Doherty, while admitting that he was part of a conspiracy, denies that he gave Mr. McBride the information.¹³⁸⁶ In his evidence Mr. McBride put the matter as follows:

Q. *I think you made a statement on the 4th of December 1996 about Frank McBrearty Senior offering you money which he took out of the glove compartment in the car. Do you remember that?*

A. *That's right.*

¹³⁸⁴ Transcript, Day 542, pages 178-179.

¹³⁸⁵ Transcript, Day 190, page 98.

¹³⁸⁶ Transcript, Day 191, page 99.

- Q. *I think you have admitted that that's not true?*
- A. *That's right.*
- Q. *How did you come to give that statement?*
- A. *William Doherty went over the story with me.*
- Q. *So he told you what to say, did he?*
- A. *That's right.*
- Q. *He gave you a story and went over it, rehearsed it?*
- A. *That's right.*
- Q. *How did you come to give the statement?*
- A. *Where did I give it?*
- Q. *Yes.*
- A. *In the back of John O'Dowd's car.*
- Q. *How did that come about?*
- A. *Mr. Doherty and me went over to the Garda station, he went into it and came back out again.*
- Q. *All right. Yes?*
- A. *We went down the sheep lane. Then a few minutes later Mr. O'Dowd, he came down, we got into the car.*
- Q. *Yes?*
- A. *And we drove for a couple of miles and then stopped then, and made the statement then.*
- Q. *So you drove out. Were you in the countryside or were you still in the town?*
- A. *Countryside.*
- Q. *What time of the day was this do you remember?*
- A. *I don't really mind.*
- Q. *Being December, was it daylight or was it dark?*
- A. *It was daylight.*

Q. *It was daylight?*

A. *Aye.*

Q. *Can you remember was it morning or afternoon?*

A. *I think it was afternoon.*

Q. *Afternoon. Okay. You made that statement about getting the money and you said that you were frightened of the McBreartys and that you had bought a watch and you had bought some things for your girlfriend with the money; is that right?*

A. *That's right.*

Q. *Who had given you these details to put in the statement?*

A. *Mr. Doherty.*

10.41. Sergeant Moylan formed part of the incident room staff in Letterkenny Garda Station. He became involved in the intimidation issue and ultimately compiled the covering report for the file on Mr. Frank McBrearty Senior that was submitted to Superintendent Fitzgerald.¹³⁸⁷ He told the Tribunal that he had no recollection of getting the McBride statement of the 4th of December on that day, but said he received it sometime after Christmas.¹³⁸⁸ He said that he met Garda O'Dowd sometime after the 29th of November and enquired of him whether he had seen Mr. McBride since the 29th of November at which stage Garda O'Dowd informed him that Mr. McBride "got paid money".¹³⁸⁹ He said he brought this information to the notice of either Superintendent Fitzgerald or Detective Superintendent Shelly¹³⁹⁰ and took no further action.

10.42. Mr. Shelly, in his evidence to the Tribunal, stated that possibly on or around the 2nd of December, he learnt that Garda John O'Dowd had conveyed that a witness had been approached by Mr. McBrearty Senior and offered the sum of £500.00 in return for his silence.¹³⁹¹ He stated that he did not know who the witness was at that stage,¹³⁹² that he was aware that Garda O'Dowd had brought the information to a conference and that he became aware of it.¹³⁹³ However, he could not recall who relayed the information to him.¹³⁹⁴ He did not speak to John O'Dowd about the information. He did not pass the information on to any other

¹³⁸⁷ Transcript, Day 541, page 26.

¹³⁸⁸ Transcript, Day 541, page 29.

¹³⁸⁹ Transcript, Day 541, page 31.

¹³⁹⁰ Transcript, Day 541, page 31.

¹³⁹¹ Transcript, Day 536, page 58.

¹³⁹² Transcript, Day 536, page 58.

¹³⁹³ Transcript, Day 536, page 58.

¹³⁹⁴ Transcript, Day 536, page 58.

Garda,¹³⁹⁵ nor did he direct anyone to obtain a statement from the source of the information.¹³⁹⁶

- 10.43. The Tribunal accepts that a statement was taken from Mr. McBride on the 4th of December 1996. The Tribunal has had sight of the original statement, which is dated the 4th of December 1996, and both the signatory to it and the witness have told the Tribunal that it was taken on that date. Whether the statement was submitted to the incident room or retained by Garda O’Dowd the Tribunal does not find it necessary to resolve in circumstances where it is admitted that the information contained in the statement was known to both Sergeant Moylan and Detective Superintendent Shelly.
- 10.44. Mr. John McGinley told the Tribunal that he did not become aware of the Noel McBride information until sometime in 1997.¹³⁹⁷ While this may seem somewhat surprising, considering that he was a senior officer involved in the investigation and questioning of Mr. McBrearty Senior both prior to and during his arrest, the Tribunal accepts this. No definite assertion has been made by anybody to the contrary and the allegation contained in the McBride information was not put to Mr. McBrearty Senior by Inspector McGinley when he subsequently questioned him on the night of the 12th of December 1996.
- 10.45. From the evidence given to the Tribunal, I am satisfied that the only persons who were aware of the McBride information (with the exception of Detective Sergeant Melody and Detective Garda Fitzpatrick, which will be dealt with later on in the report), were Garda John O’Dowd, Sergeant Moylan and Detective Superintendent Shelly. All other officers who gave evidence to the Tribunal said that they did not become aware of that particular information until much later. Members of the search team and other interrogating officers, with the exception of Detective Garda Melody and Detective Garda Fitzpatrick, stated in evidence that they were not aware of that information. The Tribunal accepts this. If they had been aware of it, some action would have been taken on foot of it and it would have been to the forefront of the minds of the Gardaí searching Mr. McBrearty Senior’s house. Furthermore, there was considerable secrecy surrounding the information coming from Mr. Robert Noel McBride.
- 10.46. The statement dated the 4th of December 1996 was the second of a series of statements made by Robert Noel McBride. On the 29th of November 1996 Mr. McBride made a statement that placed Mark McConnell and Frank McBrearty

¹³⁹⁵ Transcript, Day 543, pages 58-60.

¹³⁹⁶ Transcript, Day 543, pages 61.

¹³⁹⁷ Transcript, Day 536, page 47.

Junior in the car park outside Frankie's nightclub at approximately 01.00 hours on the night Mr. Richard Barron met his death. Mr. McBride also said that both Mark McConnell and Frank McBrearty Junior had seen him as they made their way from the main entrance of the disco to the Tudor lounge and that he had said hello to both of them. Mr. McBride ended his statement of the 29th of November by stating that he had received a phone call on or about the third Sunday after the above described events from an anonymous caller saying that he saw him up in the car park in Frankie's one Sunday night and told him not to go to the Gardaí "or else". This phone call was followed by two other night time phone calls to his house, when the caller looked for him but left no message.¹³⁹⁸ This statement of the 29th of November has been described by the Tribunal as "the linchpin around which the entire of the subsequent [murder] investigation revolved and it is fair to say all of the prior investigation moves towards that point".¹³⁹⁹

- 10.47. It is apparent from the preceding paragraphs that the statement of Mr. Robert Noel McBride of the 4th of December is closely linked to his statement of the 29th of November. Both statements directly refer to Mr. McBride's presence in the car park of Frankie's nightclub on the night of Mr. Barron's death. Both statements contain information to the effect that what Mr. McBride saw in the car park revealed to him something which Mr. McBrearty Senior did not want repeated. The alleged threat to Mr. McBride as a result of his supposed knowledge as to who was in the car park on the night of Mr. Barron's death, which had been reported in the statement of the 29th of November, was extended and linked to Frank McBrearty Senior in the second statement of the 4th of December. It is noteworthy that Mr. McBride, when asked by counsel for Garda O'Dowd to explain that part of the statement of the 29th of November which covered the anonymous phone calls, said that he made it up having been asked by the Gardaí if he was afraid of the McBreartys.¹⁴⁰⁰ The statements are also closely linked in time, coming less than a week apart. Furthermore, the alleged payment of the money by Mr. Frank McBrearty Senior, as recounted in the second statement, is something which allegedly happened in the time period covered by the first statement. It was alleged to have occurred within days of the death of the Late Richard Barron. One might expect this to have been covered in the statement of the 29th of November. It was not. All of these allegations, when made, were completely false.

- 10.48. **Mr. Shelly acknowledged that the information supplied by Robert Noel McBride relating to the paying over of money by Mr. Frank McBrearty Senior was essential in order for him to issue the search warrant. The Tribunal does not accept that William Doherty was inspired to approach**

¹³⁹⁸ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior Volume 2), pages 555-556.

¹³⁹⁹ Report on the Investigation into the Death of Richard Barron and the Extortion Calls to Michael and Charlotte Peoples, Terms of Reference, (a) and (b), Chapter 5, page 396.

¹⁴⁰⁰ Transcript, Day 191, pages 35-36.

Garda O'Dowd and lead him to the source of such essential information just prior to the time when arrests were contemplated. Nor does the Tribunal accept that Sergeant Moylan was inspired to ask Garda O'Dowd if he had seen Mr. McBride since the 29th of November, thus setting off a chain of events which would yield such useful information at a time when the arrests were planned. This is especially so when the information supplied by Mr. McBride should have been readily available on the 29th of November, on which evening both Sergeant Moylan and Garda O'Dowd had spent several hours with Robert Noel McBride.

- 10.49. In the second report, the Tribunal considered in detail the information supplied to the Gardaí by Robert Noel McBride on the 29th of November.¹⁴⁰¹ This consideration was done in the context of the sixteen statements ascribed to Robert Noel McBride with which the Tribunal had been furnished. Six of these statements were taken up to September 1997, and are summarised in paragraph 5.105 of the Tribunal's second report. I do not intend repeating my findings and observations relative to these matters here, save as they directly relate to the finding concerning the legality of the arrest of Mr. McBrearty Senior and the search of his dwelling house.
- 10.50. The Tribunal has already determined that the content of the statement of the 29th of November 1996 came from the Gardaí.¹⁴⁰² I have ascribed responsibility for this to Garda John O'Dowd and Garda Philip Collins. I have also found Sergeant Martin Moylan responsible for not controlling this misbehaviour.¹⁴⁰³ I have set out how prior to the arrests nothing was done to analyse the McBride's statements or to do any basic check, which ordinary police procedure required, as to the correspondence of his account with that of other people.¹⁴⁰⁴ The Tribunal has also illustrated how when the slightest challenge was mounted to the veracity of Robert Noel McBride's statement, he crumbled and admitted that he was telling lies.¹⁴⁰⁵
- 10.51. The Tribunal has also considered the role of William Doherty in relation to the genesis of Robert Noel McBride as a witness. The relevant section of my second report set the matter out as follows:

Mr. Doherty also said that once he had nominated Robert Noel McBride that his involvement ended.¹⁴⁰⁶ The Tribunal regards this as a blatant lie.

¹⁴⁰¹ Report on the Investigation into the Death of Richard Barron and the Extortion Calls to Michael and Charlotte Peoples, Terms of Reference, (a) and (b), Chapter 5.

¹⁴⁰² Report on the Investigation into the Death of Richard Barron and the Extortion Calls to Michael and Charlotte Peoples, Terms of Reference (a) and (b), Chapter 5, page 414.

¹⁴⁰³ Report on the Investigation into the Death of Richard Barron and the Extortion Calls to Michael and Charlotte Peoples, Terms of Reference, (a) and (b), Chapter 5, page 415.

¹⁴⁰⁴ Report on the Investigation into the Death of Richard Barron and the Extortion Calls to Michael and Charlotte Peoples, Terms of Reference, (a) and (b), Chapter 5, page 414.

¹⁴⁰⁵ Report on the Investigation into the Death of Richard Barron and the Extortion Calls to Michael and Charlotte Peoples, Terms of Reference, (a) and (b), Chapter 5, page 417.

¹⁴⁰⁶ Transcript, Day 184, page 95.

The Tribunal is certain that after the nomination was made by William Doherty that he followed up on it by attempting to implant in Robert Noel McBride's mind the script appropriate to the task for which he had been chosen by the two of them [i.e. William Doherty and Garda John O'Dowd] to reflect. In his evidence, Mr. McBride stated that the first time he met Garda O'Dowd was on the 29th of November. The Tribunal has no idea whether this is true or not. In any event, given that Garda O'Dowd was acting through a proxy, it matters little.¹⁴⁰⁷

I am satisfied that the false allegations contained in the statement of the 4th of December 1997 had their origin in the promptings of William Doherty, in which Garda O'Dowd was involved. The making of that statement must be viewed in the light of the ongoing misconduct of Garda O'Dowd in prompting the contents of the statement of the 29th of November 1996 and the continuing manipulation of events by Garda O'Dowd at that time.¹⁴⁰⁸

- 10.52. The Tribunal is satisfied that the statement of the 4th of December 1996 made by Robert Noel McBride was a further incidence in which he was manipulated and prompted into making these allegations by William Doherty and Garda John O'Dowd and that the information supposedly passed to Garda O'Dowd formed a sufficiently significant part of the information upon which Detective Superintendent Shelly formed his suspicion in order to issue the search warrant. The Tribunal is satisfied that this was part and parcel of the ongoing dealings between Robert Noel McBride, William Doherty and Garda John O'Dowd and that this information was falsely created and forwarded to the investigation team. The Tribunal is further satisfied that, as with the statement of the 29th of November 1996, Garda O'Dowd forwarded this information in order to further a case of intimidation against Mr. McBrearty Senior. In that regard, Garda O'Dowd had already made two statements tending to show that Mr. McBrearty Senior was attempting to deliberately frustrate the Garda investigation into the Late Mr. Barron's death. The continued dealings of Garda John O'Dowd with William Doherty and Robert Noel McBride are not to be viewed entirely as separate events and the Tribunal is satisfied that they are part of a continuum of misconduct on the part of Garda O'Dowd which tainted these investigations.

Garda Philip Collins

- 10.53. I have already summarised statements made by Garda Phillip Collins which suggest that Mr. McBrearty Senior was following Gardaí about in the course of

¹⁴⁰⁷ Second Report of the Tribunal, page 405.

¹⁴⁰⁸ See the Report on the Investigation into the Death of Richard Barron and the Extortion Calls to Michael and Charlotte Peoples, Terms of Reference (a) and (b), Chapter 5, pages 414-415.

their working day and Mr. McBrearty Senior's explanation for same.

- 10.54. In a letter dated the 9th of March 1998 written by Garda Philip Collins to John O'Dowd, the following appeared:

I know John that I tried my best in [the Barron] investigation. I just had one thought though and that was to nail McBrearty. That Bastard should have been nailed years ago. I even went as far as making a statement that he was following me. That I think was pure paranoia.¹⁴⁰⁹

When Mr. Collins was questioned by counsel for the Tribunal about the contents of the above letter, he commenced by explaining that the letter was a personal one to Garda John O'Dowd.¹⁴¹⁰

- 10.55. Mr. Collins told the Chairman that the reference to nailing McBrearty was a reference to Mr. Frank McBrearty Senior.¹⁴¹¹ When Mr. Collins was questioned by his own solicitor in relation to this section of the letter, the following exchange took place:

Q. *... I understood, correct me if I am wrong, that you observed Mr. McBrearty driving up and down in front of the house where you were taking a statement at one stage. Is that correct?*

A. *Yes.*

Q. *Right. That at that point in time you may have believed that he was following you or seeking to intimidate the witnesses that you were taking the statement from; is that correct?*

A. *Yeah. At that time, from previous incidents, I thought that it would be of interest to the investigation to report it, because he may have been interfering, but it may have been just a coincidence.*

Q. *And it could have been entirely innocent. I am reflecting on it, it may have been entirely innocent?*

A. *It may have been entirely innocent.*

Q. *Right. And that's what is being referred to in the letter?*

A. *Yeah.*

Q. *That you were reading something in an innocent situation which may not have been there?*

¹⁴⁰⁹ Tribunal Documents, Barron Investigation, pages 6058-6059.

¹⁴¹⁰ Transcript, Day 285, page 152.

¹⁴¹¹ Transcript, Day 286, page 13.

A. *Exactly.*

Q. *Is that part of what's being said on the previous page, a follow on from the naming of McBrearty?*

A. *A follow on in what sense?*

Q. *Well, it is all bound up in the one thing. You see in the previous statement, at the bottom of the page, that you had one thought, and that was to nail McBrearty?*

A. *Well my thought at that time was to investigate what happened to Richie Barron. My thoughts weren't to nail McBrearty for that specific incident. But when I said that, it was our relationship throughout the years and for specific things that he did and he didn't do.¹⁴¹²*

- 10.56. **The Tribunal is satisfied that the statement of Mr. Collins dated the 11th of November 1996 did not come about as a result of a policeman objectively reporting on facts but rather as a result of Mr. Collin's determination to provide incriminating material on Mr. Frank McBrearty Senior.**

The Search Warrant and Decision to Arrest Mr. Frank McBrearty Senior

- 10.57. It is against the totality of the above facts that Detective Superintendent Joseph Shelly issued a warrant pursuant to his powers under section 29 of the Offences Against the State Act, 1939 authorising Sergeant Paul Heffernan to search Mr. McBrearty Senior's dwelling house at Tullyrap, Raphoe, Co. Donegal. The face of the search warrant recites that Detective Superintendent Shelly did so as he was satisfied that there were reasonable grounds for believing that evidence relating to the commission of a scheduled offence was to be found at Mr. McBrearty Senior's dwelling house.¹⁴¹³

- 10.58. Mr. Shelly gave the following account of the decision to arrest Mr. McBrearty Senior and search his dwelling house:

A. *Well there was a decision taken, as you know from previous evidence, that on 3rd December, which was known now as a pre-arrest conference, that certain people were going to be detained in relation to the death of Richard Barron. The issue regarding Mr. McBrearty Senior was also discussed at that conference and it was decided that he would also be arrested in relation to the alleged activities that he was involved in.*

¹⁴¹² Transcript, Day 286, pages 28-29.

¹⁴¹³ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior Volume 2), page 430.

Q. Yes. Why did you decide on the 3rd then that he should be arrested because all the statements that you had predated your meeting of the 20th?

A. Yes. I appreciate that. There were a number of other issues I suppose, when I issued a warrant, in grounding my reasons for issuing the warrant I was aware that there was information in that he had allegedly approached an individual and offered to give him money as well. That was something that I knew in addition to what I had already known up to the 20th.¹⁴¹⁴

10.59. The question of who bore the responsibility for the investigation into the activities of Mr. Frank McBrearty Senior from then on is contentious. Mr. John Fitzgerald told the Tribunal that he handed over the responsibility for same to Detective Superintendent Shelly and Inspector McGinley.¹⁴¹⁵ Mr. Shelly's position on the matter is that Superintendent Fitzgerald did not delegate responsibility for the investigation to him; rather he was helping Superintendent Fitzgerald on a job by job basis.¹⁴¹⁶ **The Tribunal does not accept that Detective Superintendent Shelly did not bear a particular responsibility for the investigation into the activities of Mr. McBrearty Senior.** He spoke to Mr. McBrearty Senior on the 20th of November, was present at the conference when the decision to arrest Mr. McBrearty Senior was made, made specific arrangements in order to secure the attendance of Sergeant Joseph Costello of the Technical Support Services at Letterkenny Garda Station in order that he would be available when Mr. McBrearty Senior was released, issued the search warrant, was involved in the continuance of his detention and present when the ultimate decision to release him was made. Moreover, Detective Superintendent Shelly was privy to the Robert Noel McBride information that formed the subject matter of the statement dated the 4th of December, of which other officers were unaware.

10.60. Sergeant Paul Heffernan ultimately arrested Mr. Frank McBrearty Senior. In a statement dated the 3rd of February 1998, Sergeant Heffernan stated that at the time he was a uniformed Sergeant stationed at Letterkenny Garda Station, and was part of the investigation team set up to investigate the suspicious death of the Late Richard Barron. He stated that he kept himself up to date with its progress by attending case conferences, reading statements supplied by witnesses and speaking to other members of the investigation team. He then stated that on the 3rd of December 1996 he spoke with Detective Superintendent Joseph Shelly and informed him that he believed Mr. Frank McBrearty Senior was involved in intimidating witnesses, who had supplied

¹⁴¹⁴ Transcript, Day 543, page 57.

¹⁴¹⁵ Transcript, Day 538, page 30.

¹⁴¹⁶ Transcript, Day 543, page 74.

statements of evidence to members of the Garda investigation team. In particular, he referred to the statements of Bridget Kelly, Aileen Campbell, Philomena Lynch and Caroline Lynch. Furthermore, he informed Detective Superintendent Shelly of the statement from Garda Philip Collins. Thereafter he stated that Detective Superintendent Shelly issued a search warrant to him.¹⁴¹⁷

10.61. In evidence to the Tribunal, Sergeant Heffernan stated that the conversation about the issuance of the warrant was initiated by Detective Superintendent Shelly.¹⁴¹⁸ He told the Tribunal that he had a discussion with Detective Superintendent Shelly and that on the strength of the statements to hand as referred to in the preceding paragraph Detective Superintendent Shelly issued the warrant.¹⁴¹⁹ He was not aware, nor did Detective Superintendent Shelly inform him, of the meeting that had taken place between Frank McBrearty Senior and members of An Garda Síochána on the 20th of November 1996, nor was he aware of the information that was to hand stating that Frank McBrearty Senior had offered a potential witness a bribe of £500.00.¹⁴²⁰

10.62. **The Tribunal accepts that Sergeant Heffernan was not aware of the meeting of the 20th of November or the information emanating from Robert Noel McBride. These are matters which are not disputed by Detective Superintendent Shelly. Therefore, it follows that Sergeant Heffernan was not aware of the full picture when he satisfied himself that it was in order to arrest Mr. McBrearty Senior.**

10.63. Sergeant Heffernan told the Tribunal that at the time of the issuance of the warrant the arrest of Mr. McBrearty Senior was also contemplated. This is clear from the following:

Q. Was the decision made to effect an arrest or were you waiting to see what you would find as a result of the search before coming to any decision as to whether an arrest would be justified or not?

A. No. I think that the arrest was going to be ... you know, on the strength that I had got ... based the information on the statements, as I say, I thought that there was enough in there to make the arrest. And if any additional evidence was got during the course of the search, then that would essentially copper-fasten it. But no, I would have to say that the decision to arrest was made, you know, at the time the warrants were.¹⁴²¹

¹⁴¹⁷ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 1), pages 133-135.

¹⁴¹⁸ Transcript, Day 540, page 4.

¹⁴¹⁹ Transcript, Day 540, page 10.

¹⁴²⁰ Transcript, Day 540, pages 7, 8, 9 and 10.

¹⁴²¹ Transcript, Day 540, page 11.

10.64. Mr. Shelly, when questioned by the Chairman, acknowledged that three separate but related pieces of information caused him to issue the warrant:

Chairman: ...There are three elements: the statement from McBride that was not in at the time but was upcoming, the fact that he didn't give the undertaking at the meeting and the statements that you already had. Now, my question is: How many of those did you rely on when you were issuing the warrant?

A. I would certainly have relied on them all, Chairman.

Chairman: On them all?

A. Yes.

Chairman: That's all I want to know?

A. Yes.¹⁴²²

10.65. Accordingly, there were three separate strands of information that led to the issuing of the search warrant and the arrest of Mr. Frank McBrearty Senior:

- (a) The information and statements available suggesting that Frank McBrearty Senior had been enquiring of those interviewed by the Gardaí as to what information they had provided to the Gardaí and that he had been following Gardaí in their enquiries;
- (b) The meeting that had taken place between Mr. Frank McBrearty Senior, Detective Superintendent Joseph Shelly and Detective Inspector John McGinley;
- (c) The information furnished to Garda O'Dowd by Robert Noel McBride.

10.66. I accept that Sergeant Heffernan acted in good faith when deciding to arrest Mr. Frank McBrearty Senior and applying for a search warrant to search his dwelling house. On the information available to him he had legitimate and reasonable grounds for taking those steps. As far as he was concerned Mr. Frank McBrearty Senior was causing difficulties to the Gardaí, who were at that time, engaged in a murder investigation. However, he unknowingly acted on foot of a search warrant based on completely false information furnished as a result of the misconduct of Garda O'Dowd.

10.67. The Tribunal is satisfied that in all the circumstances the search of Mr.

¹⁴²² Transcript, Day 543, page 62.

Frank McBrearty Senior's home and his arrest in the course of that search was not a legitimate exercise of power by An Garda Síochána. The Tribunal has already concluded that the false information supplied by Robert Noel McBride occurred by reason of the interaction between and manipulation of Robert Noel McBride by William Doherty and Garda John O'Dowd. Mr. Philip Collins admitted both in personal communications and to the Tribunal that his statement suggesting that Mr. McBrearty Senior was following Gardaí about while they were conducting investigations may not have been an accurate portrayal of what took place. The Tribunal is satisfied, as it was in relation to the arrests of all of the other detainees, that an unlawful search or arrest can not occur when the agency effecting the arrest is responsible for manufacturing and procuring the false evidence on which the grounding suspicion was allegedly based. Furthermore, I do not regard it as an oversight by the investigation team that the voluntary return of Aileen Campbell to work for Mr. Frank McBrearty Senior was not reported on. This represents an example of the Gardaí ignoring a fact which did not suit the picture of Mr. McBrearty Senior that they wished to portray. Consequently, the issuance of the search warrant was legally tainted by fraud and was unlawful. It follows that an arrest effected by Sergeant Heffernan following the execution of this search warrant, upon entering Frank McBrearty Senior's dwelling house, was unlawful and in breach of Mr. McBrearty Senior's constitutional rights under Article 40.5 of the Constitution, which provides that the dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law.

- 10.68. The Tribunal has already considered the question of the issuing of search warrants pursuant to section 29 of the Offences Against the State Act, 1939 as amended, and has made recommendations in this regard in its fifth report. It is not necessary to reiterate them here.¹⁴²³ It is sufficient to say that the close involvement of Detective Superintendent Shelly in this investigation, his prompting of the application for the warrant, and its issuing to an applicant Sergeant who was unaware of important information upon which Detective Superintendent Shelly relied in issuing it, is further support for the issuing of a warrant by an independent judicial authority. This process had the strange result that Sergeant Heffernan was obliged to conduct a search without any appreciation of the core reasons for the issuing of the warrant or that he should look for evidence in respect of that matter, namely the alleged attempted bribery or bribery of Mr. Robert Noel McBride.

¹⁴²³ Report on the Arrest and Detention of Seven Persons at Burnfoot, County Donegal on the 23rd of May 1998 and the investigations relating to same: see also Chapter 16.

PART II

10.69. The matter of the legality of Mr. Frank McBrearty Senior's arrest having been dealt with, I now turn to consider the treatment of Mr. McBrearty Senior from the 5th of December 1996 to the 19th of December 1996, during which time he was in Garda custody.

The Search of Mr. Frank McBrearty Senior's Premises and his Arrest

10.70. Sergeant Heffernan executed the search warrant at 19.00 hours on the 5th of December 1996. The original plan to execute the search warrant on the 4th of December 1996 was deferred as Mr. McBrearty was in Dublin. Shortly after 19.00 hours, Mr. McBrearty Senior was arrested pursuant to the provisions of section 30 of the Offences Against the State Act, 1939. Sergeant Heffernan in his statement dated the 3rd of February 1998 outlined the situation as follows:

The search of Frank McBrearty's house finished at approximately 7.55 p.m. and I then informed him, Frank McBrearty, as a result of information that I had in my possession which I had previously outlined to Detective Superintendent Joseph Shelly, and in addition the evidence shown to me by Detective Garda James Frain found during the course of the search, I was of the opinion that Frank McBrearty had been concerned in the commission of a scheduled offence under Part V of the Act, to wit, Section 7 of the Conspiracy and Property Act, 1875 and placing my hand on his shoulder I arrested Frank McBrearty under Section 30 of the Offences Against the State Act, 1939/85. The arrest took place at approximately 7.55 p.m. in the sitting room of Frank McBrearty's home in Tullyrap Raphoe, County Donegal.¹⁴²⁴

10.71. Mr. McBrearty Senior, in the years since the search of his premises and subsequent arrest, has made a number of complaints about it. In an undated statement Mr. McBrearty Senior stated that there were at least thirty Gardaí present and that the Gardaí took a bag of wood shavings from the garage. He called Doctor Coyne as he was afraid he was having a heart attack. He phoned Superintendent Lennon who was not in. He claimed that Gardaí O'Dowd and Collins were sniggering at him. In the civil proceedings instituted against the State on account of the events of the 5th of December and the subsequent days, it is pleaded that Garda Paul Heffernan, Garda Philip Collins, Garda John O'Dowd, Sergeant Joseph Hannigan and approximately sixteen other Gardaí were present at his house on the 5th of December 1996.¹⁴²⁵ In Replies to Particulars dated the 22nd of April 1998 it is stated that Mr. Frank McBrearty Senior was arrested by upwards of thirty Gardaí who attended at his home. In an interview with the Tribunal investigators Mr. Frank McBrearty Senior complained

¹⁴²⁴ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 1), page 138.

¹⁴²⁵ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 472.

that there were about sixty Gardaí present at the search of his premises who “made a whole big scene”.¹⁴²⁶

- 10.72. When Mr. McBrearty Senior attended at the Tribunal he described the search as follows:

*I went up to the house and then all of a sudden I wasn't in the house very long till these cars and this commotion started. ... well, I seen all the commotion outside and seen the cars and that, and I had the front ... actually the front door was locked and they couldn't get in, but I was on the phone. I was on the phone as well. They went in then, they went in the back door some way, I don't know what way they got in.*¹⁴²⁷

- 10.73. Mr. McBrearty Senior in an exchange with counsel for the Tribunal continued as follows:

Q. *When you say there was commotion and there were cars outside?*

A. *Yeah.*

Q. *Were these Garda vehicles?*

A. *Yes.*

Q. *Were these members of An Garda Síochána that were in your front drive?*

A. *Yes.*

Q. *Can you recall approximately how many would have been in the search party that evening?*

A. *I am not sure, but we were counting up, maybe thirty, forty, fifty. It could have been anything up to sixty, we don't know, we're not sure. But we know there was some of them out on the road and down at my sister's house as well. I know that Sergeant Mick Keane was there, Paul Heffernan, Sergeant Paul Heffernan which was a Dublin policeman. Garda John O'Dowd was there. Philip Collins was there. Harkin, a fellow called Harkin, a tall baldy headed boy Harkin. And Frain. A fellow Frain there, they were all inside the house. There was some of them went up into the attic and some of them were down in my daughter's bedroom and my wife's bedroom.*

¹⁴²⁶ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), pages 428-24.

¹⁴²⁷ Transcript, Day 528, page 8.

They were out in the garden and took away bags of old shavings of timber ... Hannigan was outside, Sergeant Joe Hannigan was outside. And another Hennigan from Ballybofey, he was outside. And there were other guards, but I didn't see them all ... my wife was with them outside, so I don't know what happened outside ... I'm...I'm not sure whether my sister was with her or not but I know Mark and Michael—sorry, Michael and Eamonn was there because they had—there were words with Sergeant Hannigan ... I was sitting in my usual seat, my armchair where I sit to watch T.V.

Q. *Is that the living room or a family room?*

A. *I would say it's a living room and there's a conservatory off it.*

Q. *I see. In relation to the front door, where is the living room?*

A. *You come in the front door and you turn—when you come in the front door you turn to the right ... Well then if you go around the back and go in, you can go in, the toilet window is open and there's a side door, the guards went in that way. Sergeant Keane went in that way ... and when the guards came in they just headed straight into where my filing cabinet was. They never asked to open it, they just pulled everything out ... and one of the [Gardaí] were running about all over the place. They were down in my wee girl's room which I was very annoyed about that, they were in my wife's room and my room. They were up in the attic and cracked the roofs in the attic, cracked the ceiling and they went out to the garage, they took a pile of rubbish in the garage, they took it with them. A lot of the stuff they took away belonged to me, but never took back. They never noted anything down what they took. There was not one single item note down. Because I didn't know, how I found out later that they were supposed to note everything down and give you a receipt, but I got nothing. They just took everything with them.¹⁴²⁸*

10.74. When Mr. McBrearty Senior was asked about the behaviour of Garda O'Dowd and Garda Collins he said they were sniggering and laughing.¹⁴²⁹

¹⁴²⁸ Transcript, Day 528, pages 8-17.

¹⁴²⁹ Transcript, Day 528, page 19

10.75. So in essence, Mr. McBrearty Senior's complaints in relation to the search are as follows:

- (a) A very large number of Gardaí were present for the search;
- (b) It was carried out in a disorganised and heavy-handed manner. Garda O'Dowd and Garda Collins were sniggering at him.
- (c) The ceiling of the house was damaged by Gardaí;
- (d) The Gardaí failed to note what was seized in the search and no receipt was provided to Mr. McBrearty in respect of same.

10.76. Sergeant Paul Heffernan was the leader of the search party and explained to the Tribunal that there were fourteen members of the search party in all.¹⁴³⁰ He acknowledged that this was a sizeable number of Gardaí to search a house, but this was necessary due to the nature of the evidence that the Gardaí were looking for, that being diaries and notes of evidence that would indicate that Mr. Frank McBrearty Senior was further intimidating witnesses. Secondly, he explained that the house itself was quite large and there were outhouses and offices at the back of the house. **The idea behind the size of the search party was that that number of Gardaí would be able to conduct the search of the house with minimal disturbance and get the job done in a professional manner. The Tribunal accepts the evidence of Sergeant Heffernan in this regard. Indeed when cross-examined by the solicitor for the Garda Representative Association Mr. McBrearty Senior did not seriously contest that there were fourteen members of An Garda Síochána present at the search.**¹⁴³¹

10.77. The following members of An Garda Síochána gave evidence at the Tribunal as to what transpired at the search of Frank McBrearty Senior's premises: Sergeant Paul Heffernan; Detective Garda James Frain; Detective Inspector Michael Keane; Sergeant John Forkin; Sergeant Joseph Hannigan; Sergeant Coady and Mr. John O'Dowd.

10.78. Sergeant Heffernan described the search as follows:

I briefed a party of Gardaí at Lifford Station, Mr. Chairman, prior to that. It was a sizeable Garda party. I told them the grounds on which the warrant had been issued, the nature of the evidence that we would be looking for. We arrived and I went to the front door, knocked on it. I was accompanied at that time by Detective Sergeant Keane, Sergeant Hannigan and Detective Garda Frain as well. The house was very quiet when I arrived and I saw, when I went to the front door I saw Mr. McBrearty Senior sitting in the

¹⁴³⁰ Transcript, Day 540, page 15.

¹⁴³¹ Transcript, Day 533, pages 105 -107.

sitting room to the right hand side of the door. There was a large window at the front of the house and I could see him, he was sitting in the chair. I knocked on the door quite loudly and Mr. McBrearty looked up, approached the front door and I did say something to him, identified myself at that stage. I had Detective Sergeant Keane with me because we discussed ... Frank McBrearty would not have known me, and I had never met the man before in my life and Mick Keane did know him and hence that was the reason why he came to the door. I identified myself and told him what my purpose was there and words were ... Mr. McBrearty said "there's no one searching my house". Certainly words to that effect anyway. He was quiet. He was calm, he just walked to the door and said "there's no one searching my house" and appeared to lock the door, close it, or make sure it was locked, one or the other, and returned to the chair ... he then returned to his seat and made a telephone call. At that point then other people came up the driveway of the house, including a lady who I now know to be Mrs. McBrearty. There were some men with her as well. Initially Garda Frain spoke to this woman, Mrs. McBrearty as she was behind me. She had a young child with her as well. Immediately I felt that Mrs. McBrearty was in bad form. Some profanities were uttered. I then turned to her and told her who I was since I was in charge of the search party. And she wasn't very happy at all and she passed by me and stood at the front of the door and said something to me again, which was very unusual and at that point Detective Sergeant Keane had come in through the house, he had left me moments previous to this and he walked around to the side of the house and then he opened the door from the inside and at that point I walked past Mrs. McBrearty into the sitting room where Frank was and showed him the warrant. I showed him my identification card as well. I told him my name and produced to him the warrant. But he didn't seem to have any interest in it at all. I showed him the warrant and I read it over to him. He didn't seem to be ... he passed no interest in me at all and he kept on continuing what he was doing. The search of the house commenced then. There was a sizeable Garda party there and each member had been assigned rooms when we got in to get the search done as quickly as we could and as efficiently as we could.¹⁴³²

- 10.79. Detective Inspector Keane who went to Mr. McBrearty Senior's residence accompanied by Sergeant Heffernan described Mr. McBrearty Senior declining to

¹⁴³² Transcript, Day 540, pages 13-15.

let the Gardaí in through the front door of the house; thereafter he went around the back of the house, opened the door and introduced Sergeant Heffernan to Mr. McBrearty Senior.¹⁴³³

- 10.80. Sergeant Hannigan, the uniformed Sergeant in Raphoe, arrived at the McBrearty property and joined Sergeant Heffernan and Detective Sergeant Keane at the door. He described Mr. McBrearty Senior sitting down ignoring the Gardaí and beginning to use the telephone. He then described the scene as follows:

At that stage Mrs. McBrearty came along and she came up the driveway. She was very agitated and was verbally abusive in relation to the Gardaí present. I recall that Sergeant Heffernan introduced himself and showed her his identity card, his warrant card, he also showed her the warrant. But that she stood between the Gardaí in the doorway. I think probably at some stage prior to that some of us had tried the handle on the door and found it to be locked. Mrs. McBrearty positioned herself between the Gardaí and the doorway.

I don't recall now, at whose suggestion, or why it occurred, but along with Detective Sergeant Keane I went around the back and the back door was open. They went in through the rear of the house and up a hallway to the front door, where we opened the door or one of us opened the door. I stayed momentarily in the house. After a period I slipped outside again.

I was in the driveway when one of the McConnell family came along and they were fairly vocal. My statement mentions Michael, I think Eamonn, Mark McConnell and their mother. I cautioned them in relation to their behaviour and told them that they could be in breach of the Public Order Act.

At that, I told them not to interfere with the search and then they moved back towards their own house which was next door ... I recall, Mr. Chairman, that Fr. Harkin, Fr. Cíaran Harkin arrived. He was a local curate at that time and I knew him. He asked me what was going on. I told him that there was a search being conducted. I told him in general terms what was going on and when I was talking to him Mr. McBrearty came to the doorway and made a remark to the guards, a loud sort of ... enraged remark in relation to us and went back in. Fr. Harkin went into the house then. I also recall that Dr. Coyne, Dr. Martin Coyne, arrived and he went into the house.¹⁴³⁴

¹⁴³³ Transcript, Day 536, pages 95-99.

¹⁴³⁴ Transcript, Day 541, pages 9-13.

- 10.81. Detective Garda James Frain described the entry into the premises in the same terms as Sergeant Heffernan. He searched the front room of the premises where he located a number of items that seemed to him to be relevant to the matter. He searched the room along with Garda Harkin and on completion of his search he approached Mr. McBrearty Senior and informed him that he had taken a number of documents which he showed to Mr. McBrearty Senior. He also said in evidence that he offered to give Mr. McBrearty Senior a receipt for the documents. He describes Mr. McBrearty Senior's reaction as follows:

*Mr. McBrearty was completely dismissive of me. He didn't want to see me ... in fact he was extremely derogatory towards me. He told me to take whatever the f... I wanted out of his house and he didn't give a damn. I think words to the effect that he was an influential business man and Lord Mayor of Raphoe and that I was a nobody. That's his words to me if I recall correctly, Chairman.*¹⁴³⁵

- 10.82. Sergeant Forkin searched the kitchen area of the house and seized various documents as he believed they may have contained evidence pertaining to Mr. McBrearty Senior's alleged interference with witnesses. He made no complaint about being obstructed during the search and the Tribunal is satisfied that this is the case.

- 10.83. Garda John O'Dowd also took part in the search of Mr. McBrearty Senior's house. By the time Garda O'Dowd arrived at the McBrearty premises Mrs. McBrearty was there. He described the scene as follows:

*There were a few there when I landed anyhow and they were standing at the front door. And Mrs. McBrearty was there. There was a few members like. So I believe they were negotiating to get in at that stage. I heard her say something about the IRA and scum.*¹⁴³⁶

- 10.84. Garda O'Dowd entered the premises through the back door and commenced a search in that room. He completed his search in this room and went into a back office where he seized some documents and disks. He describes Mr. McBrearty Senior as roaring and shouting while he was in the sitting room and at one stage telling him to "get the f... out of here".¹⁴³⁷

- 10.85. Sergeant Coady was appointed Exhibits Officer at the conclusion of the search. He conducted a search of an office with Garda John O'Dowd and did not retrieve any documentation from anywhere else in the house.¹⁴³⁸ He had no interaction with Mr. McBrearty Senior during the course of the search.

¹⁴³⁵ Transcript, Day 535, page 20.

¹⁴³⁶ Transcript, Day 542, page 198.

¹⁴³⁷ Transcript, Day 542, page 199.

¹⁴³⁸ Transcript, Day 541, page 18.

10.86. The Tribunal accepts that the search was carried out by the Gardaí in an appropriate fashion and no criticism can be made of them concerning same. I am satisfied that Mr. Frank McBrearty Senior provided an exaggerated version of the happenings at his house on the 5th of December 1996. One only has to refer to the fact that he at one stage maintained that there were up to sixty Gardaí present at his premises, but when challenged on this did not disagree that there may have been as few as fourteen Gardaí present. In relation to the allegation that damage was caused to Mr. McBrearty' Senior's house in the form of cracks to the ceiling the Tribunal does not accept that this has been established. The evidence of Fr. Harkin, Dr. Martin Coyne, and to some extent the evidence of Mrs. Rosalind McBrearty supports the Tribunal in these conclusions.

10.87. On the day of the 5th of December Mrs. Rosalind McBrearty had been in her sister, Hannah McConnell's house which is situated a very short distance from Frank McBrearty Senior's house. Her husband returned from Dublin, called into Hannah McConnell's house and then went to his own house, leaving Rosalind McBrearty behind. Some time in the evening Mrs. Rosalind McBrearty saw a number of cars passing the house and she immediately went up to her residence. She admits referring to the Gardaí in a derogatory way and sprinkling holy water over them. Furthermore, she refers as follows to her husband's interaction with Garda John O'Dowd and Garda Phil Collins:

A. *Fr. Harkin was down in Hannah's house and actually Fr. Harkin didn't really come in until nearer that Frank was getting taken out of the house. Frank never spoke. I never spoke inside the house, but when he did come out into the hall, the two boys were standing in the hall, John O'Dowd and Phil Collins and Frank gave them a mouthful, you know.*

Q. *Was that ... can we take it it was fairly abusive?*

A. *He says "what are you two blagards" ... well more than that, I'm not going to say it anyway, "doing in my house" and they said "we have a right to be here".*

Q. *Did Fr. Harkin have a discussion with your husband?*

A. *No. He might have said something to him, I'm not sure. He might have said something to him.*

Q. *At any time did you call the guards scum?*

A. *Yes, I did.¹⁴³⁹*

¹⁴³⁹ Transcript, Day 549, page 11.

- 10.88. I do not accept that the behaviour of Mrs. McBrearty was appropriate. While on the one hand it is understandable in the particular circumstances of that day, a number of members of her extended family having been arrested and a team of Gardaí having arrived at her house to search it, it is nonetheless not acceptable that she sprinkled holy water over Gardaí and referred to them in derogatory terms.
- 10.89. Mrs. McBrearty told the Tribunal that weeks after the search a hairline crack appeared in the ceiling of the house.¹⁴⁴⁰ That being the case it would not be in order for the Tribunal to conclude that the cause of cracks in the ceiling was a member or members of An Garda Síochána.
- 10.90. Fr. Cíaran Harkin was asked to attend at the McBrearty house at the request of Mrs. Hannah McConnell. From Mrs. McConnell's house he walked up to Frank McBrearty Senior's house and encountered a Garda at the front door of the house. He was immediately allowed to go into the house by the Gardaí. He met Mr. Frank McBrearty Senior, who he described as agitated and upset. He does not recall any member of An Garda Síochána being in the room with Mr. McBrearty Senior. He also spoke to Mrs. Rosalind McBrearty who was upset during the course of the search. He also describes Frank McBrearty Senior as passing comments to the Gardaí which he described as unfair.¹⁴⁴¹
- 10.91. Mr. Frank McBrearty Senior suggested that he was in no fit condition to be arrested. Dr. Martin Coyne attended on Mr. McBrearty Senior at his residence on the evening of the 5th of December 1996 in response to a call he received. Mr. McBrearty Senior was an existing patient of Dr. Coyne's partner and at that time had a history of borderline blood pressure and had been on medicine for hypertension for some months prior to December 1996. Dr. Coyne recollects a number of Gardaí being present at the house. Dr. Coyne recollects a scene in which there was no major disruption of the house and no abuse being given by members of An Garda Síochána to Mr. McBrearty Senior. He attended with Mr. McBrearty Senior, who was on his own in a room, and found that his blood pressure was very high, in response to which he administered medication which had the immediate effect of reducing Mr. McBrearty Senior's blood pressure. Dr. Coyne spoke to one member of An Garda Síochána whom he was unable to identify before leaving the premises. There is some controversy about the exact contents of this conversation. Dr. Coyne's recollection of the conversation is as follows:

A. *I spoke to a member of the Gardaí as I was getting into my car.*

Q. Yes.

¹⁴⁴⁰ Transcript, Day 549, page 19.

¹⁴⁴¹ Transcript, Day 549, page 64.

A. *I can't identify the member, I was asked how Mr. McBrearty was, I explained that his blood pressure had been very high, that it was now at normal levels, but that I felt it essential that he wasn't stressed any more than he was.*¹⁴⁴²

10.92. Sergeant Heffernan has identified himself as the Garda who spoke to Dr. Coyne. However, his recollection is that he got a positive response from Dr. Coyne as to the state of Mr. McBrearty Senior's health and he told the Tribunal that had Dr. Coyne said that Mr. McBrearty Senior was not to be stressed he would have enquired further before arresting Mr. McBrearty Senior.¹⁴⁴³ However, Dr. Coyne accepted in evidence that had a direct enquiry been made of him by Sergeant Heffernan as to whether or not it was appropriate that Mr. McBrearty Senior be arrested he would not have vetoed the intended arrest. **The Tribunal is satisfied that in all the circumstances Sergeant Heffernan did not wilfully disregard Mr. McBrearty Senior's health in deciding to proceed with his arrest.** The reality of the situation can be seen from the following answers by Dr. Coyne in respect of this matter:

A. *... If the situation in the guards ... if the Garda situation deemed that this man had to go into custody I wouldn't have interfered in that, Mr. Chairman, but I certainly would not have prevented them taking him into custody.*

Q. *You wouldn't?*

A. *No, I don't think I would, no. But I would have certainly reiterated the point that his interrogation, questioning, whatever, should be in a fairly gentle manner, in an unstressful manner, if there is such a thing.*

10.93. It is also noteworthy that Mrs. Rosalind McBrearty in a statement, which seems to have been made in 1997, stated that Dr. Coyne gave Mr. McBrearty Senior a tablet and "told the guards to take it easy with him."¹⁴⁴⁴

10.94. **In conclusion the Tribunal accepts that Mr. McBrearty Senior's health was not in such a weak state that he should not have been arrested at that time.**

The Journey to the Garda Station

10.95. Mr. McBrearty Senior was escorted to the Garda station by three Gardaí, namely Garda James Frain, Sergeant Heffernan and Detective Sergeant Keane, in a patrol car. Mr. McBrearty Senior was in the back seat of the car along with Detective Sergeant Keane, while the two other members of An Garda Síochána were in the

¹⁴⁴² Transcript, Day 544, page 98.

¹⁴⁴³ Transcript, Day 545, pages 99-104.

¹⁴⁴⁴ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 587.

front of the car. Mr. McBrearty Senior was not handcuffed. Mr. McBrearty Senior told the Tribunal that during the course of the car journey, which lasted about a half an hour, he was arguing with the Gardaí. He said that the Gardaí were referring to him as being a hard man in Raphoe, being involved in boxing, the fact that he was Lord Mayor of Raphoe and that he was not such a hard man now that he was under arrest.¹⁴⁴⁵

- 10.96. The Gardaí involved deny these allegations. Detective Inspector Keane told the Tribunal that the only people who spoke during the journey to the Garda station were himself and Mr. McBrearty Senior. He said that Mr. McBrearty Senior told him about how he ran his business and his life and referred to the two Gardaí in the front of the car as being too small to be members of An Garda Síochána. During the course of this conversation, Mr. McBrearty Senior would nudge Detective Inspector Keane every so often. When questioned by counsel for the Tribunal about references to boxing and being the Lord Mayor of Raphoe, Detective Inspector Keane said that Mr. McBrearty Senior himself brought up these topics.¹⁴⁴⁶ Detective Inspector Keane in exchanges with counsel for the Tribunal described what transpired during the car journey as follows:

A. *Chairman, Mr. McBrearty was seated in the back seat behind the passenger seat...I was seated behind the driver. Detective Garda Frain was driving the car and Sergeant Heffernan was sitting in the passenger seat. The only people who spoke on that journey, that journey would have taken ten or twelve minutes, its only nine or ten miles from Mr. McBrearty's home to the station, the only two people who spoke during that journey was Mr. McBrearty and myself...it was...a broad conversation at times because Mr. McBrearty was telling me, I suppose things I already knew in relation to how he ran his premises and that I knew him and he knew me and that I should know that he wasn't up to anything untoward and he was at times a wee bit abusive to the two members in front, he probably didn't know them and he was maintaining they were somewhat small in stature to be in the guards...while that was going on he would nudge me every so often...*

Q. *Do you recall anyone saying, either in the house or in the car, that he was a hard man and that he had engaged in boxing and he wouldn't be as hard a man down in the barracks as he was outside it?*

¹⁴⁴⁵ Transcript, Day 528, page 30.

¹⁴⁴⁶ Transcript, Day 536, pages 102-106.

A. *No. As a matter of fact in the car on the way, as I said he spoke about his involvement with Raphoe boxing club.*

Q. *Yes.*

A. *And apparently he has a long association with it.*

Q. *Did anyone refer to his status as Lord Mayor of Raphoe?*

A. *Other than himself, nobody.*¹⁴⁴⁷

Detective Garda Frain's evidence was broadly in line with that of Detective Inspector Keane.

10.97. Sergeant Heffernan told the Tribunal that the journey to the Garda station was troublesome enough. He said that Mr. McBrearty Senior told him he would never work in Donegal again. Sergeant Heffernan told the Tribunal that he would have responded to that statement by asking Mr. McBrearty Senior what he meant by that. He continued that there would not have been "an awful lot of reply" to his query.¹⁴⁴⁸ He denied referring to boxing or to Mr. McBrearty Senior being Lord Mayor of Raphoe.¹⁴⁴⁹

10.98. **The Tribunal accepts that the Gardaí were not verbally abusive to Mr. McBrearty Senior during the journey to the Garda station and that insofar as references were made to boxing and Mr. McBrearty Senior being Lord Mayor of Raphoe, these references were made by Mr. McBrearty himself. The Tribunal has seen many documents either compiled by Mr. McBrearty Senior or compiled in furtherance of his instructions both before and after his arrest and detention, in which Mr. McBrearty refers to himself as Lord Mayor of Raphoe, being a respected businessman and President of the boxing club.** For example, in a statement compiled by Mr. McBrearty Senior which documents the visit by Detective Superintendent Shelly and Inspector McGinley to his premises Mr. McBrearty Senior records that:

I am Lord Mayor of Raphoe, I'm on four different committees in the town, I'm involved in various charity organisations, I'm president of both the Raphoe Boxing Club and Tullyvinney Football Club, and I have a lot of part time staff who work for me at weekends living in town and as a result of this ...¹⁴⁵⁰

This document is signed "Frank McBrearty, Lord Mayor of Raphoe, Proprietor of Frankie's nightclub".¹⁴⁵¹ This document was one of those seized by Gardaí in the search of Mr. McBrearty Senior's house in 1996.

¹⁴⁴⁷ Transcript, Day 536, pages 102-106.

¹⁴⁴⁸ Transcript, Day 540, page 24.

¹⁴⁴⁹ Transcript, Day 540, pages 24-25.

¹⁴⁵⁰ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), pages 430-14.

¹⁴⁵¹ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), pages 430-15.

10.99. A similar reference is repeated in a 27 page statement compiled by Mr. McBrearty Senior in 1997.¹⁴⁵² In a Statement of Claim, prepared on behalf of Mr. McBrearty Senior in furtherance of his claim for false imprisonment against the State, the following reference to Mr. McBrearty Senior appears;

During his hospitalisation in four hospitals he was treated like a dangerous criminal and was kept under twenty four garda guard despite being a well known businessman and Lord Mayor of Raphoe...¹⁴⁵³

The Tribunal also notes that in a supplemental affidavit, sworn by Mr. McBrearty Senior on the 30th of May 1997, Mr. McBrearty Senior refers to himself as making efforts to eradicate drug use in Raphoe in his capacity as Lord Mayor of Raphoe.¹⁴⁵⁴

10.100. **Therefore, the Tribunal accepts the evidence of Detective Inspector Keane in relation to the journey to the Garda station. It is highly likely that Mr. McBrearty Senior, in illustrating to the Gardaí that he was not engaged in criminal activity, referred to himself as Lord Mayor of Raphoe and President of the boxing club as he has done in the past when confronted by allegations of criminal behaviour. Furthermore, the Tribunal accepts insofar as there was any verbal abuse this came from Mr. McBrearty Senior and was directed towards the Gardaí. Mr. McBrearty Senior had admitted to being made very angry by the fact that his house was searched and that he was arrested, and by the manner of his arrest. In such a situation the Tribunal does not believe that Mr. McBrearty Senior would hold his counsel.**

The Detention

10.101. The custody record states that Frank McBrearty Senior arrived at Letterkenny Garda Station at 20.10 hours. His personal details were entered into the custody record by Garda John Rouse. Mr. McBrearty Senior refused to sign the custody record in acknowledgement of the receipt of a notice of his rights at 20.15 hours. The following are the main details in respect of his detention set out in tabular form:

Occurrence on the 5th of December 1996	Detail of Occurrence	Comment
20.10 hours	Sergeant Paul Heffernan arrived at the station with Frank McBrearty Senior and outlined the offence in respect of which the arrest was made to Garda Rouse who was the member in charge.	

¹⁴⁵² Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 564.

¹⁴⁵³ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 473.

¹⁴⁵⁴ Tribunal Documents, Harassment materials, pages 1308-1309.

20.15 hours	Notice of Rights given to Mr. McBrearty Senior.	Mr. McBrearty Senior refused to acknowledge same.
20.20 hours	Mr. McBrearty Senior was searched, some property was taken from him.	
20.25 hours	James O'Donnell, Solicitor, arrived and spoke to Mr. McBrearty Senior in the interview room. Mr. McBrearty Senior was given a drink of water.	<p>The following matters were noted by James O'Donnell:</p> <ul style="list-style-type: none"> • Mr. McBrearty's house was searched by up to 20 Gardaí. • He was not given any reason for his arrest. • The Gardaí questioned him about what he had been doing in Dublin. • Mr. McBrearty Senior seemed very upset and had a thyroid condition and he had become irritated under questioning. • Garda Collins and Garda O'Dowd were harassing him. • Gardaí were accusing him of running Raphoe with an iron hand and threatening and intimidating.
21.05 hours	Mr. O'Donnell left the room, Mr. McBrearty Senior is supervised by Garda Rouse.	
21.10 hours	Mr. O'Donnell returned to Mr. McBrearty Senior.	
21.13 hours	Mr. O'Donnell left the Garda station requesting that a doctor be called to the Garda station to examine Mr. McBrearty Senior.	Mr. O'Donnell noted that the member in charge told him his client was only trying to waste Garda time and did not need a doctor. After leaving the Garda station Mr. O'Donnell recorded that he telephoned Mrs. McBrearty and asked her to contact her husband's doctor.

21.15 hours	Mr. McBrearty Senior was taken to the interview room by Detective Gardaí Keating and Herraghty. Garda Rouse telephoned Dr. Coyne who was unable to come to see Mr. McBrearty Senior.	First Interview. Mr. McBrearty requested Dr. Coyne or Dr. Kelly to be phoned.
21.35 hours	Mr. McBrearty Senior was informed that Dr. Coyne was unable to come to the station, Mr. McBrearty Senior requested Dr. Kelly to come to the Garda station. Garda Rouse telephoned Dr. Kelly who was not in a position to attend at the Garda station. Dr. Rouse informed Mr. McBrearty Senior of this, who replied that he did not want any other doctor.	
22.00 hours	Garda Liam Dowd took over as member in charge. Garda O'Dowd and Garda Rouse visited Mr. McBrearty Senior in the interview room. Garda Dowd was introduced to Mr. McBrearty Senior, who requested a drink of water and a doctor.	
22.05 hours	Mr. P. Murphy, solicitor, telephoned and requested to speak with Mr. McBrearty Senior.	
22.08 hours	Mr. McBrearty Senior was taken to the day room and spoke with Mr. Murphy on the phone.	
22.13 hours	Mr. McBrearty Senior returned to interview room where the interview with Detective Gardaí Keating and Herraghty resumed.	
22.20 hours	Mr. McBrearty Senior was provided with a drink of water.	
22.25 hours	Garda Dowd contacted Dr. McGeehan, who agreed to come to the station once he had completed a call.	
22.30 hours	Dr. Kelly arrived at the Garda station to see Mr. McBrearty Senior.	Dr. Kelly told the Tribunal that he did so as a result of a call he received from a member of the McBrearty family.
22.33 hours	Mr. McBrearty Senior was taken to an interview room where he received a visit from Dr. Kelly.	

23.00 hours	Dr. Kelly informed Garda Dowd that Mr. McBrearty Senior was in danger of having a heart attack/stroke and that he should be taken to casualty.	
23.03 hours	Garda Dowd checked Mr. McBrearty Senior in the interview room who seemed okay. Mr. McBrearty Senior was supervised by Garda Dowd.	
23.16 hours	Mr. McBrearty Senior taken to Letterkenny Hospital.	
Occurrence on the 5th/ 6th of December 1996	Detail of Occurrence	Comment
23.16 hours to 06.00 hours	Supervised by Detective Gardaí Herraghty and Keating.	
06.00 hours to 18.00 hours	Supervised by Detective Gardaí Frain and Anderson.	
9.20 hours	Mr. O'Donnell telephoned the Garda station and was informed that Mr. McBrearty Senior was still in custody, but had been removed to Letterkenny General Hospital.	
Occurrence on the 6th/7th of December 1996	Detail of Occurrence	Comments
18.00 hours to 06.00 hours	Supervised by Detective Gardaí Herraghty and Keating.	
06.00 hours to 18.00 hours	Supervised by Detective Gardaí Frain and Anderson.	Mr. James O'Donnell noted that he spoke to Mr. McBrearty Senior during the course of the morning. Mr. McBrearty Senior told him that the Gardaí had harassed him and accused him of all sorts of things in the Garda station.
Occurrence on the 7th/8th of December 1996	Detail of Occurrence	Comments
18.00 hours to 06.00 hours	Supervised by Detective Gardaí Gilroy and Tolan.	

06.00 hours to 18.00 hours	Supervised by Detective Gardaí Herraghty and Keating.	
Occurrence on the 8th/9th of December 1996	Detail of Occurrence	Comment
18.00 hours to 06.00 hours	Supervised by Detective Gardaí Gilroy and Tolan,	
06.00 hours to 18.00 hours	Supervised by Detective Gardaí Herraghty and Keating.	
Occurrence on the 9th/10th December 1996	Detail of Occurrence	Comment
18.00 hours to 06.00 hours	Supervised by Detective Gardaí Carroll and Anderson.	
06.00 hours to 18.00 hours	Supervised by Detective Gardaí Herraghty and Keating.	<p>Mr. McBrearty Senior's solicitor wrote to the Superintendent, Letterkenny referring to the following:</p> <ul style="list-style-type: none"> • Garda John Rouse said that Mr. McBrearty Senior was only wasting Garda time; • Mr. O'Donnell telephoned Mrs. McBrearty and told her to call Dr. Kelly. • Mr. O'Donnell had visited Mr. McBrearty Senior on a number of occasions. There were two members sitting immediately outside Mr. McBrearty Senior's hospital room. • Mr. McBrearty Senior had instructed them that he was being harassed and verbally abused by members of An Garda Síochána since he was taken into custody. • Once Mr. McBrearty Senior's medical condition no longer necessitated his

		hospitalisation his solicitor intended to take whatever remedy was appropriate to secure the immediate release of Mr. McBrearty Senior.
Occurrence on the 10th/11th of December 1996	Detail of Occurrence	Comment
18.00 hours to 06.00 hours	Supervised by Detective Gardaí Carroll and Anderson.	
06.00 hours to 21.30 hours	Supervised by Detective Gardaí Gilroy and Tolan.	
08.30 hours	Moved to Blanchardstown Hospital	
21.15 hours	Mr. McBrearty Senior discharged from Blanchardstown Hospital. Returns to Letterkenny General Hospital.	
Occurrence of the 11th/12th of December 1996	Detail of Occurrence	Comment
21.30 hours to 06.00 hours	Supervised by Detective Gardaí Frain and Jennings.	
06.00 hours to 16.30 hours	Supervised by Detective Gardaí Gilroy and Tolan.	
09.30 hours	Mr. O'Donnell calls to see Mr. McBrearty Senior. He informs Mr. O'Donnell of his trip to Blanchardstown.	
10.29 hours	Fax sent to the incident room in Letterkenny Garda Station from Sergeant John White containing the information that a test carried out on Mr. McBrearty Senior at Blanchardstown proved negative and no abnormalities of any kind showed up.	
11.15 hours to 12.15 hours approximately.	Mr. O'Donnell returned to Letterkenny General Hospital. He met Dr. Callaghan who informed him that Mr. McBrearty Senior was going to be discharged. Dr. Callaghan gave Mr. O'Donnell a letter saying that further interrogation would exacerbate Mr. McBrearty Senior's condition. Detective Sergeant Sylvester Henry attended at Letterkenny General Hospital. He met Dr. Callaghan and was shown a copy of Dr. Callaghan's letter.	

16.30 hours	Mr. McBrearty Senior discharged from Letterkenny Hospital	
16.35 hours	Arrived in Letterkenny Garda Station.	Garda Thornton who was the member in charge noted that Mr. McBrearty Senior appeared to be in good form on the custody record.
16.40 hours	Mr. McBrearty Senior signed the custody record in acknowledgement of the receipt of the notice of rights.	At the same time Garda Thornton explained to Mr. McBrearty Senior that he was still under arrest. Mr. McBrearty Senior requested to speak to a solicitor.
16.45 hours	Garda Thornton phoned a solicitor at Mr. McBrearty Senior's request.	
16.52 hours	Garda Thornton phoned Mr. McBrearty Senior's home.	
17.00 hours	Mr. McBrearty Senior taken to interview room by Detective Sergeant Henry and Detective Garda Frain.	
17.02 hours	Detective Sergeant Henry left the interview room. Detective Garda Jennings entered interview room.	Second Interview Sometime after leaving interview room Detective Sergeant Henry receives letter from V.P. McMullin & Co. together with copy letter written by Dr. Callaghan.
18.00 hours	Garda Kieran Jackson takes over as member in charge. Mr. McBrearty Senior given his medication.	
18.05 hours	Mr. O'Donnell, solicitor visited Mr. McBrearty Senior in the interview room.	Mr. O'Donnell's attendance records: <ul style="list-style-type: none"> • Detective Gardaí Frain and Jennings had said he was a murderer in Scotland; • They said that a man died and fell down a stairs in Frankie's in Raphoe before.

		<ul style="list-style-type: none"> • They told him that he wanted to get his reputation back as a good citizen in Raphoe; • They told him that they knew he had a wee girl to look after; • That he could get 20 years for the offence for which he was arrested.
18.25 hours	Mr. O'Donnell left the Garda station At the same time Mr. McBrearty Senior was visited by his wife and daughter.	Detective Sergeant Henry met Mr. O'Donnell as he was on his way to hand Dr. Callaghan's letter to his superiors, when there was a discussion on the further detention of Mr. McBrearty Senior. A decision was taken to continue with Mr. McBrearty Senior's detention.
18.42 hours	Mrs. McBrearty and her daughter left the Garda station. Detective Garda Jennings and Frain resumed interviewing Mr. McBrearty Senior.	
18.45 hours	Garda Thornton resumes duty as member in charge.	
19.50 hours	Garda Thornton asked prisoner if he wanted something to eat. Mr. McBrearty Senior requested some food.	
19.55 hours	Detective Garda Frain left the interview room and was replaced by Detective Garda Anderson.	
20.30 hours	Mr. McBrearty Senior was given a pot of tea and a chicken sandwich. Detective Garda Jennings left the interview room. Mr. McBrearty Senior was at that stage not being interviewed. Detective Garda Anderson remained with Mr. McBrearty Senior until 20.55 hours.	
20.55 hours	Garda P.J. Thornton placed Mr. McBrearty Senior in cell number 4.	

21.27 hours	Mr. McBrearty Senior was taken to interview room by Detective Garda Jennings. Detective Garda Frain went to interview room. The interview resumed with Detective Gardaí Jennings and Frain.	
22.00 hours	Mr. Thornton gave Mr. McBrearty Senior a tablet for Angina. Garda Healy took up duty as member in charge.	
22.15 hours	Prisoner was taken from the interview room as the interview terminated. Mr. McBrearty Senior was taken to Inspector McGinley's office to speak to Superintendent Fitzgerald and Inspector McGinley.	Third Interview Mr. McBrearty Senior said he was asked to sign a blank piece of paper which was put down on ground in the room.
22.25 hours	Frank McBrearty Junior phoned the Garda station enquiring about Mr. McBrearty Senior. Mr. McBrearty Junior was informed that Mr. McBrearty Senior was fine.	
22.40 hours	Mrs. Rosalind McBrearty phoned to enquire about Mr. McBrearty Senior's condition. She was informed that Mr. McBrearty Senior was fine.	
22.50 hours	Mr. Frank McBrearty Junior called to the Garda station to speak to Mr. McBrearty Senior. He was told to come back later.	
23.05 hours	John McBrearty phoned the Garda station from the U.S. enquiring about Mr. McBrearty Senior. He was informed he was fine.	
23.55 hours	Mr. McBrearty left Inspector McGinley's office and made a phone call.	
24.00 hours	Mr. McBrearty Senior was shown to the cell and refused to go into same as he had a medical condition. Alternative accommodation was arranged and a bed was prepared for him in an interview room with which he stated he was very happy. He requested a drink of water which was given to him.	It was recorded on the custody record that he said he was claustrophobic and complained about the cold concrete floor in the cell. He said he had a sore chest and a cold.

Occurrence on the 13th of December 1996	Detail of Occurrence	Comment
00.08 hours	Mr. Frank McBrearty Junior called to the Garda station to visit his father. Mr. Frank McBrearty Junior visited his father in an interview room. Mr. McBrearty Senior requested a cup of tea and toast which was provided to him.	
00.10 hours	Mr. McBrearty Senior was given two sleeping tablets as requested.	
00.25 hours	Mr. Frank McBrearty Junior left the Garda station and Mr. McBrearty Senior went to bed.	
02.15 hours	Mr. McBrearty Senior provided with some Rennie tablets by Garda Rowland.	
03.30 hours	Mr. McBrearty Senior taken to the toilet.	
06.00 hours	Garda P.J. Thornton resumes duty as member in charge.	
06.35 hours	Mr. McBrearty Senior given a glass of water.	
07.55 hours	Mr. McBrearty Senior complained of a pain in his chest and stomach and requested that his wife and Dr. Kelly be contacted.	
08.00 hours	Garda Thornton phoned Mrs. McBrearty, there was no answer.	
08.10 hours	Garda Thornton phoned Mrs. McBrearty, no answer.	
08.15 hours	Garda Thornton phoned Dr. Kelly who stated that he was unable to come to the Garda station. Mr. McBrearty Senior was provided with a drink of water by Detective Garda Jennings.	
08.20 hours	Mr. McBrearty Senior phoned his residence and spoke to his wife.	
08.23 hours	Mr. McBrearty Senior phoned his solicitor.	
08.25 hours	Prisoner returned to the interview room where he had slept the previous night.	
08.35 hours	Detective Sergeant Henry and Detective Garda Jennings go to the interview room to commence an interview with Mr. McBrearty Senior.	Fourth Interview

08.40 hours	The prisoner was given his medication and a glass of water.	
08.45 hours	Garda Thornton asked Mr. McBrearty Senior if he wanted breakfast or a cup of tea. Mr. McBrearty Senior said he wanted nothing.	
08.50 hours	Mr. McBrearty Senior was taken to the toilet to freshen up by Detective Garda Jennings and given a pair of socks.	
09.15 hours	Mr. O'Donnell visited Mr. McBrearty Senior.	<p>Mr. O'Donnell's notes record that:</p> <ul style="list-style-type: none"> • Questioning stopped at about 00.30 hours; • Questioning resumed at 08.30 hours; • Mr. McBrearty Senior had been put in a cell for a while but he got claustrophobic and was brought back to the interview room; • He had been questioned the previous night about interference with witnesses. Mr. McBrearty Senior told Mr. O'Donnell that John Fitzgerald had told him that Philomena Lynch had made a statement implicating him. • Detective Sergeant Henry had refused to show Mr. O'Donnell the custody record and that Detective Sergeant Henry was getting annoyed with him as he was writing things down.
09.35 hours	Mr. O'Donnell left the Garda station. Detective Garda Jennings and Detective Sergeant Henry resumed interviewing Mr. McBrearty Senior.	

10.00 hours	Mr. McBrearty Senior was given medication.	
10.15 hours	Detective Sergeant Henry and Detective Garda Jennings left the interview room. Mr. McBrearty Senior's wife and daughter were allowed to visit Mr. McBrearty Senior.	
10.40 hours	Garda Thornton checked on Mr. McBrearty Senior who said that he was okay.	
10.45 hours	Mr. McBrearty Senior was provided with a glass of water.	
11.10 hours	Mrs. McBrearty and her daughter left the interview room. Mr. McBrearty Senior was provided with a glass of water.	
11.35 hours	Mr. McBrearty Senior was taken to the interview room upstairs by Detective Sergeant Melody and Detective Garda Fitzpatrick.	Fifth Interview Mr. McBrearty Senior said that he met these two Gardaí for a very short time and there was no opportunity for an interview to take place as the doctor arrived and said he should be transferred to hospital.
12.00 hours	Mr. McBrearty Senior stated that he wished to have a local doctor examine him. Garda Thornton asked Mr. McBrearty Senior if he was alright. Mr. McBrearty Senior informed him that he wanted the doctor to check him out and verify that he had the correct medication.	
12.08 hours	Garda Thornton phoned Dr. Kelly's practice and spoke to Dr. McColgan.	
12.25 hours	Dr. McColgan arrived to see Mr. McBrearty Senior. Detective Sergeant Melody and Fitzpatrick left the interview room and Dr. McColgan entered the interview room.	
12.40 hours	Dr. McColgan finished his examination of Mr. McBrearty Senior and said that he should be taken to hospital for an ECG examination.	
12.45 hours	Mr. McBrearty Senior phoned home and phoned his solicitor.	
12.50 hours	Mr. McBrearty Senior was taken to Letterkenny Hospital by Detective Sergeant Smith and Detective Garda Scanlon.	

12.50 hours to 18.00 hours	Supervised by Detective Gardaí Smith and Scanlon.	
Occurrence on the 13th/14th December 1996	Detail of Occurrence	Comment
18.00 hours to 06.00 hours	Supervised by Detective Gardaí Tolan and Herraghty.	
18.55 hours	Mr. O'Donnell visits Mr. McBrearty Senior at Letterkenny General Hospital.	Mr. O'Donnell records that Mr. McBrearty Senior told him that two detectives from Dublin, referred to as John and John, told him that they had a signed statement from Frank McBrearty Junior admitting to the murder of Richard Barron.
06.00 hours to 12.00 hours	Supervised by Detective Gardaí Carroll and Garda Anderson.	
12.00 hours to 18.00 hours	Supervised by Detective Gardaí Frain and Jennings.	
Occurrence on the 14th/15th of October 1996	Detail of Occurrence	Comment
18.00 hours to 06.00 hours	Supervised by Detective Gardaí Herraghty and Gilroy.	
06.00 hours to 18.00 hours	Supervised by Detective Gardaí Frain and Jennings.	
Occurrence on the 15th/16th of December 1996	Detail of Occurrence	Comment
18.00 hours to 06.00 hours.	Supervised by Detective Gardaí Herraghty and Keating.	
06.00 hours to 18.00 hours.	Supervised by Detective Gardaí Frain and Jennings.	
Occurrence of the 16th/17th of December 1996	Detail of Occurrence	Comment
18.00 hours to 06.00 hours	Supervised by Detective Gardaí Gilroy and Tolan.	

06.00 hours to 12.00 hours	Supervised by Detective Gardaí Frain and Jennings.	
12.00 hours to 18.00 hours	Supervised by Detective Gardaí Carroll and Jennings.	
Occurrence on the 17th/18th of December 1996	Detail of Occurrence	Comment
18.00 hours to 06.00 hours	Supervised by Detective Gardaí Scanlon and Gilroy.	
06.00 hours to 21.45 hours	Supervised by Detective Gardaí Herraghty and Keating.	
16.45 hours	Mr. McBrearty Senior was transferred to Beaumont Hospital.	
21.45 hours to 23.00 hours	Supervised by Detective Gardaí Molloy and Cogan.	
Occurrence on the 18th/19th of December 1996	Detail of Occurrence	Comment
23.00 hours to 07.30 hours	Supervised by Detective Gardaí Gibbons and Cogan.	
07.30 hours to 17.10 hours	Supervised by Detective Gardaí Herraghty and Keating.	
17.10 hours	Mr. McBrearty Senior was released from the provisions of section 30 of the Offences Against the State Act, 1939 on the directions of Superintendent John Fitzgerald.	

Overview of Detention of Mr. McBrearty Senior

10.102. As is apparent from the above, Mr. McBrearty Senior arrived in Letterkenny Garda Station on the 5th of December 1996 at 20.10 hours. He was released from custody at 17.10 hours on the 13th of December 1996. In the intervening period of time he spent from 23.16 hours on the 5th of December to 16.35 hours on the 12th of December in hospital, following which he was again admitted to hospital at 12.45 hours on the 13th of December up to the time of his eventual release.

10.103. He was interviewed on five occasions, namely:

- (i) The 5th of December 1996 between 21.15 hours and 22.33 hours by Detective Garda P.J. Keating and Detective Garda Seán Herraghty.

- (ii) The 12th of December 1996 between 17.00 hours and 20.30 hours by Detective Garda Michael Jennings and Detective Garda James Frain.
- (iii) The 12th of December 1996 between 22.15 hours and 23.55 hours by Superintendent Fitzgerald and Inspector McGinley.
- (i) The 13th of December 1996 between 08.35 hours and 10.15 hours by Detective Sergeant Sylvester Henry and Detective Garda Michael Jennings.
- (v) The 13th of December 1996 between 11.35 hours and 12.25 hours by Detective Sergeant John Melody and Detective Garda John Fitzpatrick.

Arrival at Garda Station

- 10.104.** Mr. Frank McBrearty Senior arrived at Letterkenny Garda Station at 20.10 hours on the 5th of December 1996. Garda John Rouse was the member in charge of the Garda station. Mr. McBrearty Senior was processed at the Garda station by Garda Rouse, whom he described as a “small grey haired man”.
- 10.105.** Mr. McBrearty Senior was searched and a number of items were taken from him. Mr. McBrearty Senior alleges that some tablets were taken from him at that stage. This matter is disputed by Garda Rouse. Mr. McBrearty Senior then stated in evidence that he requested a solicitor to attend at the Garda station. Mr. James O’Donnell arrived at the Garda station at 20.25 hours. It is not clear whether this was in response to Mr. McBrearty Senior’s request at the Garda station or to an earlier request during the continuance of the search. Mr. O’Donnell had a consultation with Mr. McBrearty Senior in an interview room which lasted from 20.25 hours to 21.13 hours, with an interruption from 21.05 hours to 21.10 hours, when Mr. O’Donnell left the station. At the outset of the consultation Mr. McBrearty Senior was given a drink of water by Garda Rouse.
- 10.106.** In his evidence to the Tribunal Mr. James O’Donnell remembers that Mr. McBrearty Senior’s primary concern was to get a doctor. Secondly, he also remembers that at that time this concern was not being facilitated.¹⁴⁵⁵ Mr. McBrearty Senior described his condition as follows to the Tribunal:

*I was taking dizzy spells and I had pains in my arms and across my chest. You see, I was suffering with high blood pressure and I was worrying away about my business and my family and all that as well.*¹⁴⁵⁶

- 10.107.** At the conclusion of his consultation with Mr. McBrearty Senior, Mr. O’Donnell on leaving the station requested of the member in charge that a doctor be called to

¹⁴⁵⁵ Transcript, Day 539, page 38.

¹⁴⁵⁶ Transcript, Day 528, page 47.

examine his client. Mr. O'Donnell records in an attendance note dated the 5th of December 1996 that he left the station at approximately 22.15 hours. On the custody record it is recorded that he left the station at 21.13 hours. This is significant as Garda Rouse was replaced as the member in charge by Garda Liam Dowd at 22.00 hours. The Tribunal is satisfied that this is an error contained in the typewritten attendance of Mr. O'Donnell and that in fact he left the station at or around 21.13 hours on that evening, at which time Garda Rouse was the member in charge of the Garda station.

- 10.108.** Garda Rouse told the Tribunal that Mr. McBrearty Senior was taken to the interview room by Detective Garda Keating and Detective Garda Herraghty following Mr. O'Donnell's departure. Mr. McBrearty Senior then requested of Garda Rouse that he phone either Dr. Coyne or Dr. Kelly. Garda Rouse made no enquiries of Mr. McBrearty Senior as to why he wanted a doctor as he did not see it as any of his business. He said that he felt that Mr. McBrearty Senior was fit for interview, but he just wanted a doctor, and he felt that he was discharging his duties as member in charge by phoning a doctor.¹⁴⁵⁷
- 10.109.** At 21.15 hours Garda Rouse phoned Dr. Coyne and told him that Mr. McBrearty Senior requested his attendance at the Garda station. It is recorded that Dr. Coyne said that he was unable to come to see the prisoner. At 21.35 hours Mr. McBrearty Senior was informed that Dr. Coyne was unable to come to the Garda station. Mr. McBrearty Senior then requested that Garda Rouse phone Dr. Kelly, who was telephoned at 21.35 hours. He was also not in a position to attend at the Garda station. In his evidence to the Tribunal, Garda Rouse had no specific recollection of the details of any conversation he had either with Dr. Coyne or Dr. Kelly and gave his evidence in accordance with what was recorded on the custody record. Garda Rouse informed Mr. McBrearty Senior that Dr. Kelly was not in a position to attend at the Garda station and told the Tribunal that Mr. McBrearty Senior informed him that he did not want any other doctor.¹⁴⁵⁸ The Tribunal regards this as somewhat surprising considering the evidence of Mr. O'Donnell already referred to and Mr. McBrearty Senior's subsequent request, to which we will refer in the following paragraphs.
- 10.110.** Garda Rouse completed his tour of duty at 22.00 hours when Garda Liam Dowd took over as member in charge. At this time, both Garda Rouse and Garda Dowd visited Mr. McBrearty Senior in the interview room. Garda Rouse's entry in the custody record notes that he introduced Garda Dowd to the prisoner. Garda Dowd records that at that time Mr. McBrearty Senior requested a drink of water and a doctor. Garda Dowd in his evidence to the Tribunal said that he did not know if Mr. McBrearty Senior told him what he was complaining of. He did not

¹⁴⁵⁷ Transcript, Day 528, page 121.

¹⁴⁵⁸ Transcript, Day 549, page 127.

recall whether he made an enquiry as to what was wrong with Mr. McBrearty Senior, but he assumed that it was a medical condition because Mr. McBrearty Senior made no reference to being ill treated. Garda Dowd said he had not enquired of Garda Rouse as to whether there was anything wrong with Mr. McBrearty Senior or whether there was any problem about his medical condition, but Garda Rouse had informed him that he had requested a doctor for Mr. McBrearty Senior. The doctor he was looking for was not available, so he had to contact Dr. McGeehan.¹⁴⁵⁹ Garda Dowd had no recollection of being informed that Dr. Coyne had attended at Mr. McBrearty Senior's house and provided him with some medication.¹⁴⁶⁰

- 10.111. At 22.25 hours Garda Dowd contacted Dr. McGeehan, who agreed to come to the Garda station after attending at a call. Before Dr. McGeehan actually had a chance to attend at the Garda station Dr. Kelly arrived at the station at 22.30 hours. Dr. Kelly, in his evidence to the Tribunal, explains his presence at the Garda station as follows:

On the night of this day ten years ago I got a phone call from a member of Mr. McBrearty's family to see if I would attend, being his own general practitioner, in Letterkenny Garda station to see him where he was in custody. He had been seen earlier in the day by my partner in his house.¹⁴⁶¹

- 10.112. Mr. McBrearty Senior, who at this stage was being interviewed by Detective Gardaí Keating and Herraghty, was taken to an empty interview room where he had a consultation with Dr. Kelly. Dr. Kelly described the situation as follows:

I went to the Garda station in Letterkenny and I interviewed him, examined him at 10.50 p.m. that night. Mr. McBrearty had a history of high blood pressure for the length of time that I had known him, which would have been the previous ten years, and had been on medication for the same. When I arrived there he was complaining of numbness and loss of power in the left side of his face. His blood pressure was raised, he was very distressed when it happened and I formed the opinion that he was at risk of having either a stroke or transient ischaemic attack and I recommended that he be admitted to hospital. He was subsequently transferred to Letterkenny, where that diagnosis was confirmed and then was moved on to Dublin.¹⁴⁶²

- 10.113. **Dr. Kelly then informed the Gardaí of his findings and at 23.16 hours Mr.**

¹⁴⁵⁹ Transcript, Day 536, page 80.

¹⁴⁶⁰ Transcript, Day 536, page 80.

¹⁴⁶¹ Transcript, Day 536, page 5.

¹⁴⁶² Transcript, Day 536, page 5.

McBrearty Senior was taken to the Casualty Department in Letterkenny General Hospital by Detective Gardaí Herraghty and Keating. In the interim period, Mr. McBrearty Senior was supervised in the interview room by the member in charge, Garda Dowd. The Tribunal is satisfied that the response of the Gardaí to the findings of Dr. Kelly was appropriate and efficient in the circumstances. The following morning, the 6th of December, at 09.20 hours, Mr. O'Donnell, solicitor, telephoned the Garda station to enquire as to whether Mr. McBrearty Senior was still in custody, whereupon he was informed that he had been removed to Letterkenny General Hospital the previous evening.

First Interview

- 10.114. At 21.15 hours on the 5th of December 1996 Mr. McBrearty Senior was taken to an interview room by Detective Gardaí Keating and Herraghty for the purposes of being interviewed. This interview terminated at 22.33 hours when Mr. McBrearty Senior's doctor attended at the Garda station.
- 10.115. In an undated statement, which Mr. McBrearty Senior prepared for his then legal team in 1997, Mr. McBrearty Senior described this interview as follows:

I was then taken to be interviewed by Det/Garda Keating and Det/Garda Shaun Herrity [sic]. I was abused by these guards and accused of bribing people, interfering with witnesses and watching guards, I kept asking what proof they had got to make these allegations, they said they had the proof and would produce it later. I called them all liars. They were pushing me around and banging on tables and Herrity was shouting, You're a boxer, well so am I, He also said you are a big man in Raphoe but a wee man in here. Det/Sgt. Heffernan was coming in and out of the room and shouting abuse at me. Det/Garda Martin Anderson would look in the fan light at the top of the door and laugh at me....I was then taken back to be interviewed by Det/Garda Herrighty and Det/Garda Keating and Det/Sgt. Heffernon. These Garda continued to abuse me. They kept on about how I was a hard man in Raphoe and that everybody was scared of me. They were throwing the furniture about the room and banging on the table and roaring and shouting. I felt that the guards were trying to get me to assault them, I kept telling them I was an innocent man. ¹⁴⁶³

- 10.116. Mr. McBrearty Senior commenced civil proceedings against the State in March 1997 in which he claimed, amongst other things, damages for assault during the time of his detention in Letterkenny Garda Station.¹⁴⁶⁴ In the Statement of Claim dated the 29th of September 1997 Mr. McBrearty Senior named Detective Garda Keating and Detective Garda Herraghty as being people who assaulted him.¹⁴⁶⁵

¹⁴⁶³ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), pages 565-566.

¹⁴⁶⁴ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 470.

¹⁴⁶⁵ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 473.

10.117. By the time Mr. McBrearty Senior gave evidence to the Tribunal he said that at no time had he been assaulted by any member of An Garda Síochána.¹⁴⁶⁶ Mr. McBrearty Senior told the Tribunal that he was not assaulted by the interviewing Gardaí, but that they may as well have been hitting him as the things they were saying to him were very offensive.¹⁴⁶⁷ He said that during the course of this interview, the interviewing Gardaí referred to Mrs. Barron, and the fact that she had lost her husband. They accused him of being involved in the death of the Late Richard Barron, referred to him as a hard man, accused him of bullying tactics, referred to boxing and engaged in shadow boxing.¹⁴⁶⁸ Mr. McBrearty Senior told the Tribunal that the Gardaí were pulling at the chair on which he was sitting with a view to making him angry.¹⁴⁶⁹ This is what he said in evidence:

Q. What I am asking you is, did Garda Keating and Garda Herraghty, did they do anything or say anything to you that was objectionable other than questions that they had put to you to further their investigation? Did they do anything or say anything that went beyond the questions?

A. Oh yes. They said about the hard man and the banging of tables and trying to kick the chair from under you. I am not sure which of them done that, but that was done during the course of my fourteen days between the hospital and my release ... I am not just one hundred per cent sure, but it was all the same carry on the whole way through. But none of them hit me or they didn't abuse me that way, they didn't hit me or anything like that. But they would have been as well hitting me because the things they said to me was terrible offensive and I tried to, I tried to reason with them that we were all innocent people and they wouldn't listen to us ... They were banging on the table and they were saying "you're a hard man, you're not so hard a man down here, give us information that we need and you will be released shortly. I said "I have no information for you, we're all innocent people".¹⁴⁷⁰

10.118. Furthermore, Mr. McBrearty Senior told the Tribunal that Sergeant Paul Heffernan came into the interview at one stage "bawling and shouting". In relation to Sergeant Heffernan, Mr. McBrearty Senior said as follows:

He was just bully tactics he was on about, you know. The boxing and hard man stuff¹⁴⁷¹

¹⁴⁶⁶ Transcript, Day 528, page 53.

¹⁴⁶⁷ Transcript, Day 528, page 53.

¹⁴⁶⁸ Transcript, Day 528, pages 53-57.

¹⁴⁶⁹ Transcript, Day 528, page 538.

¹⁴⁷⁰ Transcript, Day 528, questions 279-282.

¹⁴⁷¹ Transcript, Day 528, page 538.

- 10.119. Mr. McBrearty Senior also described Detective Garda Martin Anderson outside the interview room, pulling himself up and down while looking through the fanlight located above the door into the interview room.¹⁴⁷² Mr. McBrearty Senior said that he thought it was Detective Garda Herraghty who was engaged in shadow boxing with him.¹⁴⁷³ He also accused Detective Garda Herraghty of banging on the table, but he was not one hundred per cent sure as to who exactly banged on the table.¹⁴⁷⁴
- 10.120. These allegations are denied by all the Gardaí against whom they were made. Detective Garda P.J. Keating described the interview as follows:

*As normal I would take notes, as I said here before, Seán would actually do the questioning. So the interview ... didn't go according to plan anyway. I have done an awful lot of interviews over the years and I would say it's probably the worst interview I have been a part of. Mr. McBrearty was very aggressive. He was shouting and roaring, at times he banged the table. He got down on his knees and started to pray. And the questions, he wouldn't answer the questions that was asked of him, but would keep repeating things about his family, the way the guards were investigating his family, accusing him of being involved in murder and that his family were innocent. This is the way the interview went.*¹⁴⁷⁵

- 10.121. The memorandum of interview as recorded by Detective Garda Keating firstly notes that Mr. McBrearty Senior was cautioned in the normal way and was asked whether he understood it, to which he replied that he did. He was then informed that he was in the Garda station to answer questions about intimidation of various people and Gardaí, to which Mr. McBrearty Senior replied that he did not do anything wrong and that he was innocent. The Gardaí then informed Mr. McBrearty Senior that they had “stuff” out of the house in relation to statements taken by Gardaí concerning the murder of the Late Richard Barron. The allegation that Mr. McBrearty Senior came out of his work on the night of the 27th/28th of October at 03.00 hours and said to Garda O'Dowd who was sitting in a patrol car “is that what they sent to Raphoe to replace [a named former Sergeant]?” is recorded as being put to Mr. McBrearty Senior, to which his reply was that that was wrong and the questioning Garda was a liar. Thereafter Mr. McBrearty Senior denied being involved in a conspiracy. In response to the question as to why Mr. McBrearty Senior threatened and intimidated people and Gardaí, Mr. McBrearty Senior repeated that the questioning Garda was a liar. The Gardaí then put it to

¹⁴⁷² Transcript, Day 528, page 53.

¹⁴⁷³ Transcript, Day 528, page 57.

¹⁴⁷⁴ Transcript, Day 533, pages 123-124.

¹⁴⁷⁵ Transcript, Day 537, page 4.

Mr. McBrearty Senior that they had evidence, to which Mr. McBrearty Senior replied that it was rubbish. The Gardaí then asked him what he was trying to cover up, to which Mr. McBrearty Senior responded that he was not answering any more questions. Nevertheless, Mr. McBrearty Senior in response to the next question explained to the Gardaí that he was trying to take notes about what was happening to his family and himself. In response to questions about what happened on the night of Mr. Barron's death he said that he made two statements and that there was nothing missing from those statements, that he was in his nightclub all night, as was his son. It is then recorded that Mr. McBrearty Senior said to and of the Gardaí "you're a lying f... bastard, now write that down." Sergeant Heffernan entered the interview room at 22.13 hours approximately. It is recorded in the notes that Mr. McBrearty Senior said "I'll get you when I get out". Mr. McBrearty Senior denied covering up for anyone. The Gardaí then informed him that he would be in the Garda station for the next few days. The Gardaí informed him that they had found papers in his house, implying that they were relevant to intimidation: he replied that they were about a break-in to his premises. He was then directly asked whether he was covering up for anyone, at which stage it is recorded that Frank McBrearty Senior started to pray and said he would not cover up for any murderer. The interview then concluded with the arrival of the doctor in the Garda station.¹⁴⁷⁶

- 10.122. Due to the abrupt ending of the interview, Detective Garda Herraghty said the notes were not read over to Mr. McBrearty Senior, nor was he asked to sign them.¹⁴⁷⁷
- 10.123. Four interruptions are recorded in the interview notes as occurring during the course of this interview.¹⁴⁷⁸ At 21.30 hours Garda Rouse is recorded as entering the interview room and informing Mr. McBrearty Senior that Dr. Kelly could not come to the Garda station. At 21.35 hours Garda Rouse is recorded as entering the interview room and informing Mr. McBrearty Senior that he could not get a doctor at that time. It is also recorded that Garda Rouse and Garda Liam Dowd, who took over the duties of the member in charge, visited the interview room. At 22.10 hours Detective Sergeant Heffernan came into the interview room. At 22.10 Mr. McBrearty Senior took a telephone call from his solicitor Mr. Murphy. The interruptions recalled by Mr. McBrearty Senior were speaking to his solicitor and Sergeant Heffernan entering the room. Mr. McBrearty Senior did not remember visits to the interview room by the member in charge.¹⁴⁷⁹
- 10.124. Detective Garda Keating told the Tribunal that he was not able to record everything in the interview notes. He denied that there was any mention about

¹⁴⁷⁶ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), pages 441-443.

¹⁴⁷⁷ Transcript, Day 542, page 158.

¹⁴⁷⁸ It will be noted that the interview notes do not exactly coincide with the record of events in the Custody Record.

¹⁴⁷⁹ Transcript, Day 528, pages 63 - 67.

boxing during the course of the interview.¹⁴⁸⁰ He described Mr. McBrearty Senior as banging his two fists on the table during the course of the interview, getting up off the chair and banging the table.¹⁴⁸¹ He said that he was aware that Mr. McBrearty Senior had a medical condition prior to the interview and said that he was not in any way trying to exacerbate his condition during the interview he had with him.¹⁴⁸² Detective Garda Keating in the memorandum of interview describes how Mr. McBrearty Senior knelt down to pray.¹⁴⁸³ In his evidence to the Tribunal he described Mr. McBrearty Senior as getting up off his chair and moving to the right hand side of the room, kneeling and joining his hands together and commencing to pray.¹⁴⁸⁴ He said that when Sergeant Heffernan came into the interview room Mr. McBrearty Senior said to him that he would get him when he got out. He was instructed to record this in the notes of interview. He denies that Sergeant Heffernan was “bawling and shouting” at Mr. McBrearty Senior when he came into the room. Detective Garda Keating said that when he was informed that a doctor had arrived he was glad to hear it.¹⁴⁸⁵ It is as well at this stage to set out the portion of Detective Garda Keating’s evidence to the Tribunal that illustrates his impression of how the interview proceeded:

A. *Mr. McBrearty was very aggressive. He was shouting and roaring, at times he banged the table. He got down on his knees and started to pray. The questions, he wouldn’t answer the questions that was asked of him, but he would keep repeating things about his family, the way the guards were investigating his family, accusing him of being involved in murder and that his family were innocent. This is the way the interview went.*

Q. *When he was shouting and you say banging on the table, can you describe how he banged on the table and how many times it might have been done?*

A. *Oh it was done several times. He would bang with his fists, his two fists on the table. He done that several times. Now he would up off the chair and bang the table.*

Q. *Was that done ... you say he got out of the chair?*

A. *Yes, he stood up and brought his full force down on the table with his two fists.*¹⁴⁸⁶

¹⁴⁸⁰ Transcript, Day 537, page 9.

¹⁴⁸¹ Transcript, Day 537, page 4.

¹⁴⁸² Transcript, Day 537, page 6.

¹⁴⁸³ Tribunal Documents, page 443.

¹⁴⁸⁴ Transcript, Day 537, page 12.

¹⁴⁸⁵ Transcript, Day 537, page 13.

¹⁴⁸⁶ Transcript, Day 537, page 4.

Mr. McBrearty Senior said in evidence that although he recalled crying a few times, he definitely had no recollection of praying.¹⁴⁸⁷

10.125. Detective Garda Seán Herraghty described the interview as commencing calmly, but once questioning of Mr. McBrearty Senior commenced Mr. McBrearty Senior became irritated and very abusive about the investigation into the death of Mr. Barron and corrupt policemen in Donegal.¹⁴⁸⁸ He described Mr. McBrearty Senior as being a very angry person and a man on the edge during the interview.¹⁴⁸⁹ Detective Garda Herraghty did not recollect any mention of boxing during the interview and denied that he had either banged the table or pushed Mr. McBrearty Senior's chair.¹⁴⁹⁰ He described to the Tribunal an incident during the interview in which Mr. McBrearty Senior banged on the table with his two fists, knocking biros and papers off the table.¹⁴⁹¹ Detective Garda Herraghty said that until Garda Rouse came into the interview room at approximately 21.30 hours no meaningful interview took place. Prior to Sergeant Heffernan coming into the interview room Mr. McBrearty Senior had calmed down somewhat for a short period, but when Sergeant Heffernan came into the interview room Mr. McBrearty Senior became irritated again and that was basically the end of the questioning.¹⁴⁹²

10.126. Sergeant Paul Heffernan is recorded as going into the interview room at 22.13 hours approximately. It will be recalled that Sergeant Heffernan was the person who executed the search warrant, arrested Mr. McBrearty Senior and escorted him to the Garda station earlier on that evening. Sergeant Heffernan describes what happened in the interview room as follows:

A. *The interview, I suppose it wasn't ... Mr. McBrearty wasn't very co-operative. It was tense and it was difficult to get any type of structure into it really. It was hard to control it and it was loose, you know. I mean you couldn't ... to try and properly structure the interview and get a sequence of questions flowing, it was difficult.*

Q. *Can you recall what time it was that you entered into that interview?*

A. *The custody record put me in I think at 10.13.*

Q. *Did Mr. McBrearty say anything to you about where you would work?*

¹⁴⁸⁷ Transcript, Day 528, questions 377-380.

¹⁴⁸⁸ Transcript, Day 542, page 147.

¹⁴⁸⁹ Transcript, Day 542, pages 148, 157.

¹⁴⁹⁰ Transcript, Day 542, page 149.

¹⁴⁹¹ Transcript, Day 542, page 149.

¹⁴⁹² Transcript, Day 542, page 153.

A. *There was another comment passed then of you'll never work in Donegal again or something during the course of that interview as well. Now at that point I had told Detective Garda Keating, Mark, write that down, because it had been the second time it had been passed to me.*

Q. *Yes. If we look at the portion of notes, at the very end of page 442, it just notes your entry into the room at 10.10. Then the first thing that is noted in the notes is: "I will get you when I get out". Meaning Sergeant Paul Heffernan. That's the comment you told Mr. Keating to note?*

A. *Yes.*

Q. *Did Mr. McBrearty respond to your questions?*

A. *I asked Frank McBrearty very few questions during the course of that interview. I hadn't been up to speed with the way it was going prior to that. He had been interviewed for a period before, so I was kind of just seeing what ... assessing it, seeing the direction the interview was going. But as I say, it appeared it wasn't going that well, you know. It didn't seem to be that structured and things were difficult, you know, Mr. McBrearty wasn't very co-operative and it was hard to get some sense into it I think.*

Q. *Did he pray during the interview?*

A. *There was an incident of that. He turned to a window behind and started praying aloud. I thought it was silly behaviour, to be honest. I had never witnessed anybody do that before.¹⁴⁹³*

10.127. Detective Garda Martin Anderson, when questioned about peering through the fanlight, responded as follows;

That didn't happen. It never happened. I'll tell you the following morning I was on duty in the hospital, I relieved Garda Herraghty and Keating, Frank McBrearty was in a ward and onto the ward there's a built on conservatory, it was a smoke room, a day room for patients. We were sitting there, there's windows there, they're frosted, an odd time I used to look in to see where he was in the ward.¹⁴⁹⁴

¹⁴⁹³ Transcript, Day 540, pages 29-31.

¹⁴⁹⁴ Transcript, Day 537, page 138.

- 10.128. Detective Garda Keating and Detective Garda Herraghty also told the Tribunal that as far as they were concerned Detective Garda Anderson was not peering into the interview room.
- 10.129. The Tribunal does not accept that Mr. McBrearty Senior was verbally abused in the way alleged by him. Nor does the Tribunal accept that Mr. McBrearty Senior's complaints of the Gardaí engaging in shadowboxing or pulling his chair from under him have been made out by him. Insofar as any incident with a chair may have happened the Tribunal is satisfied it was one of a minor nature and not calculated to be in any sense threatening. The Tribunal does not believe that Detective Garda Anderson was peering into the interview room through the fanlight. The Tribunal accepts that insofar as there was any abuse during the interview it was coming from Mr. McBrearty Senior and directed at the Gardaí. The Tribunal has arrived at these conclusions for a number of interrelated reasons.
- 10.130. Firstly the Tribunal has evidence before it that Mr. McBrearty Senior has in the past told untruths about his treatment in the Garda station. The Tribunal has already referred to the fact that Mr. McBrearty Senior had claimed that he was assaulted by members of An Garda Síochána and that there was furniture thrown about the interview room, which allegations were not made to the Tribunal. Indeed there was a positive assertion made by Mr. McBrearty Senior that he was never at any time assaulted by a member of An Garda Síochána.¹⁴⁹⁵ This has already been referred to in detail in paragraphs 10.115 to 10.117.
- 10.131. Mr. McBrearty Senior has on a number of occasions drawn the Tribunal's attention to the fact that the events which he is now describing occurred many years ago and that it would not be unreasonable that the account which he now gives would vary somewhat from the account which he gave previously. The Tribunal recognises that this can happen and makes all appropriate allowance for it: however, it does not explain the serious shortcomings which have been identified in Mr. McBrearty Senior's evidence.
- 10.132. Secondly, It will be recalled that on the morning following this interview, Mr. McBrearty Senior spoke to his solicitor Mr. O'Donnell. The following reference to this period of time in custody appears in the notes taken by Mr. James O'Donnell:

I spoke with Frank McBrearty Senior this morning and he told me that he had terrible blood pressure and that he had not been able to sleep all night. He said that the Gardaí had harassed him and accused him of all sorts of things in the Garda station last night. He said that he was in a

¹⁴⁹⁵ Transcript, Day 528, questions 279-282.

terrible way. He said that unless they stopped harassing him and his family he might have a serious heart attack. He said he didn't think he could cope with the stress for much longer.¹⁴⁹⁶

- 10.133. Therefore, it appears to the Tribunal that at that time, the extent of Mr. McBrearty Senior's complaints about his treatment by the interviewing guards was that they harassed him and accused him of all sorts of things. This the Tribunal regards as significant. The Tribunal has no doubt that Mr. McBrearty Senior's arrest and the manner of its execution were events which of themselves caused Mr. McBrearty Senior distress. Mr. McBrearty Senior repeated to the Tribunal both in examination in chief and in cross-examination that he should not have been arrested, nor should any member of his family have been arrested. He continually referred (with justification) to those who had been arrested as twelve innocent people.¹⁴⁹⁷
- 10.134. In view of the above, the Tribunal accepts that Mr. McBrearty Senior was at that time of a strong mindset, and one which he was entitled to have. He knew that he and his family were innocent of wrongdoing in relation to the death of the Late Mr. Barron and was convinced that they were being unfairly targeted. In such circumstances, the Tribunal is satisfied that questions posed to him such as whether Mr. McBrearty Senior was involved in a conspiracy and enquiries as to what he was covering up, in Mr. McBrearty Senior's view amounted to "accusing him of all sorts of things and harassment". The Tribunal is satisfied that the Gardaí did not engage in the verbal abuse, but were putting the various alleged incidents of criminal behaviour to Mr. McBrearty Senior. He saw this as an attack on himself, his family, their good name and their standing in the community.
- 10.135. Thirdly, the Tribunal also accepts that Mr. McBrearty Senior was a difficult person to interview and at times was abusive to the Gardaí during the interview. The Tribunal has had the benefit of observing Mr. McBrearty Senior give evidence for a number of days. Under no circumstances could he be described as a meek or quiet person. On his own admission he said "when [the Garda] accused me I argued back that me or my family had absolutely nothing whatsoever to do with the death of Richie Barron".¹⁴⁹⁸ I am satisfied that Mr. McBrearty Senior's reaction to events and to his questioning was instinctive and emotional and born of anger and frustration with An Garda Síochána and what he perceived them to be doing to him and his family. He was not assaulted or harassed during this period.

¹⁴⁹⁶ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 634.

¹⁴⁹⁷ See for example Transcript, Day 542, pages 9-10.

¹⁴⁹⁸ Transcript, Day 528, page 52.

First Period of Hospitalisation from the 5th of December 1996 to the 12th of December 1996.

10.136. From the night of the 5th of December 1996 to the 11th of December 1996 Mr. McBrearty Senior was an in-patient at Letterkenny General Hospital. On the 11th of December 1996 he was taken by ambulance to Blanchardstown Hospital and returned on the same day to Letterkenny General Hospital. He was discharged from Letterkenny General Hospital on the 12th of December 1996 at 16.30 hours and returned in custody to Letterkenny Garda Station, where his detention under section 30 of the Offences Against the State Act was continued. While he was in hospital Mr. McBrearty Senior was at all times accompanied by two Gardaí. Mr. McBrearty Senior has made several complaints about the presence of these Gardaí in the hospital. Secondly, the circumstances of his continued detention following his release from hospital on the 12th of December 1996 are somewhat controversial.

10.137. Mr. McBrearty Senior makes the following complaints about his period of hospitalisation:

- (a) He had a twenty four hour guard on him in the hospital, which his neighbours saw;¹⁴⁹⁹
- (b) There were two Gardaí present in his room around the clock;¹⁵⁰⁰
- (c) The Gardaí never brought him anything and gave him plenty of abuse;¹⁵⁰¹
- (d) Some of his family were stopped when they attempted to visit him;¹⁵⁰²
- (e) He was escorted by Gardaí while visiting Róisín McConnell.¹⁵⁰³

10.138. Section 4(8) of the Criminal Justice Act, 1984 provides as follows:

Where it appears to a member of An Garda Síochána that a person arrested in the circumstances mentioned in sub-section (2) is in need of medical attention, or where during his detention it comes to notice that he is in need of such attention, and he is taken for that purpose to a hospital or other suitable place, the time before his arrival at the station or the time during which he is absent from the station, as the case may be, shall be excluded in reckoning a period of detention permitted by this section.

By virtue of section 9 of the Criminal Justice Act, 1984 section 4(8) of that Act applies to persons detained in custody under section 30 of the Offences Against the State Act, 1939. The Gardaí make the case that although a person is not detained in a Garda station and any period of time in hospital is excluded from

¹⁴⁹⁹ Transcript, Day 528, page 73.

¹⁵⁰⁰ Transcript, Day 528, page 73.

¹⁵⁰¹ Transcript, Day 528, page 77.

¹⁵⁰² Transcript, Day 528, pages 77, 129.

¹⁵⁰³ Transcript, Day 528, page 75.

the overall detention period permitted by the legislation, the arrested person remains the responsibility of An Garda Síochána. Furthermore, the Tribunal accepts that as a matter of logic it would seem sensible to stay with the accused person in order to prevent a potential escape from custody: though in this case that was a highly improbable occurrence.

10.139. It should also be noted at this point that had Mr. McBrearty Senior been released from the terms of section 30 on his admission to hospital, the Gardaí would have had no power to re-arrest him in order to further question him.

10.140. Mr. John Fitzgerald told the Tribunal of the difficulties the Gardaí face while performing protection duty in hospitals in the following terms:

*... I went to several hospitals looking after people and it's the most awkward thing, you are dealing with people on corridors, you are dealing with patients in their dressing gowns, you are dealing with doing your best to look after the person in custody and there is no facility there for that. It brings ... the reason I mention that is that it is unbelievable the pressure, and I say it's hateful and I found it hateful myself doing this duty, you are always excusing yourself.*¹⁵⁰⁴

10.141. Faced with that situation Mr. Fitzgerald went on to illustrate what he believed was the ideal scenario within a hospital in which to perform protection duty:

*Well the ideal thing of course would be that the person would have a private room convenient to where all the facilities would be and that there would be something set aside where the Gardaí would have a view of the person, but not interfere with their hospitalisation.*¹⁵⁰⁵

10.142. The Tribunal accepts that in such a situation the scenario outlined to the Tribunal by Mr. Fitzgerald would indeed be an acceptable one. Keeping in mind that framework, the Tribunal now intends to look at the situation in which Mr. McBrearty Senior found himself in Letterkenny General Hospital and later in Beaumont Hospital.

10.143. From the 5th of December 1996 to the 12th of December 1996 Detective Gardaí Keating and Herraghty performed five tours of duty on protection duty. Detective Garda James Frain performed three tours of protection duty; Detective Garda Anderson performed four periods of protection duty; Detective Gardaí Gilroy and Tolan performed four periods of protection duty and Detective Garda Carroll performed two periods of protection duty. Detective Garda Jennings also performed this duty.

¹⁵⁰⁴ Transcript, Day 538, page 87.

¹⁵⁰⁵ Transcript, Day 538, page 89.

- 10.144. Detective Garda Seán Herraghty described Mr. McBrearty Senior's circumstances in Letterkenny Hospital as follows:

In the first few days I recall he was in a three bedroom [sic] ward first and then he was moved down to a private ward. I recalled him looking for a phone and I recall bringing him a phone. I think it was one of these that is wheeled in on like a payphone type thing. As far as I recall he was in that private room for the rest of the time, I think he was there.¹⁵⁰⁶

- 10.145. Detective Garda Anderson, in his evidence to the Tribunal, explained the provision of a private room to Frank McBrearty Senior as a longstanding arrangement between the Gardaí and Letterkenny General Hospital:

There is an arrangement in place if a prisoner is brought to casualty and he is detained for further treatment or examination, there is an arrangement going back for over twenty years that the hospital authorities would provide a private room for that person.¹⁵⁰⁷

- 10.146. Detective Garda Herraghty told the Tribunal that he was armed while on duty, but discretely armed with a small short firearm in a holster under his coat.¹⁵⁰⁸ Detective Garda Herraghty said that Mr. McBrearty Senior was visited by his accountant, by Aidan McCann, by a priest and by his solicitor. He also said that he had visits from family.¹⁵⁰⁹ He was allowed to go to the chapel unescorted as it was a short journey down the corridor, but otherwise he was escorted within the hospital.¹⁵¹⁰

- 10.147. Detective Garda P.J. Keating, who partnered Detective Garda Seán Herraghty in performing protection duty, described the situation as follows:

While he was in the public ward it was down near the end of the corridor, myself and Seán Herraghty sat down at the very end of the corridor. Now he came and went and did whatever he wanted to do. He walked freely around the hospital. He spoke to people. When he went into the private room there were chairs opposite the door of the private room. Now at times we did sit there opposite the room, more often than not we got up and walked around. I certainly went for extended walks.¹⁵¹¹

¹⁵⁰⁶ Transcript, Day 542, page 161.

¹⁵⁰⁷ Transcript, Day 537, page 40.

¹⁵⁰⁸ Transcript, Day 542, page 160.

¹⁵⁰⁹ Transcript, Day 542, page 159.

¹⁵¹⁰ Transcript, Day 542, page 159.

¹⁵¹¹ Transcript, Day 537, page 14.

- 10.148. He agreed with the evidence of Detective Garda Herraghty saying that Mr. McBrearty Senior was free to receive visitors and that he had a telephone in his room. He also said that Mr. McBrearty Senior went to the chapel every day unaccompanied.
- 10.149. Detective Garda James Frain told the Tribunal that Mr. McBrearty Senior was not denied access to visitors. However, in the initial stages of Mr. McBrearty Senior's hospitalisation the identity of unknown visitors to Mr. McBrearty Senior was checked. He described one incident to the Tribunal when he and Detective Garda Anderson had an exchange with Mark McConnell, Frank McBrearty Junior and another unidentified person who came to visit Mr. McBrearty Senior. He told the Tribunal:

... Mark McConnell, Frank McBrearty Junior and another man arrived in the hospital ward and I believe that there was a terminally ill patient in the room adjacent to where Mr. McBrearty was staying, and the three gentlemen came up the corridor, where they seen us up the corridor they came shouting and roaring up the corridor, in the evening time, in a hospital, and I think Garda Anderson got up and he said "listen lads, you are going to have to keep it quiet here, you are in the hospital". There was a loud exchange of words between them, they were very aggressive. I got up and I said to them, "you are in a hospital, if you don't behave yourself I will call the patrol car and I will have you removed". I said "there is terminally ill people in this ward, you will have to act around here with a little bit of dignity". Mr. McBrearty himself came out of the room during the time he told them to settle it down.

Now I can't be sure did they turn on their heels and walk back out of the hospital at that stage, Chairman, but definitely there was an incident such as that. That was the extent of the incident.¹⁵¹²

- 10.150. Detective Garda Anderson, who was on protection duty with Detective Garda Frain, also described an incident with Mark McConnell, Frank McBrearty Junior and perhaps two others in similar terms.¹⁵¹³
- 10.151. Detective Garda Jennings told the Tribunal that Mr. McBrearty Senior had free movement in the hospital, that he had use of a telephone and that quite a number of visitors came, all of whom were allowed to see him.¹⁵¹⁴
- 10.152. Mrs. Rosalind McBrearty told the Tribunal that she visited her husband while he

¹⁵¹² Transcript, Day 535, page 123.

¹⁵¹³ Transcript, Day 537, page 41.

¹⁵¹⁴ Transcript, Day 536, page 166.

was in hospital during that time and that she encountered no difficulty in doing same. She told the Tribunal that there were Gardaí present outside Mr. McBrearty Senior's door reading newspapers. She describes her husband as being in a single room in the hospital.¹⁵¹⁵

10.153. Fr. Cíaran Harkin describes his visit to the hospital as follows:

*There were two guards there alright. There were two guards sitting ... it was a private room he was in at that stage and the guards were just sitting outside, as far as I remember sitting outside. They were quite obviously two guards and they were very friendly to be fair with them. I said "is there any problem going in here" and they said "no, no problem go ahead".*¹⁵¹⁶

10.154. Fr. Harkin said that Mr. McBrearty Senior's main concern at that time was his health.

10.155. Mr. James O'Donnell visited Mr. McBrearty Senior on a number of occasions while he was in hospital. In a letter addressed to the Superintendent at Letterkenny Garda Station dated the 10th of December 1996, the purpose of which was to inform the Gardaí that Messrs. V.P. McMullin & Sons would take whatever remedies were appropriate to secure the release of Mr. McBrearty Senior once his medical condition no longer necessitated his hospitalisation, Mr. O'Donnell described the situation as follows:

Mr. O'Donnell solicitor and Mr. Sweeney solicitor visited Mr. McBrearty on a number of occasions at Letterkenny General Hospital throughout the weekend of the 6th, 7th and 8th of December 1996. There were at least two members sitting immediately outside Mr. McBrearty's room at the hospital. Detective P.J. Keating told Mr. O'Donnell and Mr. Sweeney that Mr. McBrearty was still in custody and under the supervision of the members of An Garda Síochána ... however, our client has instructed us that he is being harassed and regularly abused by members of An Garda Síochána since he was taken into custody under section 30 of the aforementioned Act.¹⁵¹⁷

10.156. Mr. O'Donnell in his evidence to the Tribunal said that his recollection was that Mr. McBrearty Senior's claim at the time was that people were being denied proper access to him.¹⁵¹⁸

10.157. **The Tribunal does not accept that any allegations made by Mr. McBrearty Senior of wrongdoings by Gardaí over a number of days while he was in**

¹⁵¹⁵ Transcript, Day 549, pages 14-15.

¹⁵¹⁶ Transcript, Day 549, page 66.

¹⁵¹⁷ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), pages 647-648.

¹⁵¹⁸ Transcript, Day 539, pages 44-46

Letterkenny General Hospital have been borne out. On the contrary, the evidence of the Gardaí together with the experiences recounted to the Tribunal by Fr. Harkin and Mrs. McBrearty when they visited Mr. McBrearty Senior in hospital, which the Tribunal accepts, would suggest that the Gardaí appeared to have behaved properly. Mr. McBrearty Senior himself, when cross-examined by counsel for the Garda Commissioner, agreed that his son Frank McBrearty Junior visited him on a number of occasions in the hospital and that he was also visited by Mark McConnell.¹⁵¹⁹ The Tribunal accepts that a Garda presence had to be maintained in the hospital for the reasons already outlined. In such circumstances the Tribunal is satisfied that the Gardaí maintained a presence that was as discreet as possible, that they allowed Mr. McBrearty Senior access to visitors and he was provided with a phone. While I may have reservations about the need for the Gardaí to place themselves outside Mr. McBrearty Senior's hospital room and provide him with an armed escort, I do not see that their conduct while so doing constitutes a valid basis for complaint.

Medical Condition of Mr. McBrearty Senior

10.158. Dr. Brian Callaghan is a consultant physician in Letterkenny General Hospital and held that position in December 1996.¹⁵²⁰ Dr. Callaghan saw Mr. McBrearty Senior on the morning of the 6th of December 1996 when Mr. McBrearty Senior was complaining of chest pain and felt uncomfortable. Dr. Callaghan told the Tribunal that:

I wasn't certain whether the pain was cardiac or gastric. But he had an abnormal ECG and he was hypertensive. And he had strain in his heart either from hypertension or from ischaemia. He also complained of numbness in his left hand, the left side of his body, and I wasn't aware whether he had a cardiac syndrome or whether he had transient cerebral ischaemia.

I did tests on him and found that his blood pressure was elevated and did what we call serial cardiograms or cardiograms in sequence and checked his cardio enzymes, and these were normal. Then I pursued with what is called an exercise stress test. We performed the exercise stress test, but because of the abnormal ECG it was equivocal as to whether he may have cardiac pain or whether this was due to enlargement of the heart from blood pressure. So I felt that he warranted what was called an angiogram. At that time angiograms were done in Dublin and I referred him to Professor John Horgan in Beaumont Hospital.¹⁵²¹

¹⁵¹⁹ Transcript, Day 534, pages 66 and 67.

¹⁵²⁰ Transcript, Day 517, page 4.

¹⁵²¹ Transcript, Day 517, pages 5-6.

- 10.159. Dr. Callaghan told the Tribunal that Mr. McBrearty Senior had two sets of tests carried out on him in Blanchardstown Hospital. The first series of tests was to ensure that Mr. McBrearty Senior did not have any narrowing of the carotid artery. These studies carried out on Mr. McBrearty Senior showed no significant narrowing of his carotid artery. The second series of tests called angiograms, also recorded a normal result. With that information to hand Dr. Callaghan decided that it was appropriate that Mr. McBrearty Senior be discharged from medical care, which happened on the 12th of December 1996.¹⁵²²

Mr. McBrearty Senior's Discharge from Hospital and Subsequent Continued Detention in Letterkenny Garda Station

- 10.160. Mr. James O'Donnell called to Letterkenny General Hospital at approximately 09.30 hours on the 12th of December 1996. Mr. Frank McBrearty Senior reported to him on the events of the previous day. He told Mr. O'Donnell that he had been in Blanchardstown Hospital and back in Letterkenny by 21.00 hours.¹⁵²³ Mr. McBrearty Senior further informed Mr. O'Donnell that he had been seen by Dr. Callaghan that morning. According to Mr. O'Donnell's written attendance dated the 12th of December 1996 Dr. Callaghan, Mr. McBrearty Senior's consultant physician, was not available at that time.
- 10.161. At approximately 10.29 hours the incident room in Letterkenny Garda Station received the following information by fax on Mr. Frank McBrearty Senior's medical condition:

CONFIDENTIAL

District Glenties,

Division Donegal

Incident Room,

Letterkenny.

Re: Tests carried out at Blanchardstown Hospital, Dublin 15 on
11.12.1996.

On 11.12.1996 Mr. Frank McBrearty Snr, was admitted to James Connolly Hospital, Blanchardstown for the sole purpose of carrying out a DOPPLER TEST. This test is usually carried out on persons suffering from High Blood Pressure or Blackouts.

This DOPPLER test was carried out on the carotid artery if [sic] Mr. McBrearty's neck. The tests proved negative and no abnormalities of any kind showed.

¹⁵²² Transcript, Day 517, pages 5-7.

¹⁵²³ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 637; Transcript, Day 539, page 53.

The staff did not have any access to Mr. McBrearty's medical Records other than a letter regarding that this Doppler test be carried out.

For your satisfaction.

John White Sgt. 19787D

(JOHN WHITE)

- 10.162. Other than Sergeant White, whose signature appeared on the fax, no other member of An Garda Síochána admitted to seeing the fax. This is extraordinary. The Tribunal is asked to believe that such a document appeared in Letterkenny Garda Station and made its way from the fax machine into the incident room and onto Mr. McBrearty Senior's detention file, on a day when Mr. McBrearty Senior's medical condition was of interest to the Gardaí, without one member of the Gardaí referring to what was obviously a relevant piece of information. The Tribunal does not accept this to be the truth.
- 10.163. Mr. O'Donnell returned to Letterkenny General Hospital at about 11.15 hours. It would seem from his written attendance that he returned to the hospital on foot of a telephone call he had received from Mr. McBrearty Senior saying that his doctor was on his daily rounds. Mr. O'Donnell's attendance records that he spoke with Mr. McBrearty Senior for a while. His written attendance states that he waited for Dr. Callaghan, who arrived, and a discussion of Mr. McBrearty Senior's position took place. Thereafter Mr. O'Donnell records that he spoke to Dr. Callaghan alone. He informed him that there was no reason why Mr. McBrearty Senior should be kept any further in hospital. In his evidence before the Tribunal, Mr. O'Donnell stated that, at this stage, he was trying to ascertain from Dr. Callaghan whether the detention of Mr. McBrearty Senior was having any effect on his medical condition.¹⁵²⁴ Mr. O'Donnell's memorandum of his attendance with Mr. McBrearty Senior in the hospital records that he left the hospital with a note from Dr. Callaghan at about 12.15 hours. The note is now set out hereunder in full:

TO WHOM IT MAY CONCERN

Re: Frank McBrearty, Tullyrapp, Raphoe, Co. Donegal

This is to testify that Frank McBrearty has hypertensive cardiac disease and was admitted to the Medical Department from the 6th of December, 1996 and it is anticipated to discharge him at 3.() p.m. on the 12th of December, 1996. He also had symptoms suggestive of transient cerebral [sic] ischaemic episode.

¹⁵²⁴ Transcript, Day 539, page 54.

Investigations revealed hypertensive cardiac disease with heart strain. His coronary arteries seem to have adequate perfusion as demonstrated by a normal exercise stress test, but his basal cardiogram does show some apical ischaemic change. He also had some atheroma demonstrated in the carotid siphons with simple atheroma smooth surface causing mild disease at the right internal carotid artery. He also had controlled subthyroidism.

At this time his medications consisted of a Thiazide diuretic, Eltroxin and a low dose of Asprin.

It was felt that any stress would certainly exacerbate his condition and he is currently under interrogation for an alleged crime, it would not be in his best interest to be interrogated at this time. I intend referring him for further evaluation to a Cardiologist in Dublin.

Signed: _____

BRIAN CALLAGHAN,

CONSULTANT PHYSICIAN

c.c. Prof. J. Horgan, Const. Cardiologist, Beaumont Hospital.¹⁵²⁵

- 10.164.** Meanwhile, back at Letterkenny Garda Station, in an event which the Gardai present as one unrelated to the information which had arrived by fax from Sergeant White, Detective Sergeant Sylvester Henry was asked by either Detective Superintendent Shelly or Inspector McGinley to go to Letterkenny General Hospital in order to ascertain what the situation with Mr. McBrearty Senior was.¹⁵²⁶ The Tribunal is of the view that the information faxed to the incident room by Sergeant White may well have had the result of Detective Sergeant Henry being so tasked.
- 10.165.** Detective Sergeant Henry duly went to the hospital where he had a conversation with Mr. O'Donnell and Dr. Callaghan. As a result of this conversation, Detective Sergeant Henry understood that Mr. Frank McBrearty Senior was to be discharged from hospital. He was also shown the letter as set out in the previous paragraph by either Dr. Callaghan or Mr. O'Donnell.¹⁵²⁷
- 10.166.** Detective Sergeant Henry informed the Tribunal that he thought he told Mr. O'Donnell that Mr. McBrearty Senior was to be brought back to Letterkenny Garda Station to be further interviewed.¹⁵²⁸ He also told the Tribunal that he informed either Mr. O'Donnell or Dr. Callaghan that he had no authority to release Mr. McBrearty Senior from the provisions of section 30 of the Offences

¹⁵²⁵ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 1), page 263.

¹⁵²⁶ Transcript, Day 535, page 136.

¹⁵²⁷ Transcript, Day 535, page 136.

¹⁵²⁸ Transcript, Day 535, page 144

Against the State Act 1939 and that it was only a member of An Garda Síochána of the officer rank who could do that.¹⁵²⁹

- 10.167. Mr. O'Donnell told the Tribunal in evidence that prior to leaving the hospital he had a social conversation with Detective Garda James Frain, whom he knew. He had no recollection of meeting Detective Sergeant Henry.
- 10.168. Dr. Callaghan told the Tribunal that when he went to see Mr. McBrearty Senior on the 12th of December, there was a Garda officer present. He told the Tribunal that while he did not actually recall what he said to the Gardaí at the hospital, he probably did tell the officer at the time that it would be inappropriate to continue questioning Mr. McBrearty Senior.¹⁵³⁰
- 10.169. Detective Sergeant Henry recollects his meeting with Dr. Callaghan differently. He said that at no stage did Dr. Callaghan say to him that Mr. McBrearty Senior should not be interviewed or taken back to the Garda station.¹⁵³¹ **However in circumstances where Detective Sergeant Henry acknowledges that he had seen a copy of Dr. Callaghan's letter, I am satisfied that he knew of Dr. Callaghan's attitude to the further questioning of Mr. Frank McBrearty Senior.**
- 10.170. Mr. O'Donnell then left the hospital in the knowledge that Mr. McBrearty Senior was to be discharged, that in the doctor's view further questioning of Mr. McBrearty Senior would exacerbate his condition, and that it was the intention of the Gardaí that Mr. McBrearty Senior would be returned in custody to Letterkenny Garda Station for further questioning. He records in a memorandum of attendance dated the 12th of December 1996 that it was approximately 12.15 hours when he left the hospital. It appears that Mr. O'Donnell then returned to his office with the original letter as signed by Dr. Callaghan. Mr. O'Donnell told the Tribunal that he would have spoken with Mr. Peter Murphy, another solicitor in the firm, and thereafter it would appear that he wrote a further letter dealing with the continued detention of Mr. McBrearty Senior. This letter is marked "URGENT" and addressed to the Superintendent in Letterkenny Garda Station and c.c. to Detective Sergeant Henry. The full text of the letter is set out hereunder:

Dear Sir,

Re: Detention of Frank McBrearty Senior

We act for Frank McBrearty Senior. We have been informed by Letterkenny General Hospital, that Frank McBrearty Senior is to be released from Hospital at 3.00 p.m. this afternoon.

¹⁵²⁹ Transcript, Day 535, page 144.

¹⁵³⁰ Transcript, Day 517, page 11.

¹⁵³¹ Transcript, Day 535, page 136.

Mr. Brian Callaghan, Consultant Physician (sic) has confirmed to us, that our client has hypertensive cardiac disease with heart strain, some atheroma in the carotid sypons (sic) and controlled subthyroidism. Mr. McBrearty is presently taking various medication in relation to the above conditions.

Mr. Callaghan has confirmed that further interrogation at this stage will exacerbate Mr. McBrearty's present conditions.

Detective Sergeant Henry told James O'Donnell, Solicitor, of this office, that Mr. McBrearty will be detained and subjected to further interrogation, once he is released from Hospital this afternoon. This is despite the fact that Detective Sergeant Henry was shown a copy Mr. Callaghan's opinion. We attach a copy of Mr. Callaghan's Opinion for your reference.

We await your immediate undertaking, that Mr. McBrearty will not be subjected to further interrogation at this stage as it will exacerbate his current medical condition and put his health at risk.

If you fail to provide such an undertaking, our client has instructed us to take the appropriate action in the circumstances.

We await not only a reply to this letter but also to our letter of the 11th December in respect of Mr. McBrearty Senior.

Yours faithfully,

V.P. McMullin & Son¹⁵³²

- 10.171. Mr. O'Donnell agreed with counsel to the Tribunal that by writing that letter he was in effect calling on the Gardaí to desist from further interrogating Mr. McBrearty Senior and furthermore, that he was considering embarking on an application to the courts seeking the release of Mr. McBrearty Senior.¹⁵³³ As we will see, the letters did not have the desired effect. In fact, the letter that ultimately arrived at the Superintendent's office marked 'urgent' was in effect ignored.
- 10.172. Later on that evening Mr. McBrearty Senior was discharged from hospital. Detective Sergeant Henry, who was at the hospital at that time, described the scene as follows:

A. *I remember going back to the hospital when Mr. McBrearty was being released and Detective Garda Gilroy, who is now*

¹⁵³² Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), pages 650-651.

¹⁵³³ Transcript, Day 539, page 64.

retired, he was there and I know there was medication to be taken down with him. In order not to exacerbate his condition, as it were, because he was a very difficult individual to deal with, as you have heard already, Mr. Chairman, it was decided that he would travel down in Garda Gilroy's own private car, not the unmarked patrol car.

Q. Did you have any conversation in the hospital with Mr. McBrearty Senior?

A. He asked me what was happening and I told him that he was being taken down to the Garda station to be further questioned and he said that he wanted to clear his good name and the good name of his family, that they had done nothing wrong, that they were innocent and he said that on a number of occasions.

Q. Was that conversation that you had with Mr. McBrearty Senior before or after your conversation with Mr. O'Donnell and sight of the Callaghan letter?

A. I thought it was kind of a short time before he actually was released from the hospital before he was taken back to the station.¹⁵³⁴

Mr. McBrearty Senior, when questioned by Tribunal counsel, initially said that he had no recollection of that particular exchange. Nevertheless, other than saying that he was not on good terms with Detective Sergeant Henry, he did not deny that it had taken place.¹⁵³⁵ Later, in evidence he told the Tribunal that any conversation that he had with Detective Sergeant Henry was a heated one.¹⁵³⁶

10.173. The Tribunal accepts that the exchange took place. It may well have been a heated exchange, which to some extent is acknowledged by Detective Sergeant Henry, referring as he did to Mr. McBrearty Senior as being very difficult to deal with. Furthermore, Detective Garda Gilroy did escort Mr. McBrearty Senior back to the Garda station.

10.174. The custody record shows that Mr. Frank McBrearty Senior arrived at Letterkenny Garda Station at 16.35 hours.¹⁵³⁷ Garda P.J. Thornton was the member in charge at that time and in that section of the custody record which records any relevant particulars in relation to physical or mental condition, Garda Thornton has written "appeared to be in good form."¹⁵³⁸ Garda Thornton explained to Mr. McBrearty

¹⁵³⁴ Transcript, Day 535, pages 152-153.

¹⁵³⁵ Transcript, Day 528, page 89.

¹⁵³⁶ Transcript, Day 528, page 93.

¹⁵³⁷ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 434.

¹⁵³⁸ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 434.

Senior that his period of detention was being continued from his initial arrest on the 5th of December and Mr. McBrearty Senior was given a notice of rights. Mr. McBrearty Senior said he wished to contact his solicitor, following which Mr. McBrearty Senior spoke to his solicitor on the telephone at 16.45 hours.¹⁵³⁹ It would appear that Garda Thornton was handed three bottles of medication for Mr. Frank McBrearty Senior with instructions on each bottle.¹⁵⁴⁰

10.175. At no time was Garda Thornton, or any relief member in charge, informed of Dr. Callaghan's view on continuing the interrogation of Mr. McBrearty Senior.¹⁵⁴¹ Garda Thornton informed the Tribunal that about a year prior to April 2000 he heard rumours about a letter relevant to the detention of Mr. McBrearty Senior. At that time he was not sure to what those rumours referred. Then, in April 2000 as a result of viewing a television documentary, Garda Thornton discovered that the detention of Mr. McBrearty Senior had been continued despite a letter from a consultant cardiologist advising that it would not be in Mr. McBrearty Senior's best interest to be interrogated. Garda Thornton immediately completed a report to his superiors reporting the fact that he was not aware of any such letter and that if he had been made aware of it, he would have released Mr. McBrearty Senior from custody.¹⁵⁴²

10.176. **As the member in charge of the Garda station, Garda Thornton was the person who had responsibility for overseeing the application of the Custody Regulations. In particular, he was the Garda who had responsibility for the well-being of Mr. McBrearty Senior while he was in Garda custody. It was made impossible for him to discharge this duty in a proper manner when members of the investigation team neglected to inform him of what Mr. McBrearty Senior's consultant cardiologist thought of interrogating Mr. McBrearty Senior. This is disgraceful.**

10.177. Garda Thornton phoned Mr. McBrearty Senior's family at 16.52 hours. At 17.00 hours Detective Sergeant Henry took Mr. McBrearty Senior to an interview room. Detective Sergeant Henry spoke to Mr. McBrearty Senior at this time and told him that if he needed anything he would get it. Also, Detective Sergeant Henry told the Tribunal that he believed Mr. McBrearty Senior said to him that he wanted to clear his name.¹⁵⁴³ Again this is disputed by Mr. McBrearty Senior, who described the exchange as follows:

A. He had a conversation with me, but it was an argument, a heated argument, about Richie Barron and us innocent people.

¹⁵³⁹ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 434, Transcript, Day 536, page 172.

¹⁵⁴⁰ Transcript, Day 536, page 173.

¹⁵⁴¹ Transcript, Day 536, page 177.

¹⁵⁴² Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 665.

¹⁵⁴³ Transcript, Day 535, page 168.

Q. So you recall that there was some exchange, but there was nothing ... (INTERJECTION)

A. It was to do ... (INTERJECTION)

Q. Said by you to the extent I want to clear my family's name?

A. Yes. Me and him had heated words, but not about clearing my name, because they weren't trying to clear my name.¹⁵⁴⁴

10.178. Detective Sergeant Henry left the interview room at 17.02 hours, at which time Detective Garda Frain and Detective Garda Jennings commenced interviewing Mr. McBrearty Senior. This interview ultimately terminated at 22.15 hours and was interrupted on two occasions, firstly from 18.05 hours to 18.42 hours, during which time Mr. McBrearty Senior was visited by Mr. O'Donnell his solicitor and thereafter by his wife and daughter. The interview was also suspended between 20.30 hours and 21.30 hours in order to facilitate a rest period.¹⁵⁴⁵

10.179. Outside the interview room a significant meeting took place.

10.180. Garda P.J. Thornton checked Mr. McBrearty Senior in the interview room at 17.45 hours.¹⁵⁴⁶ He went on a meal break from 18.00 hours to 18.45 hours and Garda Ciarán Jackson took over as member in charge for that short period of time.¹⁵⁴⁷ Garda Jackson was informed by Garda Thornton that Mr. McBrearty Senior had come back to the station from hospital and that there was a prescription bottle containing medication to be taken.¹⁵⁴⁸ At 18.00 hours Mr. McBrearty Senior was given his medication.¹⁵⁴⁹ At 18.05 hours Mr. O'Donnell, Mr. McBrearty Senior's solicitor, called to the Garda station and had a twenty minute consultation with his client from 18.05 hours to 18.25 hours.¹⁵⁵⁰ Though Garda Jackson initially said he had no interaction with Mr. O'Donnell, he later accepted that he may have had some interaction with him.¹⁵⁵¹ In a typewritten attendance dated the 12th of December 1996 Mr. O'Donnell recorded his dealings with Mr. McBrearty Senior at this time.¹⁵⁵² Firstly, there are references to the interview that was being carried out at this time with Detective Gardaí Frain and Jennings in connection with which Mr. O'Donnell advised Mr. McBrearty Senior as to his legal obligations. It is noted at the end of the memorandum:

My consultation lasted approximately twenty five minutes. Frank appeared to be in good form although he did tell me that he had nearly fainted at

¹⁵⁴⁴ Transcript, Day 528, page 97.

¹⁵⁴⁵ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), pages 434 -435

¹⁵⁴⁶ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 434.

¹⁵⁴⁷ Transcript, Day 536, page 173.

¹⁵⁴⁸ Transcript, Day 545, page 88.

¹⁵⁴⁹ Transcript, Day 545, page 88.

¹⁵⁵⁰ Transcript, Day 545, page 89.

¹⁵⁵¹ Transcript, Day 545, page 90.

¹⁵⁵² Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 638

one stage while he was being questioned. He states that his face had turned white suddenly. I was told by the Member in Charge, that Frank had been taken back to the Garda station (Garda Gerry O’Sullivan) at approximately 4.35 p.m.¹⁵⁵³

10.181. Garda Jackson acknowledges that the query as to when Mr. McBrearty Senior had been returned to Garda custody could have been directed at him, but he did not recall it. He said that he does not know a Garda Gerry O’Sullivan. Garda Jackson told the Tribunal that he received no complaint from Mr. O’Donnell as to the further questioning of Mr. McBrearty Senior. Mr. O’Donnell in evidence to the Tribunal told of his reaction to Mr. McBrearty Senior’s continued detention in the following terms:

Q. When you went into the Garda station at about 6.05 on the evening of the 12th, what was your immediate reaction on learning that Mr. McBrearty was going to be questioned?

A. I mean I just thought, I mean this is clearly ridiculous, I mean they are proceeding contrary to what they have been advised, what the senior doctors have informed them. I mean I would have been very, we would have been very annoyed, we would have been very concerned. I mean this was very very serious, the manner in which they were conducting, the Gardaí.

Q. Did you bring your annoyance or concern to the attention of any of the guards in the station that evening?

A. I don’t seem to have, I don’t seem to have a note. I mean I think I was there for ... it was a fairly brief period I was there. I think at this stage I thought, we probably felt it was futile. I mean the only thing that would succeed was a habeas corpus application. We had written two or three letters, we hadn’t got any response, we had just been stonewalled. We hadn’t had any response to any complaints we had made.

Q. Did you think of making a formal complaint to the member in charge, Garda P.J. Thornton?

A. I didn’t, well I wouldn’t have made a formal complaint there and then. I mean other than just noting my concerns I had already written the letter. I had written a letter. I don’t think I could put the case any stronger than I had in the letter.¹⁵⁵⁴

¹⁵⁵³ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), pages 638 and 639.

¹⁵⁵⁴ Transcript, Day 539, pages 65-66.

- 10.182. Later on that evening Mr. O'Donnell travelled to Dublin in order to consult with senior counsel as to the likely success of a habeas corpus application made on behalf of Mr. McBrearty Senior. This is apparent from a memorandum Mr. O'Donnell completed on the 13th of December 1996 referring to a meeting with senior counsel. Ultimately no decision was made to proceed with a habeas corpus application.
- 10.183. It is recorded in the custody record that Mr. O'Donnell left the Garda station at 18.25 hours, whereupon Mr. McBrearty Senior was then visited by his wife and daughter until 18.42 hours, at which stage the interviewing of Mr. McBrearty Senior resumed and Garda Thornton resumed his duties as member in charge.

The Letter

- 10.184. Prior to leaving the station Mr. O'Donnell met Detective Sergeant Henry. Mr. O'Donnell had no particular recollection of this meeting. In a statement dated the 14th of February 1998 Detective Sergeant Henry set out the sequence of events as follows:

I left the [interview room] and Detective Garda Jennings entered. On the same date ... I returned to the day room at Letterkenny Garda Station, there I found a letter addressed to me. I opened this letter and found that it was from McMullin Solicitors. I also noticed a letter attached from Dr. Callaghan, Consultant, Letterkenny General Hospital. The contents of this letter indicated that the continued interrogation of Frank McBrearty may not be in his best interest and that he intended at a later stage to send him for further tests to Dublin. I spoke to Mr. James O'Donnell, Solicitor in a hallway in Letterkenny Garda Station for a few moments. He was after coming out from visiting Mr. McBrearty and did not make any complaints to me. At that point I immediately came upstairs with the letter I had just opened and showed it to Detective Superintendent J. Shelly, Detective Inspector J. McGinley and other members who were present in the Detective Inspector's Office at that time, it was now between 6.30 p.m. and 7.00 p.m. ... At that time Rosalind McBrearty and her daughter were in the Garda station to visit her husband.¹⁵⁵⁵

- 10.185. When he attended at the Tribunal Detective Sergeant Henry did not have an exact recollection of the time of receipt of this letter. He told the Tribunal that he had a feeling that it was around 18.00 hours, but it may have been when he came back from the hospital.¹⁵⁵⁶ The Tribunal is satisfied from piecing together the various events by reference to the custody record and Mr. O'Donnell's various attendances, that he received the letter shortly before 18.30 hours as set out in

¹⁵⁵⁵ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 1), pages 381- 382.

¹⁵⁵⁶ Transcript, Day 535, page 164.

his statement. Detective Sergeant Henry said he immediately brought the letter to Detective Superintendent Shelly and Inspector McGinley in order that they might make the decision as to what should be done at that stage. By this time he had left Mr. McBrearty Senior with Detective Garda Frain to be interviewed.¹⁵⁵⁷ Detective Sergeant Henry describes the meeting with his superiors as follows:

*I brought [the letter] into the office, you know, as I said before Mr. McGinley was there and Superintendent Shelly. I think there was somebody else there, there might have been even about two people there, I don't know, I can't remember who they were. I handed them the letter. And the letter was, it was read. I know Superintendent Shelly read the letter anyway.*¹⁵⁵⁸

- 10.186. Detective Sergeant Henry has no distinct recollection of Superintendent Fitzgerald being at the meeting. Superintendent John Fitzgerald says he was not at this meeting. Detective Sergeant Henry says that both Inspector McGinley and Detective Superintendent Shelly made the decision that Mr. McBrearty Senior was okay to be interviewed. He described the exchange as follows:

*I cannot remember like what exactly was the conversation that took place at that time, you know. I'm sure I didn't just stand there. Like I know that I have said possibly how he was brought down and everything else, and that he wanted to clear his good name and all of that. But exactly what was said I can't remember.*¹⁵⁵⁹

Detective Sergeant Henry said a joint decision was taken by Inspector McGinley and Detective Superintendent Shelly that Mr. McBrearty Senior's questioning should be continued.

- 10.187. Mr. Shelly told the Tribunal that he first became aware that there had been a letter from V.P. McMullin & Son and from Dr. Callaghan when he spoke to Detective Sergeant Henry on the evening of the 12th of December.¹⁵⁶⁰ Mr. Shelly's recollection is that the meeting took place around 19.00 hours and that he believed that Superintendent Fitzgerald, Inspector McGinley and Detective Sergeant Henry were present.¹⁵⁶¹ Mr. Shelly describes the meeting as follows:

The first knowledge that I had of it was at that meeting when Sergeant Henry came upstairs. It was a meeting in the office upstairs, I can't say at this stage what office it was in, I think it was in one of the Detective Branch offices and he showed us a copy of the letter that he had from one of the doctors in the hospital

¹⁵⁵⁷ Transcript, Day 535, page 169.

¹⁵⁵⁸ Transcript, Day 535, pages 170-171.

¹⁵⁵⁹ Transcript, Day 535, page 173.

¹⁵⁶⁰ Transcript, Day 543, page 84.

¹⁵⁶¹ Transcript, Day 544, page 21.

relating to the detention of Mr. McBrearty in the hospital and his treatment there ...

Detective Sergeant Henry had a report from the doctor in the hospital and he brought it to our attention and it basically stated, Chairman, that it wouldn't be in his best interest if Frank McBrearty was interviewed, was further interviewed. I don't know was the word "further" used in it. But basically that was the purport of it. There may have been medical terms used in it, but that's what it boiled down to and he was bringing this to our attention ... I believe we were told that he had visits from both family members and I think from his solicitor as well. Those were the background circumstances of it. Chairman, right through the meeting it was certainly clear to me that Mr. McBrearty wanted to clear his name and the good name of his family. And that in those circumstances we looked at the letter and what the letter said. It was also very clear, Chairman, and I think this is important in the whole aspect of it, at no stage did it say, firstly that Mr. McBrearty should not be further detained, and at no stage did it say that he should not be questioned under any circumstances. I think that we were aware of that and that was the feeling of all the people present. I accept that what was said in relation to it may not be in his interest. I am not sure at that time whether or not the fact that he wished to speak to the Superintendent came up. That might have been some time later. I just can't say for sure. It may well have had. He was being well treated and as far as I was concerned from the people present and I know Sergeant Henry had spoken to him that he had no complaints.

In those circumstances it was agreed that we would continue with the questioning for a while at least. That was my thinking at the time.¹⁵⁶²

Mr. Shelly told the Tribunal that he did not interpret the letter as excluding on medical grounds the possibility that Mr. McBrearty Senior would be further interrogated in Garda custody.

- 10.188.** In relation to the accompanying letter from V.P. McMullin & Son dated the 12th of December, which had threatened appropriate action if an undertaking not to continue Mr. McBrearty Senior's questioning was not forthcoming from An Garda Síochána, Mr. Shelly told the Tribunal that Mr. O'Donnell, solicitor, had been present in the Garda station shortly before the meeting and had not raised any

¹⁵⁶² Transcript, Day 644, pages 20-27.

further issue in relation to his client's continued detention. This influenced his reaction to the letter and lessened its impact upon him. Mr. Shelly said that he believed that the issues raised in the letter addressed to the Superintendent at Letterkenny Garda Station, that is, Superintendent Fitzgerald would be dealt with by him. It was Mr. Shelly's evidence to the Tribunal that the Superintendent, Mr. Fitzgerald, was in fact present at that meeting. This is a matter which is in dispute. Mr. Shelly said the following on the presence of Mr. Fitzgerald at the meeting:

Q. Are you sure he [John Fitzgerald] was at that meeting?

A. Well as far as I want to be totally frank and honest about this, when I made my statement at the time, from memory, looking at the documents, I think that file went in from the Sergeant to the Superintendent in early April 1997 for the DPP. I would have made my statement in the meantime, possibly quite early in the new year. With everything that was happening for Christmas, probably that is when it was done. The memory of it would have been reasonably fresh in my mind at the time and that's all I can say about it. I accept that John Fitzgerald is adamant that he wasn't there. I know I have heard his evidence on the matter. I can only tell you what I can recall from the documents myself.

Q. Are you saying that your assertion that Mr. Fitzgerald was present was based solely on the content of your statement made relatively proximate to the time of that meeting, but that sitting here in the witness box now ten years later, you don't have an actual memory of the man being present at the meeting?

A. No, what I am saying is that what I read in my statement and when I was refreshing my memory to come up here to give evidence that's what I believe was the situation at the time.

Q. Yes. But do you have a memory of him being there other than what is written in your statement?

A. No I have to say that I refer, I am depending on what is in the documents. It's ten years ago and it would be very naive of me to come in here and say I could remember everything that happened. I don't think that's humanly possible.¹⁵⁶³

¹⁵⁶³ Transcript, Day 544, pages 33-34.

- 10.189. Therefore, it would seem that Mr. Shelly's assertion that Superintendent Fitzgerald was present at the meeting is based on his statement made in early 1997. It does not appear from his evidence on the topic that he has an actual memory of Superintendent Fitzgerald's presence at the meeting. This is a point that will be returned to later.
- 10.190. Inspector McGinley had been in Mullingar dealing with a drugs matter on the 12th of December. He returned to the Garda station that evening and recollects that there was a meeting upstairs in the Detective Branch offices some time that night when the question of Mr. McBrearty Senior's continued detention was raised.¹⁵⁶⁴ Inspector McGinley's recollection is that Superintendent Fitzgerald, Detective Superintendent Shelly, Detective Sergeant Henry, and he thought Inspector Gallagher and maybe another, were present at that meeting. When pressed on the matter he accepted that his recollection of the night was poor. Furthermore, he told the Tribunal that it was not a formal meeting and therefore there would have been no particular reason to remember who was present.¹⁵⁶⁵ Inspector McGinley was aware that Detective Sergeant Henry had a letter written by Dr. Callaghan, but was not aware of the second letter which accompanied it from V.P. McMullin & Son.¹⁵⁶⁶ Mr. McGinley described the discussion at the meeting as follows:

*Well I think the discussion was, as I recall it, that Mr. McBrearty was collected at the hospital by Sergeant Henry in whatever and taken to the Garda station where he was questioned. That he wanted to clear these issues up himself for he was anxious to get to the bottom of whatever these issues were. Then that was ... and the question of whether ... based on the letter, whether he could be detained and questioned. The discussion centred around that. As a result of that the decision was made to continue questioning.*¹⁵⁶⁷

- 10.191. In his evidence to the Tribunal, Mr. McGinley placed emphasis on the fact that Mr. McBrearty Senior wanted to clear his own name together with the fact that the letter was not unequivocally saying that Mr. McBrearty Senior should not be questioned to justify the decision that was ultimately made. Inspector McGinley also interpreted the letter as not excluding the questioning of Mr. McBrearty Senior on medical grounds. He stated in evidence that the decision to continue the detention of Mr. Frank McBrearty Senior was ultimately a matter for the District Officer, Superintendent Fitzgerald, but that it was a decision that was taken by consensus.
- 10.192. Superintendent Fitzgerald, the District Officer at the time, stated that he was not

¹⁵⁶⁴ Transcript, Day 563, page 61.

¹⁵⁶⁵ Transcript, Day 563, page 62.

¹⁵⁶⁶ Transcript, Day 563, page 63.

¹⁵⁶⁷ Transcript, Day 563, pages 63-64.

at the meeting that decided that the further questioning of Mr. McBrearty Senior was in order. Mr. McGinley put it in strong terms that Superintendent Fitzgerald was present and made the relevant decision. Mr. Shelly was less certain but believed that Superintendent Fitzgerald was present. Detective Sergeant Henry accepted that Mr. Fitzgerald may not have been present. **The Tribunal is satisfied that Mr. Fitzgerald was not present at this meeting. Firstly, Mr. Fitzgerald in his evidence to the Tribunal stated that the first he heard of Dr. Callaghan's letter was later on that night when he was interviewing Mr. Frank McBrearty Senior in the company of Inspector McGinley, at which time he did not make any decision on the contents of the letter. In such circumstances he pointed out that he had no motive in lying about his presence at a meeting which had taken place a few hours earlier. Secondly, when Superintendent Fitzgerald's attention was directed to the fact that Mr. Shelly was placing him at the meeting, he approached Mr. Shelly and confronted him about it.¹⁵⁶⁸ Finally, the only person who has a definite memory of Superintendent Fitzgerald being present at the meeting is Mr. McGinley, who himself admits that his memory of same is poor.**

- 10.193. **The Tribunal is satisfied that the continued questioning of Mr. McBrearty Senior amounted to a complete disregard of his right to be treated fairly while in Garda custody. There was clear medical evidence before the officers present from a consultant physician, Dr. Callaghan, that Mr. McBrearty Senior had hypertensive cardiac disease with heart strain. He was on medication. Furthermore, Dr. Callaghan set out that it would not have been in Mr. McBrearty Senior's best interests to be interrogated at that time. For officers of An Garda Síochána to take it upon themselves to continue questioning Mr. McBrearty Senior at this time flew in the face of the medical opinion which had been furnished to them. Furthermore, for those same officers to justify the decision they made at this time by referring to Mr. McBrearty Senior's wish to clear his name and the fact that none of his family, nor his solicitor were at that moment demanding Mr. McBrearty Senior's release is disingenuous in the extreme. The Tribunal also regards it as highly suspicious that on that very morning a fax had been transmitted from Sergeant White to the incident room at Letterkenny Garda Station which confirmed that the tests performed on Mr. McBrearty Senior were clear; however, no member of An Garda Síochána admits to seeing this significant piece of information. The Tribunal is astounded that members of An Garda Síochána had such confidence in their own view of Mr. McBrearty Senior and his health that they chose to disregard the word of a respected consultant physician.**

¹⁵⁶⁸ Tribunal Documents, page 687.

10.194. While the Tribunal has made a finding that Superintendent Fitzgerald was not a party to the decision made to continue the questioning of Mr. McBrearty Senior, the Tribunal does not go so far as to relieve the Superintendent of all responsibility in relation to the continued detention of Mr. McBrearty Senior. It will be recalled that the letter from V.P. McMullin & Son demanding an undertaking that Mr. McBrearty Senior would not be further interrogated was addressed in the first instance to the ‘Superintendent’ in Letterkenny Garda Station, who at that time was Superintendent Fitzgerald. Notwithstanding that the correspondence was marked ‘urgent’ and referred to a person who at that time was detained in the Garda station, Superintendent Fitzgerald told the Tribunal that he did not recall reading Mr. O’Callaghan’s letter until approximately two years later.¹⁵⁶⁹ This is curious when one looks at further documentation supplied to the Tribunal.

10.195. A letter addressed to V.P. McMullin & Son, from the Superintendent’s Office, Letterkenny dated the 12/12/1996 contained the following information:

Re: Detention of Frank McBrearty Senior

Dear Sir,

I wish to acknowledge receipt of your letter of this date, in the above matter.

The matter is receiving attention and I will revert to you in course.

Yours faithfully,

[Signature of Superintendent Fitzgerald]

John J. Fitzgerald Superintendent¹⁵⁷⁰

10.196. Notwithstanding that Superintendent Fitzgerald said he did not until more recently see Dr. Callaghan’s letter, he agreed that the letter he was acknowledging in the above correspondence was that marked ‘urgent’ and enclosing a copy of Dr. Callaghan’s letter.¹⁵⁷¹ Furthermore he agreed that it was his signature that appeared at the end of the letter.¹⁵⁷² From a stamp on the letter, it would appear that this letter reached the office of V.P. McMullin & Son on the 16th of December.¹⁵⁷³

10.197. Superintendent Fitzgerald expanded on this as follows when questioned by counsel for the Tribunal:

¹⁵⁶⁹ Transcript, Day 538, page 13.

¹⁵⁷⁰ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 652.

¹⁵⁷¹ Transcript, Day 538, page 11.

¹⁵⁷² Transcript, Day 538, page 10.

¹⁵⁷³ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 652; Transcript, Day 538, page 9

Q. *So that it was an important letter, both in its heading, marked urgent, and in its content. Why would it not be brought to you, your clerk or whoever may have opened the letter addressed to the Superintendent?*

A. *I can't explain that, but there could be several letters addressed to the superintendent urgent, but I wouldn't ... unless it was addressed to me personally, Superintendent John J. Fitzgerald, then I would deal with it personally. But if that letter came in addressed, 'Superintendent Urgent'.*

Q. *Yes?*

A. *Now it might be the only 'Superintendent Urgent' letter that day, but I mean there'd be several days that there would be 'Superintendent Urgent', and that would be opened normally by my office staff, it would be taken up by my office staff, depending when the letter would come in, it could be the following day, taken up by the office staff. And in this case, the letter would be referred down to the incident room and acknowledged. That's if it were done in the normal course, it'd be acknowledged by my office, by people in my office. It would be sent down to because this had to do with this aspect.*

Q. *Would you not have been very annoyed if, no response having been given to this letter in an immediate fashion, the next minute you were getting a telephone call, perhaps as a result of the six o'clock news, informing you that an ex parte application had been made to the High Court, seeking the release of Mr. McBrearty? Because that's more or less what they had threatened in the letter. And if they hadn't got the undertaking that they were looking for, they may have instructed counsel to march straight into the High Court that afternoon and make whatever application they deemed appropriate, be it by way of Judicial Review or habeas corpus. And you might presumably have been very annoyed if there was a reporter door-stepping you or telephoning the station saying, "what's the Garda response to this?" and you hadn't been told about a letter that had been hand-delivered earlier that day?*

A. *You're quite right in saying what you are saying, but the fact that I didn't see the letter, I didn't know what was in the letter. I acknowledged it. And I still don't know exactly what was in the letter because I can't recall seeing that letter.*¹⁵⁷⁴

10.198. Superintendent Fitzgerald did not see fit to discipline anyone for allowing this situation to transpire.¹⁵⁷⁵ The Tribunal finds that Superintendent Fitzgerald allowed a system to operate in his office which as we will see led to him interviewing a prisoner against and unaware of the medical advice which had been communicated to his office. This very proposition was put to Mr. Fitzgerald by both counsel for the Garda Sergeants and Inspectors and the Chairman. However, he failed to deal with this criticism in any meaningful way. This can be illustrated by the following exchange:

Chairman: You're saying that you only heard about this after the interview was completed?

A. *Correct.*

Chairman: He's saying if that be the case, there were two people whom you should have criticised, one is the person who allowed you to sign the letter of acknowledgement in your office without drawing it to your attention that there was a serious matter for you to consider and the second is then Inspector McGinley for not telling you about it before you started the interview. Now he points out that in fact you took no action against either of those people and he suggests to you that that is not inconsistent with what one would expect if what you tell us is correct. Now he says can you account for the fact that you acted in a way that was not, if you like, normal, the normal actions that one would expect. What he says is, and I am going to repeat myself.

A. *Yes, do please.*

Chairman: That somebody in your position who found yourself landed having carried out an interview that should not have been carried out in the light of the consultant's advices, would have gone straight to his office clerk and said how could you let me sign that letter without drawing it to my attention and you

¹⁵⁷⁴ Transcript, Day 538, pages 12-13.

¹⁵⁷⁵ Transcript, Day 528, page 125.

would have gone to Inspector McGinley and said how could you let me conduct that interview without telling me about the advices of the consultant? Now he says you did neither of those things. So he says and I am sorry if I am being offensive, I don't mean to be, it doesn't seem likely that it happened that way. Do you follow his question now? I am only repeating it to give you an opportunity to answer it?

A. Yes.

Chairman: *It's not the action of a competent superintendent to behave as you did if the story that you are telling is correct. That's the question.*

A. *I want to fully understand it. Right. I know you have repeated it twice.*

Chairman: *Well I will try again.*

A. *If you don't mind.*

Chairman: *Well, maybe Mr. Birmingham will do his own work for himself?*

Mr. Birmingham: *Well, I think between us we have tried four times or five times?*

A. *I didn't, but I obviously was satisfied with what the inspector at the time, McGinley, told me. I was obviously satisfied at that stage.¹⁵⁷⁶*

- 10.199. The Tribunal accepts that Superintendent Fitzgerald did not know about the consultant's letter until it was drawn to his attention by Inspector McGinley towards the end of his interview with Mr. McBrearty Senior later on, on the night of the 12th of December. The Tribunal is satisfied that a letter from the prisoner's solicitor arrived in the Superintendent's office and was merely acknowledged but not acted upon or read by the superintendent. This non-reaction may be usefully contrasted to the reaction of Detective Sergeant Henry when he first discovered the letter in his post box. The system as such which operated in the Superintendent's office was grossly negligent.

The Obtaining of Information from Blanchardstown Hospital

- 10.200. I have already drawn attention to the conveying of information on Mr. Frank

¹⁵⁷⁶ Transcript, Day 538, pages 127-128.

McBrearty Senior's medical condition by fax by Sergeant John White to the incident room in Letterkenny Garda Station. I now wish to make some comments on this.

- 10.201. A copy of this fax was included in the detention file of Mr. Frank McBrearty Senior, which file was made available to the Tribunal by the Garda Síochána. It was discovered by the Tribunal during the course of the oral hearings into the detention of Mr. McBrearty Senior and was circulated to all parties.
- 10.202. Detective Sergeant John White told the Tribunal that he compiled the fax; however he had no recollection of what had led him to this particular course of action. In the following exchange with counsel for the Tribunal the following information emerged:

Q. *It's addressed to the incident room in Letterkenny. Can you help us who may have asked for this report to be obtained?*

A. *I can't, Chairman, it would be one of the senior officers, I would think, in Letterkenny Station because there is no Garda is going to ask me to make these enquiries, if you like. I would love to be able to help you and tell you who it was. I don't know for sure. The closest person I was to was Joe Shelly. Superintendent Shelly. No doubt in the world about that. He was closest to me. He's the man that brought me over there and if he asked me to do something, then I would do my best ... I would do it for him. Like it's a fast track method of doing it. Unfortunately I don't remember ringing the hospital. I think that I contacted somebody in Blanchardstown Station who would have a contact in the hospital who would find it out for me. Because I certainly had no contact there.*

Q. *Yes?*

A. *I had never investigated a crime of any description in the hospital where I would make contact with one of the, say, staff or, maybe not consultants or doctors or whoever it was. I just simply genuinely don't know who did the enquiry for me. But it would usually be somebody's wife who might be working in the hospital.*

Q. *Yes?*

A. *That type of thing. But it's not unusual.*

Q. *Because it seems to contain very specific information in respect to Mr. Frank McBrearty Senior?*

A. *I had forgotten about it, to be honest with you. It's actually amazing, the detailed information there.*

Q. *Yes, not only does it have the test he's carrying out, what he's suffering from ... why the test is carried out, the result of the test and the extent of the documentation available to the medical staff. That seems to indicate access to the medical file?*

A. *It was, yeah. It was, I shouldn't yes. Medical staff haven't any access to other medical records. I presume that whoever did it hadn't the full file. It would be ... if they had the full file they would have given maybe more medical records I think. The report seems to denote that.*

Q. *Yes? "The staff did not have any access to Mr. McBrearty's medical records". So an enquiry was made of somebody and somebody made an enquiry as to the extent of the records available to the staff at Blanchardstown Hospital.*

A. *Yes. Well I think I wouldn't have asked for all that detail by any means.*

Q. *Yes?*

A. *It's amazing the detail that came out there. What I would have asked is, what is the result of the test. And I suppose the reason for it being is that the belief was that Mr. McBrearty was gaming on, I'm not saying he was for a second, I'm not saying that. But that was the belief in Letterkenny at the time. That this was all a charade, that he was going to hospital to evade questioning. That's why they wanted some type of, I suppose, medical ...*

Q. *Yes?*

A. *I can't think of the word. Medical ... not a certificate, but knowledge, yeah.*

Q. *So there was a doubt that he was playing up in some way in Letterkenny and? ... (INTERJECTION)*

A. *There was more than a doubt, Mr. McDermott. There was ... I wouldn't say certain, but strong thoughts was that this was is game on, you know, that there's nothing wrong with him.*

Q. *This report, it's obviously a back door method of getting medical information on somebody that the Gardaí are not really entitled to?*

A. *It is, yes.*

Q. *And somebody wanted that information. This could be something that you would do ... would it be something you would do off your own bat?*

A. *Not at all. I wasn't working on the investigation at all. I had nothing to do with the Frank Senior investigation.¹⁵⁷⁷*

10.203. The Tribunal is shocked that information of this nature was sought out in such an underhand way by a member or members of An Garda Síochána. The obtaining of such information was a breach of Mr. McBrearty Senior's right to privacy. Furthermore, the Tribunal is of the view that the seeking out of this information by the Gardaí demonstrates that the investigation team did not accept the information which was being supplied to them by Mr. McBrearty Senior and his medical and legal advisors. The Tribunal can find no other explanation for the Gardaí looking for such information.

10.204. The Tribunal is disturbed at the extreme steps that were taken to gain unauthorised access to Mr. McBrearty Senior's medical records in Dublin and the suggestion that this was not unusual. It shows a somewhat extreme determination to question everything about Mr. McBrearty Senior even to the extent of his medical condition by breaching his relationship with his doctors on a very sensitive and personal medical matter. There follows, as all too often occurred in this case, a failure on anyone's part to admit to knowledge of or involvement in this transgression. It is a measure of how intensely focused this investigation had become on members of the McBrearty family in pursuit of the false Garda theory that two members of the family had been involved in the death of the Late Mr. Barron.

Second Interview

10.205. At 17.02 hours Detective Garda James Frain and Detective Garda Jennings commenced an interview with Mr. Frank McBrearty Senior. This interview ultimately terminated at 22.15 hours. From 18.05 hours to 18.42 hours Mr.

¹⁵⁷⁷ Transcript, Day 565, pages 97-100.

McBrearty Senior had a visit from his solicitor followed by a visit from his wife and daughter. From 20.30 hours to 21.30 hours approximately Mr. McBrearty Senior had a rest period. Detective Garda Martin Anderson replaced Detective Garda Frain in the interview room from 19.55 hours to 20.30 hours and thereafter remained with Mr. McBrearty Senior until 20.55 hours approximately.

- 10.206.** Prior to giving evidence at the Tribunal, Mr. McBrearty Senior made varying allegations about what happened during this interview period. Many of these allegations were not repeated by Mr. McBrearty Senior at the Tribunal. Mr. O'Donnell, solicitor, attended at the Garda station at approximately 18.05 hours on the 12th of December. By this stage Mr. McBrearty Senior had been interviewed by the two detectives for approximately one hour. Mr. O'Donnell recorded in a memorandum to his file as follows:

...Frank told me that the two Detectives were questioning him. Detective Jennings and Detective Frain. Frank said that they had said that he was a murderer in Scotland. Frank told me that they said that a man died and fell down a stairs in Frankie's in Raphoe before. Frank told me that they had told him that he wanted to get his reputation back as a good citizen in Raphoe. Frank told me they told him that we know that you have a wife and girl to look after...Frank told me that he told the Gardaí that he had already given a full statement to Sergeant Hannigan about the break ins in the terraces...Frank told me that the Detectives had told him that he could get twenty years for the offence for which he is being arrested...¹⁵⁷⁸

Mr. McBrearty Senior did not repeat these allegations in evidence to the Tribunal.

- 10.207.** In an undated statement prepared by Mr. McBrearty Senior in 1997 Mr. McBrearty Senior had the following to say about this interview period:

I was then interviewed at 5.00 pm by Det/Sgt Herrity and Det/Garda Frain. This was the same accusation's of bribery, following the Garda and interfering with witnesses. Shortly after this (5.02pm) Det/Garda Jennings and I told them what the Guards had done to witnesses and what they had said to Mickey McGahern and what they had said about myself and Frank Jnr. I was asking why Collins and O'Dowd were doing this.

At 6.25pm Rosalind and Maria arrived, Rosalind had been told to get me a doctor, the implication had been that I was very ill, this worried my wife and made her rush to Letterkenny.

Rosalind and Maria were upset and crying in the station. When they left I was again interviewed by Det/Garda Jennings and Frain. It was the same

¹⁵⁷⁸ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 638.

stuff about what I was supposed to be doing, I tried to explain about what they were saying to witnesses, especially Mickey McGahern. I told them Mickey had told me the implication of his interview with the Garda had been that they were trying to frame myself and my son for the death of Ritchie Barrons. It was this that led me to complain to Sean Maloney and to go[t] to Dublin to see Jean [sic] Bruton. The Garda kept insisting that I was perverting the course of justice. They kept writing and writing and would not tell me what they were writing. These two asked me to sign forms that I could not read the writing on. At 7.55pm Det/Garda Frain left and Det/Garda Martin Anderson came in to interview me along with Jennings. This interview was the same thing over and over again and the implications were that I was covering up for my family. The interviews ended at 8.30pm.

Det/Garda Jennings left the interview room and I was alone with Det/Garda Anderson. Anderson was very abusive, insulting and cheeky to me. He was going on about Ritchie Barrons and what I was doing following Guards and interfering with witnesses.

I was placed in cell No. 4 at 9.10pm.

At 9.27pm I was taken from cell No. 4 by Det/Garda Mick Jennings. At 9.30pm Det/Garda Frain came into the interview room.

This interview lasted until 10.15pm.¹⁵⁷⁹

- 10.208. Here Mr. McBrearty Senior's complaint about what took place at this interview seems to relate to Mr. McBrearty Senior's sense of indignation that he was being investigated for bribing witnesses, following Gardaí and interfering with witnesses. **The Tribunal has no difficulty in accepting that the fact of Mr. McBrearty Senior being questioned about criminal activity while under arrest was something to which Mr. McBrearty Senior took great exception.**
- 10.209. In his Statement of Claim Mr. McBrearty Senior claimed he had been assaulted, threatened and intimidated by, amongst others, Detective Gardaí Frain and Jennings.¹⁵⁸⁰ When giving evidence to the Tribunal, Mr. McBrearty Senior said that in the thirty years he had worked with Gardaí, no Garda had assaulted him.¹⁵⁸¹
- 10.210. When Mr. McBrearty Senior attended at the Tribunal he had the following to say about this interview period:

As far as I can recall, it is ten years, it was all the same pattern, the whole thing was the same pattern. The boxing, the hard man stuff,

¹⁵⁷⁹ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), pages 566-567.

¹⁵⁸⁰ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 473.

¹⁵⁸¹ Transcript, Day 534, page 98.

*the bully boy ... I was a bully boy, I was the top man in Raphoe, a small town of fourteen hundred people, all that carry on went on all day and the whole lot of them using tactics.*¹⁵⁸²

When asked directly by counsel for the Tribunal as to whether the Gardaí did anything objectionable during the course of the interview Mr. McBrearty Senior replied as follows:

A. *I was complaining all the time about the questioning about being an innocent person in there.*

Q. *Yes?*

A. *And being arrested under this section, I didn't know any section that they had me arrested under. They arrested me and my family for something we didn't have anything to do with. Sure the evidence is there the way we done it ...*¹⁵⁸³

Mr. McBrearty Senior also disputes the accuracy of the notes of interview.¹⁵⁸⁴

10.211. The interviewing Gardaí all told the Tribunal that they dealt with Mr. McBrearty Senior in a professional manner during the interview. Detective Garda Michael Jennings told the Tribunal that somebody was needed to assist Detective Garda Frain with the interview and a few minutes before the interview commenced he was assigned to so do.¹⁵⁸⁵ He had been a member of the team doing the overall investigation and prior to the interview Detective Garda Frain explained to him that he had a number of documents that he had seized during the search of Mr. McBrearty Senior's house about which he was going to question Mr. McBrearty Senior.¹⁵⁸⁶ Detective Garda Jennings' role during the interview was that of the note-taker.¹⁵⁸⁷ He also would have asked some questions in order to clarify ambiguities.¹⁵⁸⁸

10.212. Detective Garda Frain confirmed to the Tribunal that his purpose in interviewing Mr. McBrearty Senior was to question Mr. McBrearty Senior about the documentation that was seized during the course of the search of Mr. McBrearty Senior's house.¹⁵⁸⁹ The interview did not proceed in a straightforward manner. He described it in the following terms:

A. *But Mr. McBrearty, he came in and he shouted and roared and wouldn't answer a question and when you would read*

¹⁵⁸² Transcript, Day 528, page 106.

¹⁵⁸³ Transcript, Day 528, page 111.

¹⁵⁸⁴ Transcript, Day 528, pages 129 and 133.

¹⁵⁸⁵ Transcript, Day 536, page 128.

¹⁵⁸⁶ Transcript, Day 536, page 129.

¹⁵⁸⁷ Transcript, Day 536, page 131.

¹⁵⁸⁸ Transcript, Day 536, page 131.

¹⁵⁸⁹ Transcript, Day 535, page 95.

it back to him then he would want to give you an answer and he would want it incorporated into the body of the document you had already written. He was an extremely difficult man to deal with.

Q. *He seems to have given you a lot of answers.*

A. *Oh he did. In fairness to Mr. McBrearty you have to say this, that my attitude, Chairman, is this to an interview situation, I had pertinent questions to put to him, and I tried to reason with the man and to create a calm environment within which to conduct that interview because in my experience, if you can't conduct some sort of rapport with the person whom you are trying to interview, difficult and all as it was on this occasion, you are going to get nowhere. I would say that we did conduct a reasonable interview with him and he did give answers to a lot of questions. I would certainly say that. Now, it was a volatile situation on many occasions, but we always tried to calm him down. He is an extremely volatile man, but we did manage over a period of time to elicit quite a lot of responses to the questions.¹⁵⁹⁰*

Later on in answering a question from counsel for the Tribunal as to how long it would take to get what was described as a “convoluted” answer from Mr. McBrearty Senior, Detective Garda Frain described Mr. McBrearty Senior as follows:

Mr. McBrearty is an expert at giving those type of answers unfortunately. That's just the type of answers that you elicit from him. He's a mumble jumble type of guy. He goes off in tangents. I mean you can ask Mr. McBrearty a question and you might get a rhetorical question. I mean its all reflected here...¹⁵⁹¹

10.213. Detective Garda Jennings described a similar situation to the Tribunal:

Q. *How was Mr. McBrearty?*

A. *Well as far as I remember, Mr. McBrearty was fairly talkative and fairly protesting his innocence.*

Q. *Yes?*

A. *Without ... he would be a difficult enough person to interview.*

¹⁵⁹⁰ Transcript, Day 535, page 52.

¹⁵⁹¹ Transcript, Day 535, page 57.

Q. In what sense?

A. Well in the sense that I have conducted an awful lot of interviews in an awful lot of types of situations and would regard him as perhaps at the more difficult end of things to interview. He was never happy like. Everything had to be changed and amended, and even then he wasn't still happy. I bent over backwards to get things right, in making all those amendments and reading over. At least three times read over notes.¹⁵⁹²

10.214. The interview notes as written by Detective Garda Jennings appear in both typed and manuscript form in the Tribunal documentation.¹⁵⁹³ The manuscript consists of fourteen pages of handwritten notes. Both Detective Garda Frain and Detective Garda Jennings told the Tribunal that this manuscript was read over to Mr. McBrearty Senior on more than one occasion. Mr. McBrearty Senior requested a number of amendments, which were made. Mr. McBrearty initialled the first set of amendments. Detective Garda Anderson also said that when he replaced Detective Garda Frain in the interview room, Detective Garda Jennings started to read over the notes that he had taken and alterations were also made.¹⁵⁹⁴

10.215. The notes record that the interview commenced with Detective Garda Frain outlining to Mr. McBrearty Senior that the Gardaí were investigating the death of the Late Richard Barron and that they had reason to believe that Mr. McBrearty Senior and others had conspired to prevent the Gardaí from discovering what actually happened on the night of Mr. Barron's death and perverting the course of justice. Mr. McBrearty Senior denied this. A series of questions were then put to Mr. McBrearty Senior as to whether he had followed members of An Garda Síochána during the course of the investigation. Mr. McBrearty Senior denied that he did any such thing and at one stage suggested that Garda Collins might have mistaken him for his wife as she drove his car. Mr. McBrearty Senior was asked whether he had spoken to his staff in relation to what they had said to the Gardaí when they were questioned about the night of the Late Richard Barron's death, to which he replied:

No, my staff spoke to me in relation to how they were treated. We never spoke at all about anything on that night apart from that man Richard Barron being knocked down. We knew he was took to hospital, that is all we knew. I have already made two statements. I was also in here with Superintendent Fitzgerald about other matters concerning Raphoe and the

¹⁵⁹² Transcript, Day 536, pages 132-133.

¹⁵⁹³ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), pages 444-452; and 596-609.

¹⁵⁹⁴ Transcript, Day 537, page 35.

policing at Raphoe. I have also gone to his private house 3 times about matters concerning Raphoe, concerning 2 break ins at my pub. I was along with him about drugs. I gave the information to John Fitzgerald and he got them arrested. They were up at Court.¹⁵⁹⁵

Twelve exhibits in all, which had been seized during the course of the search of Mr. McBrearty Senior's house, were put to Mr. McBrearty Senior and he has asked for an explanation in respect of them. While initially Mr. McBrearty Senior did not engage with the detectives, after a consultation with his solicitor, Mr. McBrearty Senior provided explanations for the documentation that was presented to him. An example of an interchange in the interview room is as follows:

Q. What have you to say about documents marked J.F. 14, J.F. 25, J.F. 27 which Det/Garda Frain produced to him.

A. I will deal with this one first pointing to J.F.14. Frank McBrearty commenced reading J.F. 14. Inspector McGinley and Superintendent Shelly called to my premises. I made that out after they left. If you read through it you will see it deals with questions about one driving about Raphoe. I be steady round all these houses. That is how I got to be Lord Mayor. I am also the President of the Boxing Club. I am President of Frances Football Club in Tullyvinney. I cannot mind seeing a patrol car. Frank McBrearty also looked over document J.F. 24 and J.F. 12.

Q. What do you say in relation to those documents?

A. There are to do with interview I had with Superintendent John Fitzgerald. That is Christine Griffin's writing on that one pointing to J.F. 12 and also to J.F. 24.

Q. Did you dictate both of these documents J.F. 12 and J.F. 24.

A. I did.

Q. Do you want to make any comment about them?

A. They are only things I wanted taken down. They are about the programme that was on TV about Richie Barrons. I taped that programme. Everybody in Raphoe watched it. I got Reynolds in Raphoe to tape it for me because I wanted to see what was on it. The whole thing was wrong. There is a right of way into the field but there is none down to the back of the car park. You cannot drive down there with a car. It is full of holes. You would break your legs going through it.

¹⁵⁹⁵ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), pages 445- 446.

Q. Did you make a phone call on the night?

A. We made a phone call to Crime Line. There it is there pointing to point no. 4 on document J.F. 24. Why was there so many questions asked about the two businessmen, father and two sons in the town?

Q. Who made that call?

A. Christine Griffin made it to Crime Line. She was speaking to some Sgt. from Castlefin. It was me who asked her to do it. We were furious about the way we were treated.¹⁵⁹⁶

10.216. When counsel for the Tribunal went through the manuscript with Mr. McBrearty Senior, Mr. McBrearty Senior pointed out two sections of same which he said did not take place.

10.217. Firstly, in the section of the interview set out hereunder Mr. McBrearty Senior told the Tribunal that he never said the italicised words.¹⁵⁹⁷

Q. Do you know Gda. Philip Collins?

A. Yes **(FMB)** Gda Collins and I are getting on bad because of things he has said to my staff in this investigation. **(FMB)**

Q. Would he be familiar with you?

A. He would know me since he came to Raphoe.

Q. Would he mistake you with somebody else?

A. He might mistake me for my wife. My wife could be driving the car or I could be driving it. **(FMB)** If you continue this line of questioning I will call my doctor and I will have to go back up to the hospital again, my health is more important to me than anything. **(FMB)** I over reacted when I said I want it taken out, no way do I or my family want to prevent the Gardai getting the murderer or Richard Barron. **(FMB)**

Q. Do you lend you car to anybody on that date 10th November?

A. Not that I can mind.¹⁵⁹⁸

10.218. The above is a typed copy of the manuscript and where the letters **FMB** appear, the Tribunal understands these to be the initials of Mr. Frank McBrearty Senior as inserted by him following amendments being made at his request to the transcript.

10.219. Secondly he denied that he had told the Gardaí that his son was on nerve

¹⁵⁹⁶ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), pages 448-449.

¹⁵⁹⁷ Transcript, Day 528, page 116.

¹⁵⁹⁸ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 445.

tablets.¹⁵⁹⁹ Thereafter, Mr. McBrearty Senior said he would not accept anything the Gardaí said.¹⁶⁰⁰

- 10.220. In cross-examination, counsel for An Garda Síochána put it to Mr. McBrearty Senior that when the Gardaí read over the notes of the interview, that Mr. McBrearty Senior requested that changes be made, which were made, and which were initialled by Mr. McBrearty Senior. It was also put to Mr. McBrearty Senior that he had asked that the amended interview notes be read over again, at which stage he requested that more changes be made, which were made. The Gardaí explained the procedure to Mr. McBrearty Senior.¹⁶⁰¹
- 10.221. Mr. McBrearty Senior acknowledged on seven occasions that his initials, as they appear in the manuscript of the memorandum of interview, were inserted onto the document by him.¹⁶⁰²
- 10.222. It was pointed out to Mr. McBrearty Senior that his initials appear three times in the disputed section and Mr. McBrearty Senior agreed that the initials were his. Mr. McBrearty Senior's initials are to be found once just prior to the disputed passage and once just after the disputed passage. This is illustrated from the extract of the interview reproduced at paragraph 10.217 of this chapter.
- 10.223. Mr. McBrearty Senior strongly asserted that he never said to the interviewing Gardaí that his son was on nerve tablets; he told the Tribunal that he did not say it as his son was not on nerve tablets at that time.¹⁶⁰³ However, it was pointed out to Mr. McBrearty Senior that Dr. McFeeley had previously given evidence to the Tribunal that he prescribed to Frank McBrearty Senior a mild or low dosage tranquilliser called Lexidon on the 5th of December 1996.¹⁶⁰⁴ When Mr. McBrearty Senior was cross-examined by counsel for the Garda Commissioner the following exchange took place:

A. *So far as I know when he was released from Letterkenny Barracks he went in and the doctor gave him something to try and calm him down a bit.*

Q. *And there's nothing wrong with it?*

A. *Why are you putting this nerve business?*

Q. *Because I'm just simply saying to you that the guards who were questioning you, Detective Garda Frain ...*
(INTERJECTION)

¹⁵⁹⁹ Transcript, Day 528, page 127.

¹⁶⁰⁰ Transcript, Day 528, page 128.

¹⁶⁰¹ Transcript, Day 534, page 87.

¹⁶⁰² Transcript, Day 543, pages 89-93.

¹⁶⁰³ Transcript, Day 528, pages 128-129 and 131-133.

¹⁶⁰⁴ Transcript, Day 528, page 133.

A. *Well, I don't believe that that was said, you see.*

Q. *That Garda Frain and Detective Garda Jennings couldn't possibly have known that your son had been prescribed any tablets on the 5th of December or that he was on tablets?*¹⁶⁰⁵

10.224. The Tribunal accepts the evidence of Detective Garda Jennings and Detective Garda Frain as to how the interview proceeded. As has already been outlined Mr. McBrearty Senior has made varying accusations as to what transpired in this interview, most of which were not repeated in evidence by him. The description that the interviewing Gardai provided of Mr. McBrearty Senior accords with the Tribunal's own experience of Mr. McBrearty Senior. Secondly, the appearance of Mr. McBrearty Senior's initials on the interview notes on a number of occasions supports the conclusion that the document was read over to Mr. McBrearty Senior and that he did not take exception to it at the time. Thirdly, the reference to his son being on medication at the time is a fact which is true but would have not been known to the interviewing Gardai at that time.

Third Interview

10.225. As soon as the interview with Detective Garda Frain and Detective Garda Jennings was completed, Mr. McBrearty Senior was taken from the interview room to Inspector McGinley's office where he had an encounter with Superintendent Fitzgerald and Inspector McGinley which lasted until 23.55 hours. Garda James Healy was the member in charge for this period of time. Garda James Healy told the Tribunal that he was aware that Mr. McBrearty Senior was going up to Inspector McGinley's office, but he did not think that he was to be interviewed. He was under the impression that Mr. McBrearty Senior was going up there for a chat about things in general with Inspector McGinley and Superintendent Fitzgerald as he was aware that he knew both of them.¹⁶⁰⁶ He said he never knew what happened in the room because nobody told him about it. He said that he did not think anything about it at the time because he was of the view that the Superintendent was a fair man and he was going to be present in the room at the time.¹⁶⁰⁷ Detective Garda Jennings, who had been interviewing Mr. McBrearty Senior until that time, said that Inspector McGinley came into the interview room where he was with Detective Garda Frain in order to see if the interview was completed. He was aware that a meeting was to take place between Mr. McBrearty Senior and Superintendent Fitzgerald. He was not aware of who instigated this meeting.¹⁶⁰⁸ In evidence he described his impression of what that meeting was about as follows:

¹⁶⁰⁵ Transcript, Day 534, page 107.

¹⁶⁰⁶ Transcript, Day 536, page 89.

¹⁶⁰⁷ Transcript, Day 536, page 88.

¹⁶⁰⁸ Transcript, Day 536, page 148.

Q. *You described it in a statement, at page 359 as follows: "Towards the end of the interview Detective Inspector John McGinley called to the interview room and Frank McBrearty agreed to speak to Superintendent Fitzgerald and Detective Inspector McGinley. Frank McBrearty was taken to Detective Inspector McGinley's office for that purpose at 10.15 p.m. at the conclusion of this further interview with Detective Garda Frain and me". So one might infer from that, that this was, rather than an interview or interrogation that he was being subjected to, that there was an element of invitation to it because he agreed to speak to Superintendent Fitzgerald is the way you expressed it?*

A. *Yeah, I take that point there, yes, that's possibly the way it was.*

Q. *That seems to have been your sense of it?*

A. *Yes.*

Q. *Certainly it was the member in charge's sense of it, that it wasn't an interview that was going to take place or an interrogation, but a meeting?*

A. *Possibly.*

Q. *He's being offered – it would appear that there's an element of his free will involved because he has agreed to speak to them?*

A. *Yes. Well that would be fresher in my mind at that time than it is now. That's possibly the way it was.¹⁶⁰⁹*

10.226. How and why this meeting came about is disputed between Inspector McGinley and Superintendent John Fitzgerald. Earlier on in the evening a decision had been made to continue the detention and questioning of Mr. McBrearty Senior. This decision was made in the presence of Detective Sergeant Henry, Superintendent Shelly and Inspector McGinley. The Tribunal has found that Superintendent Fitzgerald was not present at this meeting. Mr McGinley, in his evidence to the Tribunal, said that one further thing raised at this earlier meeting was that Mr. Frank McBrearty Senior wanted to see Superintendent Fitzgerald. At that stage Mr. McGinley said that Superintendent Fitzgerald asked him if he would accompany him to the proposed meeting afterwards.¹⁶¹⁰ Mr. McGinley described the situation as follows:

¹⁶⁰⁹ Transcript, Day 536, pages 148-149.

¹⁶¹⁰ Transcript, Day 563, page 75.

A. *Well, following on from the meeting where it was decided to continue with him, John Fitzgerald asked me would I accompany him to talk to Mr. McBrearty and it was, I think, a two-way street at that time. Mr. McBrearty wanted to see John Fitzgerald and John Fitzgerald, I think, wanted to talk to Frank McBrearty. Obviously the time was set for a quarter past ten, or whatever. He was still being interviewed by somebody else, another group at that time and in preparation for that I recall going over to John Fitzgerald's office and we had a briefing file each in relation to Mr. McBrearty, which essentially covered the statements that were made, you know, that had been in the investigation in relation to people who had made statements about his activities in Raphoe. And we just went through those so as to put a structure on the interview. We then went over at about a quarter past ten to talk to him. Beyond that Superintendent Fitzgerald I think had wanted to talk to Frank McBrearty because he knew him and he had dealings with him in the past. I think Frank McBrearty called to him and he felt that there was a relationship there and they might be able to do business and discuss all these, get to the bottom of this issue for which he was in custody. So we, as I say, interviewed Frank McBrearty from a quarter past ten.¹⁶¹¹*

10.227. Mr. Fitzgerald described the genesis of the meeting in his evidence differently:

A. *John McGinley rang me,[at home at approximately 9.00 o'clock] to the effect that Frankie's here, which really I had known anyway, that Frankie was down from the hospital, I probably would have known that before I went home. To the effect that he is denying everything. He wants to talk to you. And we think it may be a good idea if you talk to him. I said, over the phone, I said "look John, if I'd be of any help I have no problem talking to Frankie, I know him a long time".*

At that time I thought it would be helpful. So I said, "look it, I'll spell out to him exactly why he's arrested and I'll spell out to him the statements showing that". I'd spell it out to him. So I said, "will you make sure that all the statements are there in relation to the intimidation and all that kind of thing" and he said "no problem". But I said, "now I won't be

¹⁶¹¹ Transcript, Day 563, page 86.

*able to go in for a while”, whatever I was doing I wanted to, you know, progress that. So then I went in after a while.*¹⁶¹²

10.228. The Tribunal has already rejected the contention that Superintendent Fitzgerald was present at the meeting earlier on in the evening. That being the case, the events John McGinley describe as leading up to the meeting which commenced at 22.15 hours with Mr. Frank McBrearty Senior could not have taken place. Accordingly, the evidence of Mr. Fitzgerald is accepted insofar as it was Mr. John McGinley who contacted Superintendent Fitzgerald and made the necessary arrangements for the encounter with Mr. Frank McBrearty Senior at 22.15 hours.

10.229. Mr. Fitzgerald explained to the Tribunal that he had known Frank McBrearty Senior for a number of years and had built up a relationship with him; he put the matter as follows:

A. *Shortly after I had become a uniformed superintendent in 1992, I was a detective inspector before that, I don't think I knew him as a detective inspector, I knew of him maybe. But shortly after I became superintendent he made contact with me and he would have made contact with me on many many occasions on questions about various matters. It could be anything. It could be traffic in Raphoe, it could be problems with the disco, it could be drugs. He personally abhorred drugs, I can say that he personally abhorred drugs.*

It may be that he would be upset because there might be a Garda operation, maybe we'll say on a Friday night, I don't know what night of the week, maybe in the area of Raphoe to prevent drugs or something like that and if it were ... naturally, a lot of the clientele would be going to his premises and if that were affecting him, he would be agitated by that and he would ring me and he made his way to my house, and I don't mean that in any, you know, that possibly he called to my house, probably by saying, "look it, I am going near the Gardaí", or something to that effect. I'd say, sure, well come along because I lived out on the Derry Road anyway. It would be on his way into town. He did call to me. And I remember he called with Andy, his son, at one stage. I don't know if Frank Junior ever called, but I know Andy his son.

¹⁶¹² Transcript, Day 538, pages 33-34.

I had occasion to call to his house about something, he said, would you call out, and I said yes. So that I would have built up a kind of relationship in a sense, but the type of relationship it was, that it was always agitation or complaint that he had and I suppose that I spent a lot of time relaxing him and, you know, that kind of work. And I'd say to him, look it, do you want to make a complaint, "aggh" he'd say "I don't want to make a complaint". You know, that kind of ... but he'd still want to talk it out and be agitated. Even when he'd be finished he still wouldn't be kind of happy, but he would be thankful.

Q. Yes?

A. *And I felt that there was a trust I suppose that had kind of built up over the years you know.*¹⁶¹³

10.230. Mr. Fitzgerald said that he went to the station after the telephone call from Inspector McGinley and familiarised himself with the briefing file which had been prepared containing various statements that had been taken in relation to the intimidation issue.

10.231. On the day following this interview, Mr. McBrearty Senior met his solicitor in Letterkenny Garda Station. At that time Mr. O'Donnell's notes record that Mr. McBrearty Senior had the following to say about the interview with Superintendent Fitzgerald and Inspector McGinley:

... [Mr. McBrearty] said that they had stopped questioning him at about 12.30 ... Frank told me that they had put him in a cell for a while but that he got claustrophobic and was brought back to the detaining room where he tried to sleep...

Frank told me they had been questioning him last night about interfering with witnesses. Frank said that they said that he had made contact with various witnesses. Frank told me that John Fitzgerald had told him that Philomena Lynch had made a statement implicating him ...¹⁶¹⁴

10.232. In his statement completed in 1997 Mr. McBrearty Senior described the interview as follows:

This interview was with Det/Inspector McGinley and Super. Fitzgerald, where they insinuated Frank Jnr. And Mark McConnell were the murderers of Ritchie Barrons and that I was covering up for them and perverting the course of justice, bribing people, watching Guards and the barracks in

¹⁶¹³ Transcript, Day 538, pages 34-35.

¹⁶¹⁴ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 640.

Raphoe. I explained I have to pass the Raphoe Garda barracks when travelling from my home to the pub which I do five or six times a day. During this interview they asked me to sign a blank piece of paper. I placed a cross my wife had given me when I was arrested into Super. Fitzgerald's hand and knelt down crying, that my family were innocent and they were destroying me. I was brought down stairs and pleaded with Super. John Fitzgerald and John McGinley not to put me into a cell. When I was brought down the stairs I was told my wife had phoned and my son John had phoned from America and that my son Frank Jnr. Had called into the station to see me and he would call back later on. I still pleaded with them not to put me into a cell and I was suffering from dizziness, blackouts and had a pain going across my chest. I was then put into an interview room with blankets and a mattress on the hard floor, even so this was to me better than being into a cell.¹⁶¹⁵

10.233. In civil proceeding initiated against the State Mr. McBrearty Senior claimed that he had been assaulted by the two officers.¹⁶¹⁶ In evidence he confirmed that there was no assault.

10.234. Mr. McBrearty Senior described this period of interview to the Tribunal as follows:

Q. Yes. Now at 10.15, if we look at the next page, there's an interesting development in that you are taken from the interview room and you go up to an office to talk to Detective Inspector McGinley?

A. Yes.

Q. And Superintendent Fitzgerald?

A. Yes.

Q. Do you remember that?

A. Yes. That's what I told the Chairman.

Q. Yes?

A. I was down on my hands and knees. That's when he brought out ... that's when McGinley brought out a sheet of paper with nothing written on it and told me to sign it and he would fill in the rest.

Q. That's quite an important statement to make. So can you just take it slowly, from the time that you went ... was this office upstairs or downstairs?

¹⁶¹⁵ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 567.

¹⁶¹⁶ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 473.

A. *It was upstairs.*

Q. *Had you been downstairs?*

A. *I was downstairs.*

Q. *Who brought you upstairs?*

A. *I'm not sure. I think maybe it was them, the two of them came down for me.*

Q. *Yes. Why were you taken upstairs, had you asked to speak to Superintendent Fitzgerald?*

A. *No. Not to my knowledge.*

Q. *What happened when you got up there?*

A. *That's what I said, I was in the room and I was trying to plead with him that I was an innocent man and my family were innocent and my staff. And McGinley was at his usual tricks, he produced the sheet of paper and asked me to sign it and he would fill in the rest. That's what he said. He says, all these things are all jokes when you're arrested. That's a joke, and this is a joke and that's a joke.¹⁶¹⁷*

10.235. Later on, he clarified that it was prior to going into the interview room that he was down on his hands and knees. He also elaborated that the piece of paper he was asked to sign by Inspector McGinley was of A4 size, unlined and completely blank. He alleged that Inspector McGinley said to him:

Sign that, he says, you'll have no more bother. You'll get released, and whatever goes with that...¹⁶¹⁸

He also explained to the Tribunal that during this time Superintendent Fitzgerald was sitting at the table across from him and Inspector McGinley was standing next to him.¹⁶¹⁹

10.236. The Garda record of interview shows that at the beginning of the interview there was a brief introduction between the parties and a discussion as to how Mr. McBrearty Senior was feeling. It is then recorded that Mr. McBrearty Senior indicated that he was not happy being in Garda custody and that he did not want to be placed in a cell. Thereafter, Superintendent Fitzgerald undertook that Mr. McBrearty Senior would be made as comfortable as possible. The reason for Mr. McBrearty Senior's arrest was then explained to him and he was cautioned in the usual way. He was then questioned as to whether he had asked his staff to

¹⁶¹⁷ Transcript, Day 528, pages 136-137.

¹⁶¹⁸ Transcript, Day 528, page 142.

¹⁶¹⁹ Transcript, Day 528, page 142.

recount to him what the Gardaí were asking them. No comment was made in reply at the beginning and thereafter he denied that allegation. Then he was questioned about the intimidation of witnesses, to which Frank McBrearty Senior replied by saying “no comment”. On being questioned about Aileen Campbell he acknowledged that she worked part time for him and when the allegation was put to him that he had said to her that Mark and Róisín McConnell were in the disco all of the night, he said “fucking lies” in reply. He denied any recollection of a conversation that was referred to and stated that at that time Ms. Campbell was on her last legs anyway as she was being cheeky to the customers, but she had much improved. The statement of Bridget Kelly was then put to him and he was asked whether he knew Bridget Kelly. It is recorded that he said there were “a pile” of Kellys in Raphoe. The allegation was then put to him that he called to Ms. Kelly’s flat enquiring as to what the Gardaí were saying about himself and Frank McBrearty Junior. He denied that and said that he had called to the flat with Seán Crossan. He was then asked about his dealings with Caroline Lynch and there was some discussion as to who exactly she was. He denied the allegation that he had approached Ms. Lynch and asked her to find out what the Gardaí were saying about various members of his family. He told Superintendent Fitzgerald that in fact he had been approached by customers who were informing him what the Gardaí were saying about him. The interview notes are unsigned. It is recorded at the end of the notes that Mr. McBrearty Senior said that he was too annoyed to sign them that night.

10.237. When counsel for the Tribunal put the interview notes to Mr. McBrearty Senior he said that he could not remember what was spoken about during the interview, but that the notes did not represent, insofar as he could remember, what was spoken about; all he remembered was pleading his innocence and the innocence of his family.¹⁶²⁰

10.238. Both Mr. Fitzgerald and Mr. McGinley denied that Mr. McBrearty Senior was asked to sign a blank sheet of paper during this interview. Mr. Fitzgerald said the only time he was asked to sign anything was when the notes were read over to him at the end of the interview, which he refused to do.¹⁶²¹ He described the interview in this way:

A. *Well you see, from the very word go it was formal I'd have to say, I would have treated it as formal, but the most informal formal interview that I could hold.*

Q. *Yes.*

A. *But once I went in and I said, Frankie, how are you and, all*

¹⁶²⁰ Transcript, Day 528, pages 156,157.

¹⁶²¹ Transcript, Day 538, pages 40-50.

*the rest of it, he laid into me. In that "how could I be alright, I shouldn't be arrested", you know, and that kind of ... I said to myself, well now you know I'm kind of up against it here with this, maybe we'll take our time, but then you see when I saw that attitude he was under arrest and I had to formally caution him.*¹⁶²²

- 10.239. Following the caution, the interview commenced and Mr. McGinley said that he took the notes. Mr. Fitzgerald told the Tribunal that at times Mr. McBrearty Senior would become annoyed and he recalled that at one stage Mr. McBrearty Senior had a crucifix and went down on his knees. He told the Tribunal how Mr. McBrearty Senior made to stand up on a chair, at which stage the Superintendent told him to act his age.
- 10.240. On being cross-examined it became apparent that the answers as recorded by Inspector McGinley in reply to Superintendent Fitzgerald's questions were remarkably similar to the answers given by Mr. McBrearty Senior to counsel for the Garda Commissioner. Mr. McBrearty Senior's response to the allegations put to him was to offer an entirely innocent explanation for these various events. It became clear under cross-examination that his innocent explanations of events were in large measure recorded in the notes of interview; but he claimed that these notes were not made at the time. The disputed notes contained what Mr. McBrearty Senior confirmed in his evidence amounted to a true account of his position in respect of these issues – essentially his case in relation to the various allegations raised with him. These replies, as recorded in the notes, could not have been known of or conceived by the interviewers without his input. Mr. McBrearty Senior maintained that he could not recall what was said in the course of the interview. Nevertheless, he alleged that no notes were taken during the course of the interview. It is clear from his testimony that he still maintains that his responses to these allegations as recorded in the notes were factually correct. Mr. McBrearty Senior maintains this complicated position though he cannot recall what he said during the course of the interview and disputes the accuracy of the notes produced. Insofar as notes were produced representing the notes of interview, he claims that these were not read over to him and he was not asked to sign them. So far as these notes were later produced by the interviewers they happen to contain a substantially accurate account of his refutation of the allegations made, which he continued to maintain in evidence to the Tribunal. Mr. McBrearty Senior, however, continued to maintain that he never gave that account to the interviewers. It is difficult to see that they could have anticipated with such accuracy, the case that he wished to make in respect of these allegations. It is helpful, in order to understand what happened, to set out various extracts of the notes and Mr. McBrearty Senior's testimony.

¹⁶²² Transcript, Day 538, page 49.

10.241. It is recorded in the notes of interview as follows:

Supt: ... Now, I have a statement of Bridget Kelly here.

D.I: Do you know her?

F.McB: There's a pile of Kelly's in Raphoe

D.I: Well, do you know Bridget from William St. Raphoe?

F.McB: There's so many of them.

Supt: She says that you called to the flat and asked what did the guards say. Were you asking about yourself or Frank Jnr.

F.McB: I say no to that as well.

Supt: And that they said to you that the Guards did not mention them & that you left after stating that you warned the guards to stop asking questions about the McBreartys.

F.McB: What a load of lies.

D.I: Are you saying this is untrue?

F.McB: What I'm saying is that I had Sean Crossan with me. That it was about young [name redacted] - he smashed Sean's car- and we were trying to locate him for the guards and to get the guards to arrest him.

D.I: Did you say that to the Kellys.

F.McB: No. Because I was along with Sean and he wanted to have them arrested. I went into the room with Sean but I don't know now what was said.¹⁶²³

The following exchange occurred between Mr. McBrearty Senior and counsel for An Garda Síochána when he was questioned about the above section of the interview notes:

Q. Do you recall [Superintendent Fitzgerald and Inspector McGinley] talking to you about a statement from Bridget Kelly?

A. I can't mind. I know what Bridget Kelly was, that was to do with Seán Crossan and wrecking up his house and smashing up his car, went to the Garda station in Raphoe and there were nobody there, me and Seán, and went on to Lifford to complain about it.

¹⁶²³ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), pages 531-532.

Q. *You see there is a question at page 531 at the bottom for you, the question is “I have a statement of Bridget Kelly here”? ... I am just concentrating on the questions that they say they asked you. They say they had a statement of Bridget Kelly, but Superintendent Fitzgerald is going to say that he decided to use this opportunity to go through all the allegations that would be made against you at that time and get your response. When the statement was produced Detective Inspector McGinley said, asked you: “do you know her?” and your response was “there is a pile of Kellys in Raphoe”. Then you were asked, “do you know Bridget from William Street, Raphoe?” and your answer was “there’re so many of them”. The Superintendent then says “she says that you called to the flat and asked what did the guards say. Whether they asked you about yourself or Frank Junior”. And your answer to that was “I say no to that as well”. In other words you were denying the suggestion that she was making. Do you recall that?*

A. *I said that ... my answer to that is no. That is my answer to that, is no. The Kelly family there is a whole pile of them and I don’t know all their names. They live now in Raphoe, but they were a member of the ... they used to be travelling people and they have settled them in Letterkenny and then they married people from around the Raphoe district. The guards had problems with them and we had problems with them in our nightclub.*

Q. *Then the Superintendent says “and they said to you that the guards did not mention them and that you left after stating that you wanted the guards to stop asking questions about the McBreartys”. And your response to that was “what a load of lies”. Then Detective Inspector McGinley says “Are you saying all this is untrue?” And your response to that, they say was “what I am saying is that I had Seán Crossan with me. That it was about young [name redacted].”*

A. *Yes, he smashed Seán’s car.*

Q. *Yes.*

A. *He broke the windows. And he asked me to help, could I go along with him. He was frightened.*

Q. *Well, is that true then, is that something that you did say to the guards?*

A. *No but I'm saying to you that's what I was doing down—you see when I was down to Seán Crossan's house, Sergeant Hannigan made allegations against me as well, when I was down –Seán is an electrician for the people in Raphoe...I was down in his house because he done part time work for me and I have been in his house umpteen thousand times and a whole load of other people in Raphoe that worked for me, part time work, when I needed I called to them. I wasn't down to question people or to question people about guards ...*

Q. *Yes, but it would appear then that when Detective Inspector McGinley asked you the question "are you saying all this is untrue?" referring to the Kellys, your response as recorded is "what I am saying is that I had Seán Crossan with me. That it was about young [name redacted], he smashed Seán's car and we were trying to locate him for the guards and to get the guards ... [INTERJECTION]*

A. *No, we weren't locating him, we were trying to do, we were trying to report it to the guards.*

Q. *"And to get the guards to arrest him".*

So it would appear that what you are saying to the Chairman now, in fact is what you were saying to Detective Inspector McGinley and Superintendent Fitzgerald?

A. *No, what I am saying to you is I can't mind saying that to them. But I am explaining to you that I went down and what me and Seán done.*

Q. *But sure they weren't to know that at that time were they?*

A. *I don't know, but sure they knew plenty of time afterwards.¹⁶²⁴*

10.242. A similar type of exchange took place between counsel for the Garda Commissioner and Mr. McBrearty Senior, when Mr. McBrearty Senior was questioned about what was recorded in the interview notes in relation to questions put to him about Caroline Lynch's statement.¹⁶²⁵

¹⁶²⁴ Transcript, Day 534, pages 23-28.

¹⁶²⁵ Transcript, Day 534, pages 35-40.

- 10.243. When the Chairman explained to Mr. McBrearty Senior that counsel for the Garda Commissioner had pointed out to him that there was a striking similarity between what Mr. McBrearty Senior had told the Tribunal had actually happened and what was contained in the interview notes, Mr. McBrearty Senior conceded that there was a possibility that he did say what was recorded in the interview notes to the Gardaí, but he did not remember so saying.¹⁶²⁶ On the conclusion of Mr. McBrearty Senior's cross-examination, he told the Tribunal that what he said in the interview did take place as recorded in the interview notes, but he claimed that it was taped on an audiocassette and that notes of interview were typed up afterwards.¹⁶²⁷
- 10.244. The Tribunal is satisfied that notes of interview were taken by Inspector McGinley during the course of the interview and that these notes reflect what happened in the office. Further, the Tribunal notes that when Mr. McBrearty Senior saw Mr. O'Donnell, solicitor, on the morning of the 13th of December 1996 he told Mr. O'Donnell that Superintendent Fitzgerald had told him that a Philomena Lynch had made a statement implicating him. The interview notes record that this exact proposition was put to Frank McBrearty Senior during the interview.¹⁶²⁸ The Tribunal does not believe that this interview was taped and written up at a later stage. There is no evidence to support this allegation, which has come very late in the day.
- 10.245. The Tribunal is satisfied that Frank McBrearty Senior was not asked at any stage to sign a blank sheet of paper as described by him to the Tribunal. The Tribunal does not accept that Superintendent Fitzgerald would participate in requesting a detainee to sign a blank sheet of paper, or go along with the signing of a blank sheet of paper for underhand purposes. Mr. Frank McBrearty Senior saw his solicitor Mr. James O'Donnell on the following morning at 09.15 hours. He did not at that stage make the complaint that he had been asked to sign a blank sheet of paper.¹⁶²⁹ It is inconceivable to the Tribunal that a man of Mr. McBrearty Senior's age and experience would not make such a complaint to his solicitors had that happened. More especially, in the light of all that was alleged by him and other members of his family to have happened in the course of the other detentions in the ten days prior to that interview, it is all the more likely that such a serious allegation would have been brought to his solicitor's attention. The Tribunal is satisfied that no such event took place and that the interview was recorded in writing at the time.

¹⁶²⁶ Transcript, Day 534, page 44.

¹⁶²⁷ Transcript, Day 534, page 50.

¹⁶²⁸ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), pages 532-535.

¹⁶²⁹ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 640.

Sleeping Arrangements for the Night of the 12th/13th of December

- 10.246. The custody record shows that Mr. McBrearty Senior, when escorted to a cell, refused to enter it and requested that alternative arrangements be made for the night. The relevant entry is reproduced here in full:

12/12/96 12 midnight – I showed the prisoner to the cell. He refused to go to the cell as he has a medical condition. He says he is claustrophobic. He complained about the cold concrete floor in the cell. He says he had a sore chest and had a cold. He then sought an alternative bed in another room in the station. A bed was prepared for him in an interview room which he stated he was very happy with. He asked for a drink of water which was supplied to him.¹⁶³⁰

- 10.247. Garda James Healy was the member in charge until 06.00 hours on the 13th of December. Garda Healy told the Tribunal that during the course of the interview he had received a number of phone calls from Mr. McBrearty Senior's family. Mr. Frank McBrearty Junior telephoned the Garda station at 22.25 hours, Mrs. Rosalind McBrearty telephoned the Garda station at 22.40 hours and Mr. McBrearty Senior's son, John McBrearty, telephoned from America at 23.05 hours. These were all recorded in the custody record.¹⁶³¹ Garda Healy informed Mr. McBrearty Senior's family that Mr. McBrearty Senior was fine. Mr. McBrearty Junior called to the Garda station at 22.50 hours and was told to come back later, which he agreed to do. When the interview was completed, Garda Healy told the Tribunal that he showed Mr. McBrearty Senior to the cell. Mr. McBrearty Senior then told him that he was claustrophobic and was not feeling well. Garda Healy said that Superintendent Fitzgerald suggested setting up a bed for Mr. McBrearty Senior in one of the interview rooms. He also told the Tribunal how he made arrangements that Garda Roland should sit outside the interview room where the bed was set up. Mr. Fitzgerald told the Tribunal that he first learnt from Inspector McGinley of the opinion of Dr. Callaghan, regarding the further questioning of Mr. McBrearty Senior, when Mr. McBrearty Senior requested that he would not be placed in a cell for the night. He said that when he heard that, his reaction was that Mr. McBrearty Senior was not going to be put in a cell for the night and he told Mr. McBrearty Senior that.¹⁶³²

- 10.248. When this scenario was put to Mr. McGinley he said as follows:

Well I don't recall having that conversation in the interview room with Mr. McBrearty at that stage. I certainly remember coming, yes, discussing about Mr. McBrearty's health ... Mr. McBrearty did express the view that he wouldn't be put into a cell and John

¹⁶³⁰ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), pages 436-437.

¹⁶³¹ Transcript, Day 536, page 89; Tribunal Documents, page 436.

¹⁶³² Transcript, Day 538, page 62

*Fitzgerald agreed to facilitate him on that. I don't recall a discussion about the doctor's letter in the interview room with Mr. McBrearty at that stage, I don't remember.*¹⁶³³

- 10.249. The Tribunal accepts that it was at the end of the 22.15 hours interview that Superintendent Fitzgerald first became aware of Dr. Callaghan's letter to the Gardaí. It is accepted by Mr. McGinley that a conversation as to Mr. McBrearty Senior's health took place at that stage and the Tribunal accepts that the reaction of Superintendent Fitzgerald in facilitating a request for Frank McBrearty Senior to sleep in the interview room, which was a step that would not normally be taken, was his reaction to the information that had just been supplied to him. **The Tribunal has already concluded that the continued questioning of Mr. McBrearty Senior in the face of medical evidence that it would be contrary to his best interest, represented a total disregard for Mr. McBrearty Senior's rights. Bearing that in mind, the Tribunal is satisfied that when Superintendent Fitzgerald became aware that some concern had been shown by Mr. McBrearty Senior's medical team with regard to his continued questioning he should, at that stage, have taken further steps to clarify the situation for himself and, if necessary, rectified whatever shortcomings were identified by him. At that stage he should have considered Mr. McBrearty Senior's immediate release from custody. Notwithstanding the Tribunal's conclusion on this matter, it is satisfied that Superintendent Fitzgerald acted correctly and humanely in making arrangements to have Mr. McBrearty Senior accommodated overnight in the interview room rather than in a cell. In accordance with the Superintendent's direction, a bed was made up for Mr. McBrearty Senior and he was made as comfortable as possible in the circumstances.**
- 10.250. At 00.08 hours Mr. Frank McBrearty Junior called to the Garda station and visited his father until 00.25 hours. Mr. McBrearty Senior requested sleeping tablets which were supplied to him at 00.10 hours. During the night, Garda James Healy checked on the prisoner at half-hourly intervals. At 02.15 hours Garda Healy supplied some Rennies to Mr. McBrearty Senior. At 06.00 hours Garda Healy was replaced as member in charge by Garda P.J. Thornton. Garda Thornton continued to check on Mr. McBrearty Senior at half-hourly intervals. At 07.55 hours Mr. McBrearty Senior had a complaint of a pain in his chest and stomach and he wanted his wife to be contacted so that she could telephone Dr. Kelly.¹⁶³⁴ When Garda Thornton gave evidence to the Tribunal he had no direct recall of that incident, but did remember making telephone calls for Mr. McBrearty Senior. **Garda Thornton said that if such a complaint had been made to him, he would not have been telephoning a doctor in Lifford, but would have had**

¹⁶³³ Transcript, Day 563, page 82.

¹⁶³⁴ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 438.

contact with a local doctor. The Tribunal accepts Garda Thornton's evidence in this regard. Garda Thornton had no success in actually speaking to Mrs. McBrearty, but at 08.15 hours Garda Thornton telephoned Dr. Kelly, who was unable to attend at the Garda station. Shortly thereafter, Mr. McBrearty Senior spoke to his wife and his solicitor, whereupon he returned to the interview room where he had spent the night before.¹⁶³⁵ Garda Thornton told the Tribunal that he had no specific recollection of this, but he assumed that Mr. McBrearty Senior was happy enough when he succeeded in speaking to his wife and his solicitor.¹⁶³⁶

The Fourth Period of Interview

10.251. Detective Sergeant Henry and Detective Garda Jennings on the morning of the 13th of December commenced an interview with Mr. McBrearty Senior at 08.35 hours, which terminated at 10.15 hours. This interview was interrupted on a number of occasions: at 08.40 hours Mr. McBrearty Senior was given his medication and a glass of water by Garda Thornton; at 08.45 hours the prisoner was asked whether he wanted breakfast, which he declined; at 08.50 hours Mr. McBrearty Senior was taken to the toilet to freshen up and was at that stage given a pair of socks. The interview was suspended from 09.15 hours to 09.35 hours when Mr. McBrearty Senior spoke to his solicitor, who had called to the Garda station.¹⁶³⁷ Mr. McBrearty Senior in his evidence to the Tribunal described this interview period as being the same as all of the others; he told the Tribunal as follows:

*And the questions that were put to me were the same thing as the rest of them put to me. About being Lord Mayor, about collecting money for football clubs, the boxing clubs and being a bully boy and being a tough man in Raphoe ... and how I was running Raphoe. That's all the line of questioning was. And that I was covering up for my son, for the death of Richie Barron. That was the questioning and they would say "poor Nora Barron, a widow, how do you think about that?" All that sort of questioning was done by them all. I can't put it all into a sequence for you now because I didn't have any notes.*¹⁶³⁸

10.252. Mr. McBrearty Senior told the Tribunal that he decided to make no reply to the questions at this interview.¹⁶³⁹

10.253. The memorandum of interview records that Mr. McBrearty Senior was asked about following the Gardaí around Raphoe, approaches he allegedly made to

¹⁶³⁵ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 438.

¹⁶³⁶ Transcript, Day 536, pages 179-181.

¹⁶³⁷ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 439.

¹⁶³⁸ Transcript, Day 529, page 17.

¹⁶³⁹ Transcript, Day 529, page 19.

Seán Crossan, Bridget Kelly, Caroline Lynch, telephone calls received from Philomena Lynch, approaches to Aileen Campbell, and the requests he made to the bouncers at his club to make statements. The notes record that Mr. McBrearty Senior did not reply to any of the questions asked; and that the notes were read over to him on completion of the interview and that he did not sign them.

- 10.254. Both Detective Sergeant Henry and Detective Garda Jennings deny that they were abusive to Mr. McBrearty Senior during this interview. Detective Sergeant Henry told the Tribunal that before he went into the interview he had studied a briefing pack which had been supplied to him in relation to Mr. McBrearty Senior, which included various statements from people in Raphoe, made in relation to Mr. McBrearty Senior's movements. He told the Tribunal that it appeared at that stage that Mr. McBrearty Senior was interfering with witnesses.¹⁶⁴⁰ Detective Sergeant Henry described the interview in the following terms:

*It was unproductive. Mr. McBrearty, he was very calm coming, you know, he was very polite because he had been ... like, you know, he had been ranting and raving on occasions before that, but during the interview he was very very mannerly. He was treated like a gentleman, as I said before, I don't think he answered any of our questions, he made no reply to all of our questions. Even at the very end when Detective Garda Jennings wrote out all the notes, when they were read over to him he neither nodded in agreement or shook his head in disagreement, you know, and that was just how the interview went.*¹⁶⁴¹

- 10.255. Detective Garda Jennings told the Tribunal that he took the notes of interview and Detective Sergeant Henry had the materials with him upon which Mr. McBrearty Senior was to be questioned.¹⁶⁴² Detective Garda Jennings also described Mr. McBrearty Senior as polite during the course of the interview and agreed that he did not speak.

- 10.256. The Tribunal is satisfied, having heard the evidence of Mr. McBrearty Senior, Detective Sergeant Henry and Detective Garda Jennings, that the interview proceeded in a relatively calm and mannerly way and that Mr. McBrearty Senior was not subjected to verbal abuse as described by him. Mr. McBrearty Senior agrees with at least some of the evidence given by the Gardaí insofar as he says that he had decided not to reply to their questions. Furthermore, it will be recalled that Mr. McBrearty Senior had a meeting with his solicitor at 09.15 hours on the morning of the 13th of December, which lasted until 09.35 hours. Mr. O'Donnell's attendance

¹⁶⁴⁰ Transcript, Day 536, pages 23-24.

¹⁶⁴¹ Transcript, Day 536, pages 42-43.

¹⁶⁴² Transcript, Day 536, page 153.

does not contain an allegation that Mr. McBrearty Senior was abused in any way during the course of the interview that he had, at that time, just left. The Tribunal is satisfied that had Mr. McBrearty Senior been subjected to verbal abuse he would have reported same to his solicitor.

- 10.257. Mr. O'Donnell's attendance stated that when he was leaving the Garda station at 09.35 hours, he asked the member in charge for sight of the custody record. He then explained:

I wasn't allowed to have sight of the custody record and I could ask for it afterwards and I would be given that and the statements. I then asked Detective Sergeant Henry whether he could confirm what time the questioning stopped last night. Detective Sergeant Henry told me that it stopped at midnight and that it continued again at 8.00 a.m. this morning. He said that he had given tablets to Frank throughout the night. He said that he was getting very annoyed with his solicitor writing things down in front of him. I told him I was doing my job.¹⁶⁴³

- 10.258. In evidence to the Tribunal Mr. O'Donnell stated he did not have a specific recollection of the events as described above and that Detective Sergeant Henry would have been "a professional Garda".¹⁶⁴⁴ Detective Sergeant Henry told the Tribunal that he may have made some remark to Mr. O'Donnell at this time. He said that it was not in the spirit of annoyance, though Mr. O'Donnell may have interpreted it that way. The Tribunal is satisfied that, while there may have been some sort of an exchange between Mr. O'Donnell and Detective Sergeant Henry, it was not in any way calculated to make Mr. O'Donnell's job any more difficult.
- 10.259. After this interview period, Mr. McBrearty Senior's wife and daughter arrived at the Garda station and visited him from 10.15 hours to 11.10 hours. During this visit Mr. McBrearty Senior was given a glass of water by Garda P.J. Thornton and supervised on two occasions.

The Fifth Period of Interview

- 10.260. At 11.35 hours on the 13th of December, Mr. McBrearty Senior was taken to an interview room by Detective Sergeant John Melody and Detective Garda John Fitzpatrick for the purpose of being interviewed. This interview terminated at 12.25 hours when Dr. McColgan arrived at the Garda station to see Mr. McBrearty Senior. There is a direct conflict of evidence between Mr. McBrearty Senior and the two Gardai in relation to what happened during this period of time.
- 10.261. Mr. McBrearty Senior described the encounter with Detective Sergeant Melody and Detective Garda Fitzpatrick as follows:

¹⁶⁴³ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), pages 640-641.

¹⁶⁴⁴ Transcript, Day 539, page 82.

Q. ... Can you remember when you went into the interview room at 11.35 with Sergeant Melody and Garda Fitzpatrick, did they ask you questions?

A. I can't recall, but I don't mind speaking to them at all.

Q. Can you remember ...

A. I remember going to the toilet, I remember having a pain in my arm and chest and I remember the doctor coming and examining me and I remember being took to Letterkenny, back to the hospital again and I remember the two detectives, whoever they are, I am not sure who they are, they run after the doctor and they couldn't get him. They were f..ing and blinding going down the hall, there is fuck all wrong with him, we want to interview him.¹⁶⁴⁵

10.262. In relation to the doctor's visit, Mr. McBrearty Senior described it as occurring just after he had been to the toilet; he was returning from the toilet and he met the doctor who examined him in something like a corridor or a hallway.¹⁶⁴⁶ He said that while he was being examined, Detective Sergeant Melody and Detective Garda Fitzpatrick were around a corner, in the hallway. After the examination by the doctor, he was returning and Detective Garda Fitzpatrick and Detective Sergeant Melody ran up the hallway after him. Mr. McBrearty Senior said that there was another Garda there at the time who took control of the situation and removed him to hospital and in some way placated Detective Sergeant Melody and Detective Garda Fitzpatrick.¹⁶⁴⁷

10.263. Detective Sergeant John Melody and Detective Garda John Fitzpatrick were members of the Central Detective Unit which was based in Dublin at the relevant time. Detective Sergeant Melody explained to the Tribunal that he had been in Donegal on the 4th of December to interview Mr. Frank McBrearty Junior. He returned to Dublin on the 5th of December and received instructions to return to Donegal on the 12th of December as it was anticipated that Frank McBrearty Senior would be discharged from hospital.¹⁶⁴⁸

10.264. On arrival in Letterkenny, Detective Sergeant Melody told the Tribunal that he assumed he met Sergeant Martin Moylan and the senior officers that were there on that particular day to receive an outline of the position in relation to Mr. Frank McBrearty Senior.¹⁶⁴⁹ Detective Sergeant Melody explained to the Tribunal that he received a briefing file and a briefing, but he does not remember from whom.

¹⁶⁴⁵ Transcript Day, 529, pages 28-29.

¹⁶⁴⁶ Transcript, Day 529, page 49.

¹⁶⁴⁷ Transcript, Day 529, page 49.

¹⁶⁴⁸ Transcript, Day 538, pages 139-149.

¹⁶⁴⁹ Transcript, Day 538, pages 143-144.

Along with that briefing file, Detective Sergeant Melody said he brought some of the documents that he had already received in relation to the investigation. These were the notes of the first interviews that he had had with Frank McBrearty Junior and a copy of his custody record.¹⁶⁵⁰ Detective Sergeant Melody told the Tribunal that he was told about the statement of the 4th of December made by Robert Noel McBride, but has no specific recollection of seeing that statement.¹⁶⁵¹ He also told the Tribunal that he and his colleagues were aware that Mr. McBrearty Senior had been in hospital over a prolonged period of time and that he suffered from high blood pressure and that he had a particular medical condition.¹⁶⁵² He was not aware of any letter that the Gardaí received from Dr. Callaghan.¹⁶⁵³ Detective Sergeant Melody described the interview as follows:

*We found him relatively calm and he didn't know us. It was the first time that we had met him. So I presumed there was a certain amount of each of us assessing the other. We started off the interview and I told him who we were. I asked him did he know why he was arrested and he said he did. And then at some early stage then I asked him was he feeling okay. So that's how the interview progressed. We didn't find any difficulty interviewing him.*¹⁶⁵⁴

- 10.265. Detective Sergeant Melody described one peculiar incident during the interview as follows:

*Well he behaved badly at one stage in that he got down off his chair and knelt down and asked as to join him in prayer. So we thought this was odd. As long as he wasn't doing anything, we'll say, outrageous and that, we tolerated it and we didn't see any reason for to stop him. And it wasn't for a prolonged period of time that he behaved in that manner.*¹⁶⁵⁵

- 10.266. Detective Sergeant Melody said that Mr. McBrearty Senior never, at any time during the interview, gave any indication that he was ill.¹⁶⁵⁶

- 10.267. Detective Garda Fitzpatrick's evidence was similar to that of Detective Sergeant Melody. He described Mr. Frank McBrearty Senior and his interview with him as follows:

He was cordial enough. He's a fairly arrogant man. I would say a proud man. Like I mean to say he told us who he was. I think even

¹⁶⁵⁰ Transcript, Day 538, page 145.

¹⁶⁵¹ Transcript, Day 538, page 147.

¹⁶⁵² Transcript, Day 538, page 153.

¹⁶⁵³ Transcript, Day 538, page 154.

¹⁶⁵⁴ Transcript, Day 538, page 163.

¹⁶⁵⁵ Transcript, Day 538, page 164.

¹⁶⁵⁶ Transcript, Day 538, page 165

*for us coming from Dublin to interview him he would have expected, I think, someone a bit better than ourselves with a rank. Not a Garda or a Sergeant, to be honest with you. He would be more used to dealing with officers ... that was my impression.*¹⁶⁵⁷

Detective Garda Fitzpatrick denied the account of events given by Mr. Frank McBrearty Senior.

- 10.268. The memorandum of this interview covers five pages in total. It records that the two Gardaí introduced themselves to Mr. Frank McBrearty Senior and asked him whether he knew why he had been arrested. He was then cautioned and asked how he was feeling, to which he replied “don’t worry about it, that’s my problem”. He was then asked generally about intimidating witnesses, to which he replied that he “didn’t do nothing”. In the second page of notes there are two significant questions, which are as follows:

Q. Frank, this is a very serious investigation. A man was murdered and your son, Frank Junior has admitted his part in his murder. You are not entitled to intimidate witnesses to influence them not to give evidence against your son.

A: That’s lies, all lies, my son wouldn’t do anything like that.

Q. Your son has made a statement to us outlining his part in the murder of Richard Barron. We know that you have approached several witnesses and intimidated them because they have told the truth.

A: My son is an innocent man and I’ll prove that he’s innocent.¹⁶⁵⁸

- 10.269. Then the memorandum of interview records that Frank McBrearty Senior was accused of offering a person money not to help the police, which Mr. McBrearty Senior denied. The entry then records that he was asked about intimidating an employee of his, Ms. Campbell, to which Mr. McBrearty Senior responded that that was lies. He was then reminded again that his son told the Gardaí that he was involved in the killing of the Late Richard Barron that night, to which Mr. McBrearty Senior responded that that was lies. It is then recorded that Mr. McBrearty Senior enquired as to when the doctor was coming and the Gardaí enquired as to whether Mr. McBrearty Senior was feeling alright. The next question records the Gardaí asking Mr. Frank McBrearty Senior why he would not tell the truth of what he knew about the murder of Mr. Richard Barron, to which Mr. McBrearty Senior replied that he knew nothing about it and that his son knew nothing about it. He is noted as saying that the people in Raphoe were jealous of him and his family. Again, it was outlined to Mr. McBrearty Senior that

¹⁶⁵⁷ Transcript, Day 544, page 186.

¹⁶⁵⁸ Tribunal Documents, Arrest and Detention of Frank McBrearty Senior, Volume 2, pages 462-465.

his son made a statement outlining his part in the killing of Richard Barron and that the Gardaí knew that Mr. McBrearty Senior was trying to stop certain witnesses from giving evidence against Mr. McBrearty Junior. He was asked why he would not tell the truth about what he did. Mr. McBrearty Senior is recorded as replying that he was saying nothing more and that he should not even be talking to the Gardaí. Both Detective Sergeant Melody and Detective Garda Fitzpatrick gave evidence to the effect that the notes of the interview were read over to Mr. McBrearty Senior and that his reply was that he did not think the Gardaí would write it all down; and he refused to sign the memorandum.

10.270. The member in charge at the Garda station at the time of this interview was Garda P.J. Thornton. As already outlined, he resumed duty at 06.00 hours. He took his meal break from 09.00 hours to 10.00 hours and thereafter was in the Garda station at all relevant times. Garda Thornton told the Tribunal that at 12.00 hours he checked Mr. McBrearty Senior, who was in the middle of an interview with Detective Sergeant Melody and Detective Garda Fitzpatrick. In his evidence to the Tribunal he said that he had a vague recollection of going into the interview room and Mr. McBrearty Senior asking him for a doctor. Garda Thornton said he enquired if Mr. McBrearty Senior was okay and he said he just wanted his medication checked.¹⁶⁵⁹ It was put to Garda Thornton that Mr. McBrearty Senior had said in evidence that he had complained about not being well, about having a pain in his arm and a pain in his chest and also being very dizzy that morning. Garda Thornton said if that was the case he would have written it in the custody record. As a result of Mr. McBrearty Senior's request Garda Thornton placed a telephone call to Dr. Kelly's practice and was informed that Dr. McColgan was available to come to the station. At 12.25 hours Dr. McColgan arrived to see Mr. McBrearty Senior. Garda Thornton had a vague recollection of taking Dr. McColgan upstairs to the interview room to see Mr. McBrearty Senior and both Detective Sergeant Melody and Detective Garda Fitzpatrick left the room.

10.271. Garda Thornton told the Tribunal that Dr. McColgan examined Mr. McBrearty Senior in the same room where he had previously been questioned by the two Gardaí. He was asked whether at any stage Mr. McBrearty Senior went to the toilet, to which Garda Thornton said that he had no recollection of same and if that had happened he would have recorded it in the custody record. He then said that Dr. McColgan came out of the room and said he was sending Mr. McBrearty Senior to Letterkenny General Hospital for an ECG. Dr. McColgan commenced writing out some documentation, whereupon Garda Thornton took Mr. McBrearty Senior downstairs as far as the day room where he used the telephone. At 12.50 hours Mr. McBrearty Senior was taken to hospital in the custody of Detective Sergeant Smith and Detective Garda Scanlon.

¹⁶⁵⁹ Transcript, Day 536, page 182.

- 10.272. Dr. McColgan told the Tribunal that he had a vague memory of his encounter with Mr. Frank McBrearty Senior on the 13th of December. The Tribunal does not accept Mr. McBrearty Senior's description of his encounter with Detective Sergeant Melody and Detective Garda Fitzpatrick as given by him in his evidence. The Tribunal does not accept that these two Gardaí behaved in such a way in front of a medical practitioner who had just referred Mr. McBrearty Senior to Letterkenny General Hospital for further medical tests.
- 10.273. I am also satisfied that the notes of interview represent in as accurate a way as possible what was discussed during the interview. This is strongly supported by a memorandum recorded by Mr. McBrearty Senior's solicitor, Mr. James O'Donnell, following a visit he had with Mr. McBrearty Senior at Letterkenny General Hospital at 18.55 hours on the 13th of December 1996. It is recorded in the notes as follows:

Frank said that two detectives from Dublin, who he called John and John, told him that they had a signed statement from Frank Junior admitting to the murder of Richard Barron.¹⁶⁶⁰

- 10.274. The notes of interview as recorded show that the two interviewing Gardaí had told Mr. McBrearty Senior that Mr. Frank McBrearty Junior had confessed to the killing of the Late Richard Barron. This is exactly what Mr. McBrearty Senior told his solicitor later on that day. In evidence to the Tribunal, Mr. McBrearty Senior denied any knowledge of the making of a statement by Mr. Frank McBrearty Junior until a copy of the statement was exhibited in an affidavit of Chief Superintendent Denis Fitzpatrick in April of 1997.¹⁶⁶¹ Indeed, for many years Mr. McBrearty Senior maintained this position. Clearly, he had knowledge of the making of a statement on the 13th of December 1996. Mr. McBrearty Senior goes further and maintains that he never discussed the making of this statement with his son, Frank McBrearty Junior before April 1997, notwithstanding the fact that he reported the matter to his solicitor almost immediately. It would have been of enormous benefit to the Tribunal had Mr. Frank McBrearty Senior told the full truth about being told of the existence of such a statement by the two interviewers, the importance he attached to it in telling his solicitor about it, and the nature and extent of what Mr. Frank McBrearty Junior said about it, over the days, weeks and months that followed his arrest. Instead, Mr. McBrearty Senior maintained the position that he did not discuss it all with his son during that period, which is not credible.

¹⁶⁶⁰ Tribunal Documents (Arrest and Detention of Frank McBrearty Senior, Volume 2), page 644.

¹⁶⁶¹ Transcript, Day 529, pages 40 and 53.

- 10.275. I am satisfied that the interview took place as described by Detective Sergeant Melody and Detective Garda Fitzpatrick and that the notes produced accurately record what was discussed during that interview. I am also satisfied that the interview ended when the doctor arrived and that there was no scene on the corridor involving the two Gardai running after the doctor.

Hospitalisation and Release from Custody

- 10.276. Mr. McBrearty Senior was re-admitted to Letterkenny General Hospital on the 13th of December 1996 at 12.50 hours. On the 18th of December 1996 at 16.45 hours Mr. McBrearty Senior was transferred to Beaumont Hospital. He remained in Beaumont Hospital until the 19th of December 1996, when he was released from Garda custody on the instructions of Superintendent Fitzgerald at 17.10 hours. While Mr. McBrearty Senior was in hospital he was supervised by two Gardaí at all times until the time he was released from custody. I have already dealt with Mr. McBrearty Senior's complaints concerning his Garda supervision in hospital. Since no further complaints have been referred to by Mr. McBrearty Senior concerning this particular period I do not propose to repeat my findings in respect of same. Following his release from custody he was discharged from hospital on the 20th of December 1996. His son collected him and brought him back to Donegal.
- 10.277. Dr. Callaghan told the Tribunal that Mr. McBrearty Senior was admitted to Letterkenny General Hospital under his care on the 13th of December 1996 and stayed until the 18th of December 1996. Dr. Callaghan told the Tribunal that he diagnosed Mr. McBrearty Senior as suffering from hypertension mixed with mixodena and hypertensive cardiac disease. An angiogram was carried out in Beaumont Hospital, the results of which were normal.
- 10.278. Mr. Fitzgerald told the Tribunal that he became aware that Mr. McBrearty Senior was re-admitted to hospital, more than likely on the evening of the 13th of December.¹⁶⁶² On the 19th of December, Superintendent Fitzgerald became aware that Mr. McBrearty Senior had been transferred to Beaumont Hospital on the previous evening.¹⁶⁶³ Superintendent Fitzgerald was asked by counsel for the Tribunal why he waited until the 19th of December to release Mr. McBrearty Senior under the provisions of section 30, and in particular, why he was not released on the 13th of December when he was re-admitted to hospital. Mr. Fitzgerald said that the fact that Mr. McBrearty Senior had been sent to Beaumont caused him to focus more on the situation and at that stage he made up his mind that Mr. McBrearty Senior would not be further questioned.¹⁶⁶⁴ This decision was communicated to the hospital by Detective Superintendent Shelly.

¹⁶⁶² Transcript, Day 538, page 78.

¹⁶⁶³ Transcript, Day 538, page 78.

¹⁶⁶⁴ Transcript, Day 538, page 79.

- 10.279. **The Tribunal accepts that it was the transfer of Mr. McBrearty Senior to Beaumont Hospital that caused Superintendent Fitzgerald to release Mr. McBrearty Senior. It is regrettable that his release did not occur some days earlier.**

Subsequent Events

- 10.280. Sergeant Martin Moylan was assigned the duty of completing the investigation file in relation to the allegations of interference with or intimidation of civilian witnesses during the course of the investigation into the death of the Late Mr. Richard Barron made against Mr. Frank McBrearty Senior. He completed the file and furnished it on the 2nd of April 1997 to Superintendent Kevin Lennon at Letterkenny Garda Station. This file included statements by persons already referred to including Bridget Kelly, Aileen Campbell, Daniel Lynch, Caroline Lynch and Garda Philip Collins, together with statements of Garda John O'Dowd and Garda Dan Curran in respect of a public order incident which occurred on the 27th of October 1996, and statements of Robert Noel McBride. It also included, as exhibits, papers and notes seized from Mr. McBrearty Senior's home on the 5th of December 1996 and notes of interviews conducted during the course of his detention.¹⁶⁶⁵ This file was then transmitted to the State Solicitor in Donegal by Superintendent Kevin Lennon. He identified the most significant evidence on the file as being the statements of Robert Noel McBride. It was his view that the evidence of all the witnesses, with the exception of Robert Noel McBride, did not offer the level of proof required in order to sustain a prosecution against Mr. Frank McBrearty Senior under section 7 of the Conspiracy and Protection of Property Act, 1875. He recommended that no proceedings be instituted against Frank McBrearty Senior.¹⁶⁶⁶ Subsequently the Director of Public Prosecutions directed that no charges be initiated against Mr. Frank McBrearty Senior. This was conveyed to Mr. McBrearty Senior by letter dated the 15th of September 1997 from Superintendent Lennon.

Conclusions

- 10.281. The following is a summary of my conclusions in relation to Mr. McBrearty Senior's arrest and detention on the 5th of December 1996 and subsequent days:

1. **The events leading up to the arrest of Mr. McBrearty Senior have already been examined and made the subject of findings in the second report of the Tribunal. For the reasons set out in that report and in this chapter, I am satisfied that Garda John O'Dowd and William Doherty manipulated the procurement of the false information which Garda O'Dowd then furnished to the investigation**

¹⁶⁶⁵ Tribunal Documents, Arrest and Detention of Frank McBrearty Senior, Volume 2, pages 488-559.

¹⁶⁶⁶ Tribunal Documents, Arrest and Detention of Frank McBrearty Senior, Volume 2, pages 484-487.

team. This information was relied upon to a significant degree by Detective Superintendent Shelly in issuing the search warrant on foot of which Mr. McBrearty Senior's dwelling house was searched on the 5th of December 1996, during which he was arrested under section 30 of the Offences Against the State Act, 1939. The Tribunal is satisfied that no lawful search or arrest can occur when the agency effecting the arrest is responsible for manipulating and procuring the false evidence on which the grounding suspicion was allegedly based. The Tribunal is also satisfied that the search warrant was legally tainted by fraud and was unlawful. It follows that the arrest effected by Sergeant Heffernan following the execution of this search warrant, upon entering Mr. McBrearty Senior's dwelling house, was unlawful and in breach of Mr. McBrearty Senior's constitutional rights as guaranteed under Article 40.5 of the Constitution, which provides that the dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law. Sergeant Heffernan was not at fault in this affair, in carrying out his duties as directed by Detective Superintendent Shelly.

2. Mr. McBrearty Senior complained that the search of his house by members of An Garda Síochána involved too large a search party, it was carried out in a disorganised and heavy-handed manner which resulted in the ceiling of the house being damaged, and no receipt was provided to him in respect of what had been seized during the search. The evidence establishes that the search party was comprised of fourteen members of An Garda Síochána, which I am satisfied was not excessive in the circumstances. I am satisfied that the search of Mr. McBrearty Senior's home was carried out by the Gardaí in an appropriate fashion and no criticism can be made of them concerning same. In relation to the allegation that damage was caused to Mr. McBrearty Senior's house in the form of cracks to the ceiling, the Tribunal does not accept that this has been established. The evidence of Fr. Harkin and Dr. Martin Coyne supports this conclusion.
3. Mr. Frank McBrearty Senior suggested that he was in no fit condition to be arrested. Dr. Martin Coyne attended on Mr. McBrearty Senior, at his residence, on the evening of the 5th of December 1996, just prior to the arrest of Mr. McBrearty Senior. At that time Mr. McBrearty Senior had a history of borderline blood pressure and had been on hypertensive medicine for some months. Dr. Coyne found Mr. McBrearty Senior's blood pressure to be very high and administered

medication called Inepidine to him. A complaint is made that Mr. McBrearty Senior's health was so obviously bad that he should not have been arrested. I am not satisfied that this is so. Dr. Coyne, Mr. McBrearty Senior's doctor, told the Tribunal that had he been asked by the Gardaí he would not have advised that Mr. McBrearty Senior was too ill to be taken into custody.

4. Mr. McBrearty Senior alleged that in the course of being transported to the Garda station by three Gardaí, namely Detective Garda James Frain, Sergeant Heffernan and Detective Sergeant Keane in a patrol car, the Gardaí were referring to him as being a hard man in Raphoe, being involved in boxing, that he was Lord Mayor of Raphoe and that he was not such a hard man now that he was under arrest. While in the Garda station he was interviewed on five occasions. In addition, Mr. McBrearty Senior complained that on each of the five occasions, he was verbally abused by Gardaí who referred to him in disparaging terms as a hard man, a bully boy and Lord Mayor of Raphoe. I do not accept that this verbal abuse as described by Mr. McBrearty Senior took place. I am satisfied that Mr. McBrearty Senior's habit of referring to himself as the Lord Major of Raphoe was to indicate that he was a person of some importance in the town.
5. Mr. McBrearty Senior was initially interviewed on the 5th of December 1996 from 21.15 hours to 22.40 hours by Detective Garda P.J. Keating and Detective Garda Seán Herraghty. This interview ended due to the arrival of a doctor at the Garda station. Mr. McBrearty Senior alleged that during the course of this interview he was not assaulted by the interviewing Gardaí, but that they may as well have been hitting him as the things they were saying to him were very offensive. He said that during the course of this interview, the interviewing Gardaí referred to the unfortunate Mrs. Barron, in that she had lost her husband; they accused him of being involved in the death of Richard Barron; they referred to him as a hard man, accused him of bullying tactics, referred to boxing and engaged in shadow boxing and banging of a table. Mr. McBrearty Senior said he thought it was Detective Garda Herraghty who had engaged in shadow boxing with him and who had been banging on the table, but he was not one hundred per cent sure as to who exactly had banged on the table. Mr. McBrearty Senior told the Tribunal that the Gardaí were pulling at the chair on which he was sitting with a view to making him angry. Mr. McBrearty Senior also alleged that Sergeant Paul Heffernan

came into the interview at one stage “bawling and shouting”, referring to boxing and to him being a hard man. Mr. McBrearty Senior also described Detective Garda Martin Anderson as being outside the interview room, pulling himself up and down while looking through the fanlight located above the door into the interview room. I am satisfied that neither the interviewing Gardaí nor Detective Garda Martin Anderson behaved in the manner complained of by Mr. McBrearty Senior. In so far as any incident with a chair may have happened the Tribunal is satisfied that it was one of a minor nature and not calculated to be in any sense threatening. The Tribunal accepts that insofar as there was any verbal abuse during the interview it was coming from Mr. McBrearty Senior and directed at the Gardaí.

6. Mr. McBrearty Senior’s second period of questioning took place on the 12th of December 1996 when he was interviewed from 17.00 hours to 20.30 hours by Detective Garda Michael Jennings and Detective Garda James Frain. Mr. McBrearty Senior alleged that he was accused of being a boxer, a hard man, a bully boy and the top man in Raphoe. He also disputed the accuracy of the notes of interview. I do not accept that the interviewing Gardaí called Mr. McBrearty Senior a boxer, a hard man, a bully boy or the top man in Raphoe. Furthermore, I do not accept that the notes of interview are inaccurate in the way complained of by Mr. McBrearty Senior.
7. Mr. McBrearty Senior was then interviewed for a third time on the 12th of December 1996 between 22.15 hours and 23.55 hours by Superintendent Fitzgerald and Inspector McGinley. Mr. McBrearty Senior told the Tribunal that prior to going into the interview he was down on his hands and knees, that he pleaded his innocence during the interview, and that Inspector McGinley produced a blank sheet of paper and demanded that he sign it, adding that he would fill in the rest. He disputed that any notes had been taken during the interview. He further claimed that the interview had been taped and the interview notes written up at a later stage. I am satisfied that there were notes taken by Inspector McGinley during the interview and that these notes reflect what happened in the interview room. I do not accept that Mr. McBrearty Senior was asked to sign a blank sheet of paper and I do not believe that this interview was taped.
8. On the 13th of December 1996 Detective Sergeant Sylvester Henry

and Detective Garda Michael Jennings interviewed Mr. McBrearty Senior for the fourth time from 08.35 hours to 10.00 hours. Mr. McBrearty Senior claimed that he was again questioned in a disparaging fashion about being Lord Mayor of Raphoe, collecting money for football clubs and boxing clubs, and was accused of being a bully boy and being a tough man in Raphoe and asked about how he was running Raphoe. Mr. McBrearty Senior also said that it was put to him that he was covering up for his son's alleged involvement in the death of the Late Richie Barron. Both Detective Sergeant Henry and Detective Garda Jennings denied that they were abusive to Mr. McBrearty Senior during this period of interview. Both Gardai described the interview as unproductive and Mr. McBrearty Senior as being calm. I do not accept that Mr. McBrearty Senior was subjected to verbal abuse, as described by him during this interview. The idea that Mr. McBrearty Senior was calm, while accepted, must be viewed as a description relative to the varying degrees of agitation that he exhibited throughout his detention, and not in the normal sense.

9. Mr. McBrearty Senior was interviewed for the fifth and final time on the 13th of December 1996 from 11.35 hours to 12.25 hours by Detective Sergeant John Melody and Detective Garda John Fitzpatrick. Mr. McBrearty Senior denied the account of the interview given by the two Gardai and alleged that their notes were a fabrication but rather said that he met both Gardaí on a corridor when he was about to leave the Garda station for Letterkenny hospital. He claimed both Gardaí ran down the corridor saying that there was nothing wrong with him and that they wanted to interview him. I am satisfied that an interview took place as described by the Gardaí and I do not accept that the exchange on the corridor as described by Mr. McBrearty Senior happened. I am also satisfied that during this interview Mr. McBrearty Senior was informed by the two interviewers that his son, Frank McBrearty Junior, had made an admission of involvement in the killing of the Late Mr. Barron.
10. Mr. McBrearty' Senior's health was something that was of great concern to him during the time he was under arrest. He suggested that this was a concern that was not taken seriously by the Gardaí. There is some truth in this allegation. Having had a consultation with Dr. Kelly in or around 22.50 hours on the night of the 5th of December, Mr. McBrearty Senior was admitted to Letterkenny General Hospital. From the night of the 5th of December 1996 to the 11th of

December 1996 Mr. McBrearty Senior was an in-patient at Letterkenny General Hospital. On the 11th of December 1996 he was taken by ambulance to Blanchardstown Hospital and returned on the same day to Letterkenny General Hospital. He was discharged from Letterkenny General Hospital on the 12th of December 1996 at 16.30 hours and returned in custody to Letterkenny Garda Station, where his detention was continued. He was again admitted to Letterkenny General Hospital on the 13th of December 1996 at 12.50 hours. On the 18th of December 1996 at 16.45 hours Mr. McBrearty Senior was transferred to Beaumont Hospital, where he remained until the 19th of December 1996 when he was released from Garda custody on the instructions of Superintendent Fitzgerald at 17.10 hours. While Mr. McBrearty Senior was in hospital he was supervised by two Gardaí at all times up until the time he was released from custody. Mr. McBrearty Senior objected to the presence of these Gardaí and alleged that their presence was humiliating for him and that the Gardaí concerned gave him a lot of abuse. The Tribunal accepts that when an arrested person is admitted to hospital it is necessary that that person be supervised by Gardaí while in hospital. While such a Garda presence is necessary the Tribunal accepts that it may have caused some embarrassment to Mr. McBrearty Senior. However, I do not accept that the Gardaí abused Mr. McBrearty Senior or denied him access to visitors. On the contrary I find that the Gardaí tried to remain as discreet as possible, that they allowed Mr. McBrearty Senior access to visitors and that they provided him with a phone. Furthermore, I am satisfied that Mr. McBrearty Senior himself drew attention at members of An Garda Síochána while in Letterkenny Hospital.

11. While in Letterkenny General hospital Mr. McBrearty Senior was under the care of Dr. Brian Callaghan, who is a consultant physician in the hospital. Dr. Callaghan told the Tribunal that he was happy that Mr. McBrearty Senior be discharged from medical care on the 12th of December 1996. Prior to Mr. McBrearty Senior's discharge from hospital, his solicitor, Mr. James O'Donnell, spoke to Dr. O'Callaghan in order to ascertain what effect Mr. McBrearty Senior's continued detention might have on his medical condition. Dr. Callaghan provided him with a letter which set out Mr. McBrearty Senior's symptoms, the medication he was on, when he was to be discharged from hospital and his opinion that any stress would certainly

exacerbate his condition and that it would not be in his best interest to be interrogated at this time. A copy of this letter was shown to Detective Sergeant Henry in the hospital.

12. Mr. O'Donnell returned to his office and prepared a letter addressed to the Superintendent in Letterkenny Garda Station and to Detective Sergeant Henry, which outlined the medical condition of Mr. McBrearty Senior and the fact that Mr. Callaghan had confirmed that further interrogation would exacerbate Mr. McBrearty Senior's condition, and requesting an undertaking that Mr. McBrearty Senior would not be subjected to further interrogation at that stage.
13. On that evening Mr. McBrearty Senior was discharged from hospital and returned to Letterkenny Garda Station at 16.35 hours I am satisfied that Detective Sergeant Henry received Mr. O'Donnell's letter shortly before 18.30 hours and I am also satisfied that he brought the letter to the attention of Detective Superintendent Shelly and Inspector McGinley. I am satisfied that Superintendent Fitzgerald was not present when a decision was taken by consensus between Inspector McGinley and Detective Superintendent Shelly to continue the detention of Mr. Frank McBrearty Senior and his interrogation. I am satisfied that the continued questioning of Mr. McBrearty Senior in the face of undisputed and unquestioned medical opinion to the contrary amounted to a complete disregard of his right to be treated fairly while in Garda custody. For this Detective Superintendent Joseph Shelly and Inspector McGinley were responsible.
14. I accept that Superintendent Fitzgerald first became aware of Mr. Callaghan's letter to the Gardai when he had finished interviewing Mr. McBrearty Senior. I am satisfied that when Superintendent Fitzgerald became aware that some concern had been expressed by Mr. McBrearty Senior's medical team with regard to his continued questioning he should have at that stage taken further steps to clarify the situation for himself and, if necessary, rectified whatever shortcomings were identified by him. He should, at that stage have considered Mr. McBrearty Senior's immediate release from custody.
15. It will be recalled that Mr. O'Donnell's letter was also sent to the Superintendent's office. Notwithstanding that the correspondence was marked 'urgent' and referred to a person who at that time was detained in the Garda station, and that receipt of same was acknowledged by Superintendent Fitzgerald, Superintendent

Fitzgerald did not recall reading Mr. O’Callaghan’s letter until approximately two years later. I find that it was negligent of Superintendent Fitzgerald to allow such a system to operate in his office.

16. At no time was the member in charge informed of Dr. Callaghan’s view of continuing the questioning of Mr. McBrearty Senior. The member in charge of the Garda station is the person with overall responsibility for the overseeing of the application of Custody Regulations and, in particular, he was the Garda who had responsibility for the well being of Mr. McBrearty Senior. I find it disgraceful that he was not informed of Dr. Callaghan’s opinion and I find that Detective Superintendent Shelly, Inspector McGinley and to a lesser extent Superintendent Fitzgerald bear responsibility for this.
17. The Tribunal was greatly disturbed by the fact that Sergeant John White furnished details of the tests carried out upon Mr. McBrearty Senior at Blanchardstown Hospital by fax dated the 12th of December 1996 to Letterkenny Garda Station. This facsimile was found on the detention file of Mr. Frank McBrearty Senior. It was obviously obtained and furnished behind the back of Mr. Frank McBrearty Senior and his medical advisor surreptitiously. This involved a violation of Mr. Frank McBrearty Senior’s relationship with his doctors and the hospital as a patient. Sergeant White was able to obtain the services of some third party who had access to these medical records in Blanchardstown Hospital. He did not tell the Tribunal who this person was. Nobody in Letterkenny Garda Station admitted to the fact that the facsimile had been received, viewed or acted upon. This behaviour was disgraceful. It is a measure of the zeal and narrow focus of this investigation and those involved in it that these measures were taken. Common decency dictated that Mr. McBrearty Senior be afforded privacy as a patient and that his doctors be allowed to carry out such tests and treatment and give such advice to Mr. McBrearty Senior without this kind of appalling and intrusive examination of his medical files. The Tribunal does not accept that no member of An Garda Síochána of any rank at Letterkenny Garda Station knows anything of this document. The failure of any Garda to acknowledge its existence or having sight of it at Letterkenny Garda Station in 1996 or any time thereafter is hopefully indicative that they are suitably ashamed of how An Garda Síochána conducted themselves in respect of this matter. The Tribunal suspects, however, that it is a further

example of an unwillingness to deal forthrightly with the Tribunal.

18. The Tribunal is also satisfied that Mr. Frank McBrearty Senior, when making complaints and giving evidence in respect of his arrest and detention, greatly exaggerated some events and told untruths in respect of others. These are documented in the body of the chapter. It must be acknowledged that Mr. McBrearty Senior and his family were subjected to numerous wrongs, as documented in this report. Nevertheless, it was wrong and disgraceful on his part to make false allegations from time to time in respect of members of An Garda Síochána who dealt with him at that time. The fact that wrongs were committed against Mr. McBrearty Senior does not give him a licence to unfairly and wrongly accuse other Gardaí of transgressions. Mr. McBrearty Senior's attitude in this respect was very disappointing to the Tribunal.

